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## **CROWN AND GOWN:**

Relations between the crown and the universities during the reign of James II,  
with special reference to Roger Morrice's "Entring Book".

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ABBREVIATIONS.

- Bloxam J. R. Bloxam, *Magdalen College and King James II 1686-1688*, (Oxford, 1886).
- Burnet Gilbert Burnet, *History of His Own Time*, ed. Martin Joseph Routh, reprint, (Oxford, 1969).
- DNB *The Concise Dictionary of National Biography*, (Oxford, 1979).
- CSPD *Calendar of State Papers: Domestic*, series James II, (London, 1972-9).
- Morrice Roger Morrice, *The Entering Book: Being an Historical Register of Occurrences from April Anno: 1677 to April 1691*, Mss.P and Q, (Mss. held at Dr. Williams's Library, London).
- ST T. B Howell, *A Complete Collection of State Trials*, vols. 11 and 12, (London, 1812).
- Wood Anthony a Wood, *The Life and Times of Anthony a Wood, Antiquary of Oxford, 1632-1695 Described by Himself*, ed. Andrew Clark, vol. 3 (1685-95), (Oxford, 1894).

NOTES ON SOURCES.

All direct quotes from primary sources have retained the original spelling and punctuation of their authors, with any necessary editorial additions enclosed in square brackets. Similarly, the use of the seventeenth century calendar has been retained, although the year is taken as beginning on 1 January, not on 25 March as in the old reckoning.

i. Introduction.

On March 6, 1688, Anthony à Wood, antiquary of Oxford, wrote that it had been the prediction of the late King Charles that when James, Duke of York came to the Kingship "he would not continue in the throne above 3 years."<sup>1</sup> In commenting thus Charles demonstrated remarkable foresight, for despite ascending the throne in 1685 amidst a wave of fervent royalism and unprecedented Parliamentary support, James, in just three short years, was to lose his crown at the hands of a country sullen and alienated by his efforts to restore Catholicism. Such a complete reversal in public opinion, effected in such a short time, was a remarkable 'achievement', and one in which the universities of Oxford and Cambridge played an integral role. Key components in the crystallization of public opinion against James, they were central to the Protestant rejection of toleration, and ultimately, of their Catholic King.

As central components to the reign and deposition of James, it is surprising therefore that the universities have received remarkably little individual study. In the majority of instances they have merited only a few brief paragraphs or a page or two at most in general studies of James II. Cambridge, in particular, has often been consigned to a few lines, or even omitted totally. John Spurr's *The Restoration Church of England 1646-1689* (London, 1991) provides a good example of this conspicuous lack. As the only history available which focuses on the Church of England in the second half of the seventeenth century, it is surprising (although typical) that the universities receive only a cursory mention. The single exception is Lord Macaulay's *History of England from the Accession of James the Second* in which the author devotes considerable space (and energies) towards proving the baseness of

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<sup>1</sup>Anthony à Wood, *The Life and Times of Anthony a Wood*, (abridged) ed. Llewelyn Powys, (Oxford, 1961), p.303.

this unfortunate monarch, through his conflicts with the universities. Many of Macaulay's methodologies and conclusions have since come under question however, in particular his tendency to collect evidence selectively to prove his own pre-determined opinions, so his study is hardly an objective examination of the universities during the reign of James. While this reduces the value of his work as a source of information, it does however provide an opportunity to contribute to the current debate surrounding Macaulay's work, in the context of the universities.

Of in-depth studies of the universities, only two works of any length and detail concerning Oxford under James II exist; J. R. Bloxam's *Magdalen College and King James II 1686 - 1688* (Oxford, 1886) and Laurence Brockliss, Gerald Harris and Angus MacIntyre's *Magdalen College and the Crown* (Oxford, 1988). Both, as the titles suggest, concentrate on the Magdalen case to the virtual exclusion of earlier conflicts. While these were not of such national significance, they are nonetheless important for the study of the universities as a whole, both for their impact on the wider perspective, and for what they show of the strategies employed by James for the re-establishment of Catholicism. As regards Cambridge, only John Twigg's *The University of Cambridge and the English Revolution 1625 - 1688* (Cambridge, 1990) considers this university under James in any detail. However, the reign occupies but a minor part in a larger topic of study with a broader time frame, and Twigg does not attempt a detailed study of the conflict between Cambridge and James.

The lack of serious consideration given the universities constitutes a considerable error, for they played a central role in the deposition of James. Key components in the crystallization of public opinion against him, which ultimately led to the loss of his throne, they provided a focus for unrest and a foundation upon which opposition could, and was, built. Furthermore, they were an integral part of the Catholic monarch's strategy to re-

establish the old faith. Neither is the merit of the universities as a topic defined only by their effects on the contemporary situation. The universities effectively form a microcosm, a mini-stage upon which the national picture was re-created in miniature. Epitomizing the reign of James, the universities mirrored his domestic policy with its primary concentration on religious considerations. Reflecting the gradual escalation of this policy, and the corresponding growth of national disenchantment, a study of the universities offers invaluable insight.

Neither is the relevance of the universities to historical study confined only to the reign of James. Their problems highlight the inconsistencies in the system of government operating by this time, namely the contradictions present in a system which was neither fully constitutional nor absolute, but an ill-defined mixture of both. Uneasy bedfellows at the best of times, the dispensing power and the rights of parliament had been a source of tension throughout the seventeenth century. Exacerbated by a legal system based on precedent, and the Stuart tendency to favour Catholicism, they required a politically astute monarch to ensure their peaceful co-existence. Complicating the situation further was the presence of the ecclesiastical supremacy, and the difficulties created by the fact that religion and politics were inseparable. These issues were all reflected in the conflict between the universities and James, indeed were integral to it.

The little material that does exist in print on the universities underlines the dramatic reversal in historical opinion concerning the legality of James' actions. The general historical consensus used to be that James acted in a tyrannical and illegal manner in his attempts to force the universities to accept Catholics. This altered dramatically from the mid twentieth century however, and it is now the general opinion that while he may have behaved impolitically, he was legally correct. This startling reversal reflects the current historical re-

evaluation of James which now sees the once vilified monarch represented as imprudent, rather than tyrannical.

Despite the radical difference in conclusions, commonality exists in the basis of examination. Both schools of opinion have based their conclusions principally on their interpretation of the dispensing power, which itself has undergone radical re-evaluation in conjunction with that of James. While a seemingly logical course of action, for the dispensing power indeed played a central role in the conflicts surrounding the universities, what its linking to the issue of legality effectively does, is to pre-determine conclusions and narrow artificially the field of consideration. The prime example of this is provided by the ecclesiastical supremacy. Playing a role at least equal to the dispensing power, it is never seriously investigated as a factor in the ensuing conflict because the legality of the dispensing power has become the determining factor, this despite the fact that James intervened in the universities only by virtue of this supremacy.

Neither does the linking of the dispensing power to the question of legality allow for the development of alternative ways of approaching and exploring the conflicts. Instead it determines that the starting point for any examination lies with the crown. While there is nothing inherently wrong in looking at the conflict from this point, it does mean that the primary emphasis is placed on the crown, that the crown becomes the instigator, leaving the universities in the passive role. It is quite clear however, that this was not so. While the initial moves were certainly the orchestrations of the crown, the universities soon took the initiative and became the driving force in the conflicts. It would be logical then, to examine the conflict in terms of the universities themselves, and to determine legality not on the strength of the dispensing power as is customary, but on the strength of the universities' case.

This thesis aims, in part, to demonstrate that the dispensing power needs to be

considered in conjunction with other factors, in particular the rights of the universities and the ecclesiastical supremacy, when attempting to determine the legality of James' actions against the universities. Through a detailed examination of the individual cases it will seek to show that the current dependency on the dispensing power as a means of evaluation is only one of the possible approaches, and that the legal case of the universities needs to be given due consideration. It also seeks both to examine the nature of the impact of the universities on the reign, and in particular on the deposition of James, and to demonstrate that it was considerably greater than has previously been allowed. It will attempt to redress the lack of detailed historical study of the universities under James II, in particular with regards to Cambridge and the earlier Oxford cases. It needs to be added at this point that this study will not include an investigation of Trinity College, Dublin, but will confine itself to Oxford and Cambridge. While James did interfere in the Irish University, an almost complete lack of information renders any examination impossible except in the briefest of terms.

This thesis also aims in particular to look at the universities from a viewpoint other than that of the contemporary establishment by using the political diary of Roger Morrice, entitled *The Entring Book: Being An Historical Register of Occurences from April Anno 1677 to April 1691* as a principal source. As a Presbyterian minister, Morrice's record and observations are particularly useful because they were not constrained or directed by the Church of England's obsession with the preservation of religious uniformity. This gives a less 'biased' view point, although it should be added that Morrice shared the Church of England's anti-Catholic paranoia. It was Morrice who raised the issue of the ecclesiastical supremacy as a central factor in the university cases, and the possibility of looking at the legal strength of their cases rather than the crown's. Morrice himself was particularly well placed to comment comprehensively on the universities. A person of some standing within the

Presbyterian movement, he had contacts at court, in Parliament, the legal profession, and the Church of England. It is not surprising therefore that his account of the actions taken against the universities and the ensuing trials are both full and accurate. It is also subscribed with his own opinions and observations, something which offers stark contrast to other contemporary diarists whose entries concerning the universities are on the whole disappointingly brief.

The technical accuracy of Morrice's reports of the cases is particularly significant, for it lends credence to his opinions and comments. Comparisons with the official transcripts of the trials reflect very few discrepancies and of the few that do exist, they concern only minor points which had no bearing on the cases. It is quite clear that Morrice was working from a reliable information base, although what his sources were it is virtually impossible to ascertain, for he was very circumspect about naming names (quite possibly for security reasons). Clearly a politically astute and knowledgeable man who followed the convoluted path of English politics at home and abroad over a particularly turbulent period of history, it is his devotion to detail and the high level of accuracy which makes this diary particularly useful to this study.

Of the other unofficial primary sources besides Morrice, the *Life and Times of Anthony a Wood*, antiquary of Oxford proved to be of considerable worth. As the only other contemporary diary providing details of the university trials it was particularly useful in verifying Morrice's accounts. Where it proved its greatest worth however was in its detailed accounts and observations of the earlier cases in Oxford which never came to national notice. As a resident of Oxford, and part of the University, Wood was better placed than Morrice to describe the early effects of James' first moves against the University. Gilbert Burnet's *History of His Own Time* devotes considerable time to discussing the universities and provides some interesting observations. Working in exile at the court of the Prince of Orange however,

meant that Burnet was working from second hand sources at best, and more importantly, was unable to experience personally the changing atmosphere in England. It is also necessary to realise that Burnet was personally biased against James and that he 're-wrote' his history at a later date, amending various sections which did not appear 'politically correct'. Bloxam's wide-ranging nineteenth-century collection of material concerning the Magdalen trial proved invaluable also, particularly in view of the difficulties surrounding the accessibility of primary material in New Zealand. Of the other unofficial sources of information available, few provided much information beyond brief fact.

Of the official sources of information available the *State Trials* (London, 1812) proved the most valuable, particularly in the case of Cambridge where detailed information is so scarce as to be virtually non-existent. Not only did they provide transcripts of the main trials, but they also included material written by a wide range of contemporaries concerning their observations, interpretations and conclusions. This was particularly valuable with reference to the question of legality. Of the other available official sources few proved to be of much use. The *Calendar of State Papers Domestic* was useful mainly in verification and in establishing a time frame. The utility of the *Journals of the House of Commons* and the *Debates of the House of Commons* were severely curtailed by James' continual prorogation of Parliament, although the post 1688 material was useful for a brief retrospective view of the foregoing proceedings.

The most obvious gap in the primary sources available is the absence of a Catholic viewpoint beyond that of James. It is generally believed that most Catholics did not support their King's tolerationist efforts and it would be interesting to know their reaction to the university cases. This absence is not the result of the inaccessibility imposed by distance however, for perusal of various indexes and of the listed sources used by the few historians

who have written about the universities, indicates that such sources are very few. As a minority viewpoint only, Catholics making up only one percent of the population,<sup>1</sup> this absence is perhaps not too crucial, except to the satisfaction of curiosity.

The single and most obvious difficulty in a study of this kind is the fact that the topic of study lies half a world away. This affects particularly the accessibility of primary sources. While inter-lending is available, few institutions will risk lending valuable archival material, and one is forced to rely on the limited sources available in New Zealand. Of particular interest would have been the material held in the archives of the two universities. This means that one is forced to place great reliance on the works of other historians, and that the possibility of creating an unbalanced picture through an over reliance on limited information is greater. It is these factors which make a study which places particular emphasis on a single source, or looks at an event from a particular viewpoint, in this case the diary of Morrice, one of the best options when attempting to write about a period of English history from a nation in the Pacific.

The shape of this thesis has been determined by its subject. Beginning with a brief outline of the religious policy of James to place it in context, it moves on to an examination of the dispensing power. Included both because this power was a key component in the university cases and because it has long been the predominant authority used historically in defining the legality of James' actions in the disputes, this chapter looks principally at its legal jurisdiction and the context in which it was held by contemporaries. Chapter three examines the establishment of the Ecclesiastical Commission, its principal aims, and the contemporary reaction to it. As the medium through which the crown sought to discipline the Church, and exert its will in the universities, such an examination is not only warranted, but

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<sup>1</sup>John Miller, *Popery and Politics in England 1660-1688*, (Cambridge, 1973), p.219.

necessary. Chapter four gives a brief outline of the historical development of the universities in order to establish why James should turn his attention to these institutions, and why they were of such importance to his efforts to re-establish Catholicism. Chapters five and six examine Cambridge and Oxford respectively, taking a detailed look at each individual case in chronological order. The consequences of James' actions in the universities, and the flaws in his strategy are retailed in the conclusion.

### 1. The Religious Policy of James II.

Central to the reign of James II was the issue of religious toleration. Colouring all aspects of his rule, it was primarily responsible for his deposition in 1688. It was also, more relevantly, the foundation upon which the attacks launched on the universities were placed.

The issue of toleration and the re-establishment of Catholicism as the official religion in England has long been the topic of lively debate amongst historians studying the reign of James. Portrayed until recently as an evil tyrant who sought to destroy English liberties and the Common law, establish military despotism, impose Catholicism by force and subject England to the Pope, the current re-evaluation of James however, has seen the emergence of a more objective and less 'hysterical' study of the realities of achieving such an objective.

James professed to support liberty of conscience, and had done so long before his accession to the throne.<sup>1</sup> While somewhat inconsistent in this profession towards the Dissenters, he believed that the contrary went against the principles of Christianity.<sup>2</sup> Rather than use force, as maintained by the Whig tradition, James sought to establish conditions conducive to the growth of Catholicism. Certain that Protestantism had survived only through self interest, fear and a gross misrepresentation of the Catholic Church, he was convinced that a natural conversion to Catholicism would result, were people permitted to see the religion in its true light.<sup>3</sup> To this end he sought to silence public criticism of Catholicism, and the removal of the penal laws, tests and oaths, which, he asserted, discouraged conversion. With the removal of these barriers James was confident that a Catholic majority would exist in

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<sup>1</sup>This is attested to by the Quaker William Penn, a close friend of James from his time as Duke of York. Vincent Buranelli, *The King and the Quaker, a Study of William Penn and James II*, (Philadelphia, 1962), p.203.

<sup>2</sup>Morrice Q, p.86.

<sup>3</sup>John Miller, *Bourbon and Stuart*, (London, 1978), p.230.

England in perhaps as little as two years.<sup>1</sup> Seeking the facilitation of these aims, James first sought the concurrence of Parliament and the Church of England. On finding both implacably opposed he was forced to look to an alliance with the Dissenters, who responded with only limited enthusiasm. Left with few alternatives, he was compelled to pursue his aims through an extensive use of the prerogative, of which the issuing of the Declaration of Indulgence was the pinnacle.

Despite James' profession of liberty of conscience, contemporary interpretation of James' aims and actions was much in line with that of the Whig tradition. Reflecting the strength and nature of the anti-popery tradition, Protestant England was convinced that James meant to bring in Popery under the guise of toleration, then eradicate Protestantism by force under the guise of heresy, capping his triumph with the establishment of arbitrary government. His establishment of a standing army did little to allay fears, and despite recent numerous claims that the army was of no threat due to its predominantly Protestant composition, contemporaries clearly felt otherwise. Morrice believed the army to be of no religion at all, rife with "atheism, infidelity and censuality", and who never spoke of the Church unless drunk. Such armies, he asserted, never mutinied unless unpaid, hence it was therefore a threat.<sup>2</sup> Western's assertion of low levels of desertion in the army in the face of invasion in 1688 bears this out,<sup>3</sup> although a threat from an external invading force is a different matter from forcing fellow Protestants to convert, and so does not provide a reliable comparison. James' inconsistent attitude towards the Dissenters did little to inspire trust

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<sup>1</sup>*ibid*, p.231.

<sup>2</sup>Morrice P, p.581.

<sup>3</sup>J. R. Western, *Monarchy and Revolution, England in the 1680's*, (Hong Kong, 1985), pp.140-44.

either. Stating in 1669 that "he had no bitterness against the nonconformists, [being] against all persecution for conscience sake, looking upon it as an unchristian thing and absolutely against his conscience", by the time of his accession he had informed the bishops that "he would never give any sort of countenance to dissenters", and indeed in 1685-6 he continued to persecute them while alleviating the plight of Catholics. This inconsistency can be explained by his equating Protestant dissent with republicanism and Catholic dissent with royalist loyalism, but it undermined his sincerity.<sup>1</sup> While James may have equated Catholicism with loyalty to the crown, Morrice's comment that during the Commonwealth some "of the very principall of the popish nobillity of this kingdome" allegedly presented an address to Cromwell in which they "expressly and formally promised to renounce Charles Stewart and his family if they might find favour under his Highness" does not support this.<sup>2</sup> James was also unfortunate that Louis XIV chose this time to move against the Huguenots in France. The inability of his subjects to see past James' Catholicism meant his actions were interpreted in light of the Protestant myth. This becomes obviously apparent in the disputes in the universities. Unable, or unwilling, to believe that James sought to allow Catholics into the universities simply for the sake of liberty of conscience, his subjects construed his actions as a deliberate and mortal blow to the Church of England.

That Morrice believed this is undoubted. Concern for the future of Protestantism in the face of James' toleration is unequivocally apparent in the pages of his diary. Documenting the names of those who converted to Catholicism, the increasing numbers of preferments going to Catholics and their subsequently increasing numbers in official positions, he expresses escalating concern in the face of such events as the establishment of the

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<sup>1</sup>*ibid*, pp.186-87.

<sup>2</sup>Morrice Q, p.127.

Ecclesiastical Commission, the issuing of the Declaration of Indulgence, and the attacks on the universities. That he distrusted James was also clear. Commenting on the "solemn health" James drank to the Church of England he added that it was "plain enough his Majesty said it sceptically."<sup>1</sup>

Despite contemporary assertions to the contrary, force was not an available option. James' situation was in fact the reversal of France. Unlike Louis XIV, he was King of a predominantly and strongly Protestant nation. Neither was his predominantly Protestant army of approximately 20,000 large enough to force a population of five million to convert, regardless of the increasing numbers of Catholics entering the service. Finally, and perhaps most importantly, for virtually his whole reign James had no Catholic heir. His hopes of re-establishing Catholicism lay therefore, in making willing and genuine converts.<sup>2</sup>

For James then, the establishment of toleration, rather than the use of force, was to be the vehicle for the re-establishment of Catholicism. In this respect it is strongly arguable that in reality James was not a tolerationist. As Miller points out, James did not believe that differences of opinion could or should be permitted within a State, or that no single Church had a monopoly on truth. Toleration was for James merely a means by which Catholicism could be re-established. Once it had 'triumphed' over Protestantism the question of toleration would be obsolete.<sup>3</sup> In this respect the Protestant population was correct in its fears for the continuance of their religion, but incorrect as to the means. Simply put, the threat was doctrinal, not political.

James' certainty of success despite the overwhelming odds lay in his personal

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<sup>1</sup>Morrice P, p.558.

<sup>2</sup>John Miller, *James II, a Study in Kingship*, (England, 1978), p.126.

<sup>3</sup>Miller, *Popery and Politics*, p.200.

dissatisfaction with the Protestant faith. For James, the conversion to Catholicism had come naturally and from this he conjectured it would be so for the rest of Protestant England. Unable to believe that Protestants had a genuine spiritual attachment to their mode of belief, he interpreted resistance in any terms other than principle or spiritual conviction. In doing so he miscalculated fatally, and denied himself any real understanding of the strength of opposition. Unable to comprehend or accept his subjects' implacable convictions regarding the nature of Catholicism, his ensuing persistence in pursuit of his goals in the face of mounting opposition was suicidal. This obtuseness can in part be explained by his belief that the re-establishment of Catholicism was a God given task, much as William saw his role in the protection of Protestantism in England. From this he conjectured that as his designs were God's designs, success was guaranteed despite glaring evidence to the contrary. Elements of this are patently evident in his dealings with the universities, a central element in his religious policy. As the bulwarks against Catholicism in the Church of England, it was essential they be opened to Catholic influence if the re-establishment of Catholicism was to succeed. Conversely, they were equally important to the Church of England in the fight against Catholicism. Occupying a position of vital importance to the success of both sides, the strength and bitterness surrounding the conflict in the universities came to epitomize the wider struggle between Protestantism and Catholicism.

## 2. The Dispensing Power.

Central to any study of relations between the universities and the crown in the post reformation era, is the dispensing power. Successive monarchs used it to varying degrees within these institutions, and James II was no exception. Indeed the dispensing power was of particular importance to James, for it was to be the means by which the Church of England and the universities were to be brought to heel, so allowing for the re-catholicisation of England. Forced to rely totally on the royal prerogative after failing to gain Parliamentary support, James used the dispensing power extensively and recklessly with little regard for public opinion. Exercised in the universities, it had nowhere a greater result, for in focusing national opposition, they were central to his deposition.

The dispensing power had long been a source of conflict between the crown and Parliament. While few disputed its legality, its actual legal usage, particularly under the Stuarts, had been a growing point of contention. Largely undefined by law, the dispensing power had few boundaries, and its use was essentially regulated by precedent. In an effort to demonstrate that it could be legally used in its widest possible sense (as he fully intended to use it), James sought a favourable ruling from the judiciary in the test case of *Godden vs Hales*.

The issue of whether or not the crown could dispense individuals from acts of Parliament was never a point of contention. What was debated was the circumstances in which it could do so. For James personally however, there was no question. A staunch adherent to the principles of divine kingship, he firmly believed that the monarchy "had no dependency on Parliament, nor on nothing but God alone".<sup>1</sup> When the case of *Godden vs Hales* came before the King's Bench, James determined to use it as a test case to establish

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<sup>1</sup>quoted by Miller, *James II*, p.125.

the legality of, firstly, the granting of army commissions to Catholics and secondly, the right of the crown to dispense individuals despite Parliamentary statute to the contrary. Consulting the judges in April 1686, James was told that "they [were] of opinion that the Crown may dispense with a Non Obstante", which Morrice considered "most considerable, and most comprehensive".<sup>1</sup> Despite this, James was forced to purge the judiciary, removing six judges and the solicitor-general to ensure a favourable judgement. The purging of the judiciary was not confined to this single instance. It became an on-going feature of James' reign and one which Morrice thought serious enough to follow in his diary, noting the removals and the replacements within this body. While never achieving a docile judiciary, James was able to 'manage' it enough to gain sanction for his broad use of the dispensing power - which had significant consequences in, and for, the universities.

In light of this 'selection', the verdict was a forgone conclusion. Sir Edward Herbert, the Lord Chief Justice, and 11 of the 12 judges presiding, ruled in favour of the dispensing power.<sup>2</sup> Declaring Hales' dispensation to be perfectly legal, Herbert offered the following facts as a basis for this decision: firstly, that the kings of England were sovereign princes, secondly, that the laws of England were the king's laws; thirdly, therefore it was an inseparable prerogative of the kings of England to dispense with penal laws in particular cases

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<sup>1</sup>Morrice P, p.529.

<sup>2</sup>Macaulay suggests that the dissident, Sir Thomas Street, was ordered to rule against the dispensing power in an effort to make the bench appear independent (Macaulay, *The History of England from the Accession of James the Second*, vol.II (London, 1914), p.738). This is echoed by Browning who says Street's dissention "was generally believed to have been inspired by the Court with the idea of giving an air of independence to the Bench." (Andrew Browning, *Memoirs of Sir John Reresby*, (London, 1991), p.429). A. F. Havighurst however maintains in his article 'James II and the Twelve Men in Scarlet', *Law Quarterly Review*, vol.69 (1953) p.582 that historians have asserted "on wholly inadequate grounds" that Street dissented by collusion, and that no evidence of collusion came to light in the Parliamentary investigation of 1689.

and upon particular necessary reasons, fourthly, the king is sole judge of these reasons and necessities; and fifthly, this is not a trust invested in or granted to the king, but the ancient remains of the sovereign power of the kings of England, which has never been and never can be removed.<sup>1</sup> This was a particularly strong assertion of the rights of the crown, which Morrice believed accounted for Herbert's elevation to Lord Chief Justice. Having framed an argument which allowed James (then the Duke of York) to be made Admiral under his brother Charles II, despite the laws that precluded him, Morrice states that James inferred that Herbert supported the dispensing power and so made him Lord Chief Justice.<sup>2</sup> Burnet concurs, maintaining that Herbert had "unhappily got into a set of very high notions with relation to the king's prerogative", and despite being "an indifferent lawyer" was raised "without any application of his own" to the lofty position of Lord Chief Justice as a result.<sup>3</sup>

The verdict raises the issue of judicial servitude, particularly in light of the handpicked nature of the bench. William Atwood, a contemporary lawyer, believed that dispensations had "no other foundation than in the encroachment of princes, and [the] servility of judges".<sup>4</sup> This point has been picked up by later historians examining the case, in particular those of the Whig school. Western however maintains that Herbert was moved by conviction rather than subservience,<sup>5</sup> and in this I think he is correct. Neither Morrice or Burnet make any mention of servitude, confining their comments to the fact that Herbert was a strong supporter of the royal prerogative (however unsavoury this was to them). Indeed Morrice reported that

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<sup>1</sup>ST, vol.XI, p.1199.

<sup>2</sup>Morrice Q, p.113.

<sup>3</sup>Burnet, p.98.

<sup>4</sup>ST, vol.XI, p.1309.

<sup>5</sup>Western, p.57.

Herbert declared that the judges in Westminster Hall were responsible only to the King, and not to the Lords or Commons or any other person or power.<sup>1</sup> Furthermore, that Herbert later opposed James on matters of law and was removed from the Kings Bench to the Common Pleas,<sup>2</sup> also indicates an absence of servitude. It is not inconceivable then that any number of the other judges involved were motivated by conscience rather than servility. One cannot discount the effects of pressure however. Havighurst maintains that despite the reconstruction of almost half it's membership, there was no "approximation to unanimity" on the bench; at least four of the judges - Powell, Holloway, Lutwyche and Wythens - had strong doubts.<sup>3</sup> Morrice himself reports that Powell was in doubt but changed his mind after consultation.<sup>4</sup>

Despite the dubious selection of the bench, technically, James had a case. Firstly there was no lack of precedent for James' use of the dispensing power, something demonstrated by the principal judicial authority on which the Bench relied for actions concerning the use of the dispensing power. This was a case dating from the reign of Henry VII, concerning terms of office for sheriffs. Under the law, sheriffs could hold their appointments for a maximum length of one year and could not have this period extended by a dispensation. However dispensations had been issued to a number of sheriffs, and these had been held to be legal by the judges in the courts. It was by reference to this verdict that Herbert and the

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<sup>1</sup>Morrice P, p.538.

<sup>2</sup>This arose from the case of the execution of a deserting soldier in April of 1687. The soldier having been condemned to die in Reading, James wanted the execution to take place in front of his regiment in Plymouth to serve as an example. Herbert however ruled that the law required the execution to take place in the county in which the death warrant had been issued. Herbert's removal saw the about face of judges Wright, Holloway and Powell on this point. Morrice Q, pp.98,108.

<sup>3</sup>Havighurst, p.532.

<sup>4</sup>Morrice P, p.554.

judges reached their decision. Furthermore, granting dispensations to Catholics was nothing new. It was a common practice under the Stuarts. Secondly, the crown had the right to dispense with statutes which were *mala prohibita* (the laws of men, as opposed to the laws of God which were *mala in se* and untouchable by the prerogative), under which the penal laws were held to be. Thirdly, the king had the right to dispense with any statute which took away "any prerogative which is sole and inseparable to his person",<sup>1</sup> in this instance his right to the service of *all* his subjects. Fourthly and finally, at this point James was only dispensing individuals, not whole groups, which was legally acceptable.

In light of this, Thomson's comment that the packing of the Bench was remarkable when so much could be said for the dispensing power, seems appropriate;<sup>2</sup> James may have been behaving in an impolitic manner, but he was not violating any statute nor disregarding a judicial decision. However, while this may technically be the case, the decision reached by the judges was not widely accepted and, as Reresby comments, "occasioned much discours in the kingdome".<sup>3</sup> The Earl of Danby believed the dispensing power to be illegal and the judges' opinions "unwarrantable by the lawes of England, and by the generality of the best lawyers."<sup>4</sup>

The important issue of constitutionality formed the backbone of much of the opposition to the judgement. Herbert had justified the verdict on the grounds that there was no law that could be not be dispensed with by the supreme law giver. Hence James, as the supreme

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<sup>1</sup>quoted by John Miller, *James II*, p.157.

<sup>2</sup>Mark A. Thomson, *A Constitutional History of England 1642-1801*, vol. 4, (London, 1938), p.93.

<sup>3</sup>Reresby, p.429.

<sup>4</sup>Morrice Q, p.49.

legislator, had the right to dispense any law that wasn't *mala in se*.<sup>1</sup> In a country with a constitutional monarchy such as England, it was hardly surprising this statement met with little support, for it smacked of absolutism. It was generally held, as Sir Robert Atkyns stated, that while the king had a "great and most eminent part in the legislature, and in the passing of laws...he hath not the sole legislature, such as God has over his creatures."<sup>2</sup> In other words the whole kingdom, through Parliament, had a share in the legislature, and while the king's authority was necessary to pass laws, it required more than his authority to remove them.

Closely linked to the issue of the legislature and absolutism was that of sovereignty, and the various interpretations surrounding it. Herbert's declaration that the dispensing power was legal was based, among other things, on the fact that the kings of England were sovereign princes. While this was not disputed, the interpretation that this placed the crown above the law was. Atkyns in his examination of the view of sovereignty concluded that the word sovereignty in its true sense meant that the English sovereigns were not in any way subject to the Pope or any foreign power, but that "it doth in no way impart that the king can dispense of his people *"ut placuit Regi"*", or alter the government, without the peoples consent.<sup>3</sup>

Atkyn's examination of the issue of sovereignty highlights the dislocation in opinion over the prerogative between James and his subjects. William Stanford under the Tudors had maintained that the prerogative acknowledged the king's superior position and enabled him to discharge the task of governing, but that it was granted by laws of the realm. This was the

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<sup>1</sup>ST, vol.XI, p.1196.

<sup>2</sup>*ibid*, p.1242.

<sup>3</sup>*ibid*, p.1247.

position generally accepted by most people but not, however, by the Stuarts, and in particular not by James. The Stuarts regarded the prerogative as bestowed by God, not the law, for which they were answerable to God alone. They saw the prerogative not as part of the law but as above the law, which gave them the freedom to disregard it.<sup>1</sup> This difference between king and subjects had substantial consequences, for it coloured strongly people's interpretation of James' actions, to his disadvantage and ultimately to his deposition.

Contemporary opposition to the dispensing power concentrated not only on the rights of the crown to dispense with the law, but on the issues of sovereignty, absolutism and the legislature. This is remarkable when one considers that at this point James was not trying to change the law, or to remove it, but simply to grant dispensations to individuals, which was legally within his rights. From reading tracts of contemporary opposition however, one could be excused for assuming that James was trying to dispense with the penal laws entirely and subvert the constitution. This 'extremity' demonstrates the extent to which people were disturbed by the dispensing of Catholics, particularly in the army. It also provided a useful political barometer, which James chose to ignore.

The packing of the bench, if necessary to obtain the required decision, also had an adverse effect on public opinion. Through the purging of the judiciary, the ruling of the judges lost considerable weight. In his declaration published on the eve of his invasion, William stated that the judgement allowing James to dispense the law carried little weight being the product of a packed bench,<sup>2</sup> which was also a point picked up by Atkyns in his attack on Herbert's defense of his decision.<sup>3</sup> While legally of little consequence, it was

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<sup>1</sup>G. R. Elton, *The Tudor Constitution*, (Cambridge, 1962), pp.17, 18.

<sup>2</sup>Thomson, p.69.

<sup>3</sup>ST, vol.XI, p.1279.

important in the formation of public opinion, which in turn determined reaction to the invasion in 1688.

The technical legality of the *Godden vs Hales* verdict is possibly not as strong as some would assert, resting as it does on a number of assumptions. Western holds that while a purge of the judiciary was required to obtain the favourable ruling, "it was not necessarily bad law. Chief Justice Herbert pointed out that dispensations had constantly been used in the appointments of sheriffs despite an express statutory prohibition and that the courts had constantly upheld the King's right to do this."<sup>1</sup> This assumes however, that the case was proven in law, and accepted by all as such, a point which is not borne out by the comments of Morrice or other contemporaries. Godden's lawyer, Northey, asserted that the sheriffs case was not conclusive, having ended in an adjournment accompanied by a declaration "that both judges and counsel agreed, what they had then said should be taken for nothing."<sup>2</sup> This was confirmed by Morrice who wrote that the two judges on this case stated afterwards that "this was the first time that case had come before them &c, and they would study it throughly, and would have all that they had then said about it to be looked upon as not said." He believed that while it was true that sheriffs had held their offices for more than one year, this was because "the commission has ordinarily or alwaies been renewed every year". Consequently "there has been no dispensation given by the Crown, as to those statutes, and so they can be no president for dispensing with other statutes." Others, continues Morrice, asserted that the statutes concerning the sheriffs are not the same as those under question, and that even if those can be dispensed with, those under question cannot.<sup>3</sup> In addition, it was possible that

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<sup>1</sup>Western, p.197.

<sup>2</sup>ST, vol.XI, p.1188.

<sup>3</sup>Morrice P, p.559

the case had been judged good on the grounds that it was within an exception of the statute concerned and was therefore an inappropriate measure.<sup>1</sup> Finally, according to Northey, even if this was not so, the case was nulled by the statute 23H.6 which states that the king's grant for more than one year was void "notwithstanding any *non obstante*."<sup>2</sup> Morrice concurred, stating "This notion is very much confirmed by that proviso in the statute excepting all hereditary sheriffs".<sup>3</sup> The case used as a precedent was then, inconclusive in itself, and on these grounds it could be argued that James' dispensation to Hales was not legal. That opposition was based on actual legal points demonstrates that not all opposition was based only on abstract theory concerning the nature of government.

It is interesting in face of this to note Macaulay's rendition. Describing Northey as a notorious tool of the government, he asserts that he made a "feeble" case, being without doubt in collusion with the defense.<sup>4</sup> Morrice was of quite a different opinion. Northey's argument, he comments "had a connexion in it of severall good authorities, records and notions" the only complaint being that it was "not well digested."<sup>5</sup> This is far from 'a feeble case' and evidences no collusion. Faced as he was however with a handpicked bench, even Sir John Maynard, the prominent jurist and arguably the most brilliant legal mind of his era, could not have succeeded.

The differing interpretations and conclusions reached by both sides on this case demonstrate admirably the problems surrounding a system of law which based legal argument

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<sup>1</sup>ST, vol.XI, p.1188.

<sup>2</sup>*ibid*, p.1188.

<sup>3</sup>Morrice P, p.559.

<sup>4</sup>Macaulay, p.738.

<sup>5</sup>Morrice P, p.548.

on precedent, rather than abstract theory. It meant, as James I recognised back in 1609, that there were many "contrary reports and precedents"<sup>1</sup> which made a clear and undisputed ruling difficult to obtain, and often saw the resultant verdict determined ultimately by the personal bias of the adjudicators. Thus both Herbert and Atkyns both cited different past cases and legal opinions to support their conclusions. The contention surrounding the opinion of Lord Coke on the sheriffs case is a perfect example. Coke wrote, in a legal treatise, that in this instance, judgement was given that the King might dispense in this case. Morrice states however, that "it is granted (by most) that therein [Coke] was mistaken".<sup>2</sup> Morrice's words "by most" reflect admirably the problems induced through the use of precedent. The relative weight of these differing cases and opinions is difficult for those not trained in law to ascertain, but both sides appear to hold merit. One of the main difficulties that a lack of a systematic code of laws constituted, was the historical justification for contemporary institutions and procedures. This system did not allow for the evolution of these institutions and procedures over time, or for atypical circumstances. Ultimately it meant that there was no machinery with which to control the prerogative should it be used against the common good, as it was perceived to have been used by James.

The question of the common good raises the issue of the 'unwritten assumptions' which accompanied the prerogative. While not legal in the sense that statute is legal, these assumptions were virtually of equal importance, if not authority. While the dispensing power was considered essential in providing just and merciful government, it was generally held to come with certain qualifications. These included the expectation that the king would use it

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<sup>1</sup>*The Harleian Miscellany: a Collection of Scarce, Curious, and Entertaining Pamphlets and Tracts*, (London, 1808), p.12.

<sup>2</sup>Morrice P, p.559.

only for the common good, that it could not infringe on the rights of subjects, that it could be used only in cases concerning *mala prohibita*, that it was to be used in a restricted manner, and that it could be used to dispense individuals only, not groups, and certainly not to suspend laws entirely. None of these qualifications were constituted in law, and all were open to interpretation.

The *Godden vs Hales* case shows the sorts of problems associated with these assumptions, the issue of the common good for instance. The dispensing of Catholics in the army was not considered by the Protestant population, which perceived them as a threat to the security of the nation, to be in the interests of the common good. The issue of security was a serious one, coupled as it was with the basic belief in the inherent dangers posed by Catholics, both in religious and political terms. Burnet's comment that the penal laws were "made to secure us against that which we esteem the *greatest of evils*"<sup>1</sup> was not just a personal viewpoint, but representative of the Protestant population. For this reason it was believed that James should not dispense the penal laws and tests acts.<sup>2</sup> Shades of this are reflected in Atkyns' assertion that Herbert should have considered "the desperate effects and consequences that would follow upon the dispensing with that act". In essence, the situation should determine the decision. James on the other hand regarded these laws not as security for the realm, but as laws which denied him the services of a group of his subjects, to which the crown inherently had a right. Atkyns, considering this, asks whether Catholics "who account Protestants heretics, and to be rooted out and destroyed, and with whom they hold no faith is to be kept, and against whom they have been continually plotting mischief" were

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<sup>1</sup>Gilbert Burnet, *A Collection of Eighteen Papers Relating to the Affairs of Church and State, During the Reign of King James the Second*, (London, 1689), Scholarly Resources reprint, 1973, p.73.

<sup>2</sup>ST, vol.XI, p.1275.

fit people to be "intrusted with defense of the Protestant religion, with our lives and estates, which are all concerned in every public office and trust?"<sup>1</sup> For the majority of people it was an issue of national security, for James it was simply a matter of attaining the full dues of the crown.

Interestingly enough, in 1674 there had been a ruling by Chief Justice Vaughan in *Thomas vs Sorrell*, declaring that the king could only dispense with statute when no man was injured by it.<sup>2</sup> This demonstrates the problem of unwritten assumptions, for to the Protestant population dispensing the penal laws and test acts was considered injurious, while to James these same laws were considered injurious to the inherent rights of the crown. This example demonstrates well not only the strength of the anti-Catholic tradition in England and the way it affected interpretation and action, but the problems associated with a Catholic king on the throne of a Protestant nation.

In terms of cold hard legal fact James was almost certainly in the right in his use of the dispensing power despite the contention surrounding the sheriffs case, yet in terms of the more abstract qualifications he was perceived to be acting unconstitutionally. It is this perception which is important, for it demonstrates conclusively that it was not the legal existence of the dispensing power that was under dispute, but the way in which it could be used. None of the tracts written against the dispensing power proposed its abolition, rather all firmly asserted that the dispensing power was necessary for good government. The concern expressed centered exclusively around its correct usage. The Bill of Rights of 1689 provides further evidence. While abolishing the suspending power, it maintained the dispensing power, condemning it only as it had been used by 'the late king'.

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<sup>1</sup>*ibid*, p.1275.

<sup>2</sup>Thomson, p.89.

The *Godden vs Hales* case had much greater implications than its immediate concern, becoming indirectly a case of the prerogative against the law. Morrice believed it to be "the greatest case that ever came into the Hall."<sup>1</sup> Northey declared at the trial that it was a great case, for the question was plainly whether the prerogative could set aside an act of Parliament. Morrice considered this statement remarkable.<sup>2</sup>

Miller's conclusion that the main theme in seventeenth century political history was the responsible, or irresponsible, use of the dispensing power (and hence efforts to regulate it), rather than the struggle between Parliament and the crown as the whig tradition holds,<sup>3</sup> is an astute one, borne out by this case. The product of James' tolerationist policies, the limitation, or regulation, of the prerogative was a prominent feature of this period, and one closely linked to the religious prejudices held by the Protestant populace.

This religious prejudice was of particular importance, for it pre-determined his subjects' interpretation of his policies. Judged in the light of the Protestant myth, James' actions could only create suspicion at the least, and hysterical fear at worst. Had James been Protestant, his determination to use the dispensing power in favour of Catholics would have elicited a different response. While such actions would not have been viewed with favour, the overriding and widespread fear for the existence of Protestantism and representative institutions would not have been a factor.

James' use of the dispensing power was perceived to be a threat to firstly, the security of the nation, secondly, the political status quo, and thirdly, the future of Protestantism. It

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<sup>1</sup>Morrice P, p.548.

<sup>2</sup>Morrice P, p.548. On stating this in court, Northey was told by Herbert to keep his eyes on his paper.

<sup>3</sup>Miller, *James II*, p.32.

is this last point that primarily concerned the universities. The dispensing power was regarded by many as the means by which James was going to attack and destroy the Church of England. More specifically, the disputed nature of his usage of the dispensing power raised suspicions that he was deliberately undermining the Church of England in direct contradiction to the promises he had made on his accession, and in the Declaration of Indulgence. This suspicion was confirmed in the minds of the Protestant population by the attacks launched on the universities, in particular that of Magdalen College, Oxford.

That the decision made in the case of the dispensing power had repercussions for the Church of England was recognised by Morrice who wrote that "this cause (differs from all or most others, for they had respect to Dissenters) had a direct aspect upon the Church of England". He believed also that it would destroy the Act of Uniformity, and while he personally would not have minded this, he regarded it as strange that men who saw themselves as "great pillars of the Church of England" should act in such a manner as "to deprese it [the Church of England], and patronize the Church of Rome."<sup>1</sup> This belief was by no means confined to Morrice, and reflects the commonly held interpretation of the aims behind the use of the dispensing power.

The legality of the dispensing power was a central issue in the attacks on the universities, not because it was itself regarded as illegal, but because it was used in a way alien to the generally accepted qualifications held to be a part of it. The *Godden vs Hales* case was an influential one in this respect, for it molded the perception of the use of the dispensing power under James II, predetermining or laying the foundations for the reaction to the attacks on the universities. That it was a case of much greater portent than its immediate concern was recognised by Atkyns when he wrote that the judgement made brought to nothing all the

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<sup>1</sup>Morrice P, p.552.

securities established for the safety of the Protestant religion and England.<sup>1</sup> The attacks on the universities provided ready confirmation of this to Protestant England.

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<sup>1</sup>ST, vol.XI, p.1278.

### 3. The Ecclesiastical Commission.

The establishment of an Ecclesiastical Commission in 1686 is a central event in a study of relations between the universities and James II, for its founding mandate specifically included the universities. Designed to be the instrument through which the Church of England was to be disciplined by the royal hand, its establishment was surrounded by considerable conflict. Morrice followed the Commission's foundation in his diary chiefly in relation to the Compton trial, but he recognised its wider implications for the universities, the Church of England, and Protestantism itself.

Instituted in July 1686, the Ecclesiastical Commission was established in the face of James' inability to control the Church of England clergy.<sup>1</sup> Despite royal instructions to avoid preaching about either the government or "controversies with reflection and bitterness against those that were of a different persuasion"<sup>2</sup> a number of the clergy had continued actively to preach against the 'evils' of Catholicism, some even reflecting on the King. According to Morrice however, those who preached against popery were "very few comparatively".<sup>3</sup> This contrasts with Burnet who asserted that "Many of the clergy...[begin] to preach generally against popery" but that they began an organised resistance.<sup>4</sup> A large number of historical works on this era likewise maintain that a marked and widespread clerical opposition against popery evidenced itself at this time. Certainly James felt it was a big enough problem to

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<sup>1</sup>The record in the Privy Council Register states that the Ecclesiastical Commission was established "for the prevention of Indiscreet Preaching (his [James'] Many Exhortion's having proved ineffectual)." *Great Britain Privy Council Register - the Reign of James II beginning February 6, 1684 - March 18, 1687*, (London), reel 1, p.300.

<sup>2</sup>Morrice P, p.556.

<sup>3</sup>Morrice P, p.548.

<sup>4</sup>Burnet, pp.104-5.

require action. He ordered William Sancroft, the Arch-bishop of Canterbury, and the other bishops to forbid preaching against popery, threatening to re-consider his promises to the Church of England if they refused. However the bishops declined to go beyond requiring them to moderate their tone, and Morrice reports that there was subsequently "solemn debate" as to the best "way and method" those who preached against popery could be suspended.<sup>1</sup>

The issue came to a head soon after when James ordered Henry Compton, Bishop of London, to suspend immediately Doctor John Sharp, Dean of Norwich, who was charged with preaching "seditiously and factiously as to the raising of feares and jealousies in his Majestie's leige people".<sup>2</sup> Sharp, prompted by a letter to him from an anonymous parishioner in spiritual doubt, had felt it his moral duty to provide guidance despite James' instructions to the contrary, and despite the fact that he was chaplain in ordinary to the King. Sharp's defiance was by no means a singular occurrence amongst the clergy, nor of greater vindictiveness, but James, in the face of the bishops' lack of serious discipline, determined to use him as an example in an effort to intimidate the rest into submission.<sup>3</sup> That a warrant similar to the one sent to Compton had also been issued to the guardians of the Church of York (the bishopric being vacant at the time) against Doctor Tulley, Prebendary of that Church, demonstrates that Sharp's ordered suspension was part of a concerted effort to prevent anti-Catholic preaching. It should also be noted that this was not the first time Sharp had been reprimanded. Only the week before he had been summoned before the Lord Chancellor, who had then managed to persuade James that the matter had been dealt with.

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<sup>1</sup>Morrice P, p.548.

<sup>2</sup>Morrice P, p.556.

<sup>3</sup>Burnet, p.106.

On this second time the Chancellor again sought to assure James, and believed that "the business would perpetually dorm".<sup>1</sup>

Compton however proved to be less compliant than anticipated, and refused to suspend Sharp. Notably his refusal was based not on James' actual order to suspend, but on the circumvention of the legal process attached to the act of suspension. Compton maintained that he could not suspend Sharp until the charges were laid before him and proven upon oath, and the Dean cited to appear and heard in his own defense as was usual in cases of ecclesiastical censure.<sup>2</sup>

The Ecclesiastical Commission was established by James as a means by which Compton could be suspended for disobeying the royal command. Morrice saw the Commission's institution as the result of Jesuit influence, in particular by Father Morgan and Father John Warner - confessor to James.<sup>3</sup> Both friends of François La Chaise, confessor to Louis XIV, they had been sent to James by Louis. The closeness of the Society of Jesus to the center of power raised considerable apprehension in England, as the Jesuits were regarded as iron willed fanatics who could be counted upon to "sollicit his Majesty to break [his] solemn promise".<sup>4</sup> Burnet on the other hand attributes the Commission's establishment to Jeffreys, claiming it was an effort by Jeffreys to regain favour at court in the face of Herbert's ascendancy.<sup>5</sup> Morrice too mentions the rivalry between Jeffreys and Herbert, stating that Herbert was made Lord Chief Justice despite Jeffreys' opposition - and this at a time

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<sup>1</sup>Morrice P, pp.556, 557.

<sup>2</sup>Morrice P, p.557.

<sup>3</sup>Morrice Q, p.87.

<sup>4</sup>Morrice P, p.598.

<sup>5</sup>Burnet, p.108.

when Jeffreys "was in his zenith for interest", although he did not feel it was responsible for the establishment of the Commission.<sup>1</sup>

It would appear that an Ecclesiastical Commission was not the original idea about how to deal with intransigent clergy. Ranke maintains that the original idea was to make Sunderland Vicar General in spirituals, like Thomas Cromwell under Henry VIII, but that James having no desire for overmighty ministers saw a commission as preferable.<sup>2</sup> Morrice supports this, commenting that it was commonly reported there was to be a Vicar General, with both Sunderland and the Lord Chancellor competing for the office. He believed however, that it was more likely that several commissioners would be appointed, and in this he was correct.<sup>3</sup>

Compton's refusal to suspend Sharp underlines the difficulties James encountered with the bishops. Unable to rely on them to exercise their disciplinary powers as he wished, James resolved to delegate these powers elsewhere (the bishops holding these powers only by virtue of the crown, the crown holding the ecclesiastical supremacy). The main problem for James was that most of the bishops were unsympathetic to his cause, which was not surprising as most regarded it as prejudicial to the continued existence of the Church. Even closely associated bishops such as Sancroft and Turner proved to be less co-operative than anticipated, and while James replaced vacant bishoprics with more compliant men (such as Cartwright and Parker), these replacements did not change the character of the episcopate quickly. The Ecclesiastical Commission was to be the instrument that reduced a powerful

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<sup>1</sup>Morrice Q, p.113.

<sup>2</sup>Leopold von Ranke, *A History of England, Principally in the Seventeenth Century*, (Oxford, 1875), vol. 4, p.298.

<sup>3</sup>Morrice P, p.562.

organisation - the Church of England - to obedience by bypassing its great offices, and placing it under the control of a body more subservient to the royal will. Morrice's report as to the possibility that two other bishops were to be summoned before the Commission bears this out.<sup>1</sup>

The establishment of the Ecclesiastical Commission also reflects the change taking place in James' tolerationist policy around this point in time. Moving away from the Church of England and the Tories, he began seeking the support of the Dissenters. That Morrice recognised this is undoubted. Writing that Sharp's petition to the King which "made the most ample submission to the King that could be exprest" was "rejected with scorn and contempt", he concluded it was because James and the court "had no further occasion for the Church's assistance".<sup>2</sup> Sir John Baber, royal physician and line of contact between the crown and the Presbyterians, told Morrice that the court was "in a great distress, finding the Church restiff and uncomplyant, and had therefore taken a great displeasure against it, and [had determined] it should be made to feele the effects of it."<sup>3</sup> The Ecclesiastical Commission was to be the means by which this "displeasure" was to be felt.

The powers granted to the Ecclesiastical Commission, while confined to the church, were far reaching. It had the power to summon ecclesiastical persons of any rank before it; to execute all manner of jurisdiction touching any ecclesiastical or spiritual province; and "to visit, reforme...order, correct and amend all such abuces, offences, contempts and inormities, which by the spirituall or ecclesiasticall law may be reformed". It had the power to punish

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<sup>1</sup>Morrice P, p.597.

<sup>2</sup>Morrice P, p.581.

<sup>3</sup>Morrice P, p.594. Morrice's mention of Baber as the source of this information is noteworthy, for he rarely provides such identifications.

and correct by suspension, deprivation and excommunication. Significantly, its jurisdiction expressly included the "universities, cathedralls, and colegeat churches and colledges, grammar schools, and other ecclesiasticall incorporations." It had the authority in these institutions to "correct and amend their statutes and rules, and where none, to make and devise good orders and rules, to be confirmed and allowed by the King" and to "order the possessions and revenues of the same". Of particular consequence for the universities was the Commission's authority to act "Nonobstantibus any priviledges, exemptions, statutes or ordinances to the contrary."<sup>1</sup> It also employed the notorious procedure of examining *ore tenus*, whereby those before it were required to answer questions orally. Even Lord Burghley had criticized this method of interrogation, claiming it smacked of the inquisition.<sup>2</sup>

The specifics of the Ecclesiastical Commission reveal the aims behind it. Basically James was aiming for the greater facilitation, or more effective enforcement, of the royal will in the Church. More specifically, the Commission was designed to break the monopoly held by the Church, and force it to accept Catholics into its educational institutions. These aims tie in directly with James' inability to control the clergy (in particular the bishops) effectively, and with the change in tack evident in his policy of toleration which developed from this.

Those appointed to the Ecclesiastical Commission require comment, for they were in themselves very telling. Heading the Commission was George Jeffreys, which did not bode well for either fairness or legality. Jeffreys, perhaps the most brutal of the King's agents, was a vigorous supporter of James' use of the dispensing power. Unscrupulous with regards to

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<sup>1</sup>Morrice P, p.577.

<sup>2</sup>W. A. Speck, *Reluctant Revolutionaries, Englishmen and the Revolution of 1688*, (Oxford, 1988), p.144.

the law, his abusive court room tactics were well known<sup>1</sup>. The requirement that Jeffreys be present on all cases that came before the Commission was symbolic of the nature and purpose of the newly established body. The remaining six places were filled by Robert Spencer, Earl of Sunderland; Sir Edward Herbert, Lord Chief Justice; Lawrence Hyde, Earl of Rochester; William Sancroft, Archbishop of Canterbury; Nathaniel Crewe, Bishop of Durham; and Thomas Sprat, Bishop of Rochester. Of these both Herbert and Sunderland were well known supporters of James. Herbert's support of the dispensing power and the prerogative have already been discussed, and Sunderland, considered by most historians as a crafty and unscrupulous politician, had almost as unsavoury a reputation as that of Jeffreys. Of the four non ecclesiastical appointees, Hyde was the only figure not obviously biased in favour of the crown. A strong adherent of the Church of England, his appointment was quite possibly simply window dressing.

Of the Church appointments, both Crewe and Sprat were 'amenable' to the King's wishes. Sancroft declined his appointment, citing reasons of age and ill health, and was replaced by Thomas Cartwright, Bishop of Chester. Burnet accused Sancroft of "timorous" behaviour, hiding behind excuses rather than declaring against popery. This, as Martin Routh (editor of Burnet's diary), points out, does not align with Sancroft's later actions, Sancroft being one of the seven bishops put on trial for refusing to read the Declaration of Indulgence.<sup>2</sup> He was also to lose his preferment on a matter of conscience in 1690, as a non juror. Cartwright, like Herbert, was a strong advocate of the royal prerogative. Believing it to be above the law, he maintained that the King's authority was God given, and so absolute

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<sup>1</sup>Indeed, Morrice felt it significant enough to note an instance when Jeffreys was not abusive, stating that "Jeffreys was not so very loude nor rude before the Lords as in other courts, and at other tryalls". Morrice P, p.511

<sup>2</sup>Burnet, p.109.

and superior. While he showed no signs of converting to Catholicism, he was regarded as a useful tool in bringing the Church to heel.

Of the seven appointments to the Ecclesiastical Commission, six were biased in favour of the crown. It would be false to represent these as mere 'toadies' of the crown, for on a number of occasions, they declined to be merely rubber stamps for James.<sup>1</sup> Overall however, the appointments were unquestionably chosen for their 'suitability', illustrating that the Ecclesiastical Commission was not an independent body, but fully intended to be an extension of the royal will.

The initial reaction of contemporaries recorded by Morrice to these appointments is intriguing, for it was not entirely negative as one might expect given the nature of not only the appointees, but the Commission itself. Neither is it what one would glean from standard historical texts on this period. Morrice reports that the fears of many people towards the Ecclesiastical Commission were "allayed and calmed" since the Commissioners were "such good Church of England men, and three of them of their own order". Many apparently believed that the defects existing in ecclesiastical law would be remedied, although Morrice does add that a few others "have other kind of apprehensions and cannot easily come to a resolution how to demean themselves in case they be cited before them."<sup>2</sup> The promise James had made to protect the Church as established by law also appears to have had some part in calming alarm. Only a month after the establishment of the Commission Morrice reported that a "doctor of considerable note in the Church of England" stated that while there was at present "some cloud upon the Church" he believed it would come to nothing because

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<sup>1</sup>For example, at Compton's trial both Herbert and Sprat were for his acquittal. The acquittal of the seven bishops by the Ecclesiastical Commission provides another good example. Neither were they unanimous in the judgements against the universities.

<sup>2</sup>Morrice P, p.587.

James was "a person of such innate justice and veracity that he could not but make good his promise."<sup>1</sup>

Morrice believed these apprehensions of safety engendered by the appointments of 'good Church of England men' to be prejudicial, if not suicidal, to the future of Protestantism. Considering themselves to be secure, the hierarchy<sup>2</sup> and their followers, he believed, were simply deluding themselves into thinking they were safe "by pretentions of keeping popery out". To feed these delusions, he continues, they cite among other evidences the fact that "the ecclesiastical commissioners consist of seaven good Church of England men, and three of them clergymen". Such blindness, Morrice concluded, would only bring popery in, and portended a rapidly approaching ruin.<sup>3</sup>

Lack of clerical concern was also a feature. According to Morrice efforts by Edward Fowler to engender discussion amongst the divines of London on what should be done if they were summoned before the Commission met with little interest. This lack of concern Morrice put down to purely selfish reasons - "every man shifts for himselfe no man hath any respect for the common interest of religion, property and liberty."<sup>4</sup> This apparently common lack of concern is intriguing for it contradicts the frequent assertion that the Ecclesiastical Commission aroused much fear and opposition.<sup>5</sup> The answer to this contradiction perhaps lies in the fact that until the cases against the universities arose in the following year, the

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<sup>1</sup>Morrice P, p.598.

<sup>2</sup>Morrice refers to those most responsible for the persecution of the Dissenters in the Church of England as 'hierarchists'.

<sup>3</sup>Morrice P, p.581.

<sup>4</sup>Morrice P, p.593.

<sup>5</sup>For instance Macaulay, p.744.

Ecclesiastical Commission did not act in such a way as to appear overly threatening. While it is true that Compton's case elicited opposition from most interests, it has been asserted that this did not outlast the trial.<sup>1</sup>

Contemporary reaction was not uniformly unopposed, or uncaring however, for there were those who regarded the Commission as a serious threat. Fowler provides one such example. While unable to gain much interest from his fellow divines, he nonetheless advised that should any be summoned before it they should demur to its jurisdiction. If all refused to acknowledge the jurisdiction of the Commission, he believed they could render it incapable - the Commission being unable to excommunicate the whole body of the clergy.<sup>2</sup> Morrice himself regarded it as supremely dangerous, as previously mentioned, and believed that if they did acknowledge the jurisdiction of the Commission "the Court will find or make all they accuse guilty, and none will be able to clear themselves by any defense they can make."<sup>3</sup> Morrice it seems, was well aware of the wider threat posed by the Commission; to the law as well as to Protestantism. Wood believed "the design of [the] commission was to introduce a Roman hierarchy".<sup>4</sup> This particular point gained much credence in the face of the university cases. It also ties in with the possible development of opposition to the Commission over time as mentioned previously.

Fowler's advice to refuse to acknowledge the jurisdiction of the Ecclesiastical Commission raises the issue of legality. That it was a contentious one to contemporaries is

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<sup>1</sup>Lesley Buckley, *'An Edition of Roger Morrice's Entering Book, 2 August 1686 - 11 September 1686'*, unpublished Massey University B. A.(Hons) research exercise, 1982, p.11.

<sup>2</sup>Morrice P, p.593.

<sup>3</sup>Morrice P, p.593.

<sup>4</sup>Wood, p.193.

reflected by Morrice in his diary. He, along with a considerable number of others (including Burnet and Compton) regarded the Commission as illegal, based on the belief that it was simply the resurrection of the much hated Court of High Commission, which had been abolished and declared illegal by the Long Parliament in 1641. This same act had also repealed the clause in the Elizabethan Act of Supremacy which gave statutory authority to re-establish anew any such Court. Burnet contends that the Commission was in reality the High Commission masquerading as a mere standing court of delegates,<sup>1</sup> while Morrice believed it to be "much after the forme of the commission given to the Lord Cromwell in Henry the 8th's time, with all such powers as the High Commissioners formerly had."<sup>2</sup> That the seal for the new Commission had the same inscription as that of the old High Commission - *Sigillum Regiae Majestatis ad causas Ecclesiasticas* - did little to enhance distinction either.

This view has long been the standard historical opinion and has only recently been challenged, with quite a different interpretation transpiring. Closer examination of the Ecclesiastical Commission reveals a number of crucial differences between it and the Court of High Commission. Firstly James' Commission was never a Court - it did not have the power to fine or imprison as a Court did. Secondly, the High Commission had a much wider jurisdiction, made possible by the very loosely phrased letters patent under which it operated.<sup>3</sup> Originally a commission for the enforcement of clerical discipline, it evolved into a regular court staffed by ecclesiastical judges. It dealt mainly with laymen, mostly of humble origin, and suits brought by private persons. In comparison the jurisdiction of the Ecclesiastical Commission was very narrow, being confined to ecclesiastical persons and aimed mostly at

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<sup>1</sup>Burnet, p.108.

<sup>2</sup>Morrice P, p.573.

<sup>3</sup>J. P. Kenyon, *The Stuart Constitution 1603 - 1688*, (Cambridge, 1966), p.176.

those of high rank. Finally, the purposes of the two Commissions were quite different. The High Commission was primarily concerned with the maintenance of uniformity, while the Ecclesiastical Commission was designed for the enforcement of the royal will in the Church and as a means of achieving its obedience. These crucial differences reflect the pivotal change in historical attitude towards the reign of James II that has come with the twentieth century, of which the reassessment of the Ecclesiastical Commission is indicative.

While historical opinion may have changed, the important fact that contemporaries believed it to be the dreaded High Commission, remains. That this was so even for those who regarded it as legal is intriguing. What becomes clear from the pages of Morrice's diary is that the issue was not the nature of the Commission, but the issue of the royal supremacy. Despite Macaulay's assertion that the lawyers regarded the Commission as an outrageous violation of the law,<sup>1</sup> Morrice reports that the lawyers consulted by Fowler were "not very cleare in point of law that the commission is illegal by reason of the clause in the Act reserving to the King his power in matters ecclesiasticall".<sup>2</sup> The Act referred to by Morrice was that passed in 1661 which while reaffirming the 1641 abolition of the High Commission, also enacted that nothing therein contained was to diminish or abridge the royal supremacy in ecclesiastical affairs. The powers conferred on the crown by the Act of Supremacy remained intact, which is important because James established the Ecclesiastical Commission "by vertue of our supream authority and prerogative royall".<sup>3</sup> Hence while James could not establish a Commission due to the 1641 statute, he "might doe it by vertue of the supream power originally vested in him in all ecclesiasticall matters". This was the opinion of the

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<sup>1</sup>Macaulay, p.744.

<sup>2</sup>Morrice P, p.593.

<sup>3</sup>Morrice P, p.577.

lawyer consulted by Compton, who advised him not to demur to the Commission, for that could be interpreted as a disowning or refusing to submit to the King's supremacy - a treasonable offence.<sup>1</sup>

In direct opposition to this assertion of the king's independent supremacy is the view espoused by Robert Atkyns - that of Parliamentary involvement in the supremacy. According to Atkyns, the king's ecclesiastical power and jurisdiction were by "the fundamental laws of the realm distributed into several courts, which are mentioned and confirmed by...several acts of Parliament, and may not...be exercised by any other, but by such courts, and in such method...as by law, and the said acts of Parliament it is provided."<sup>2</sup> He continues that even the High Commission established by Elizabeth I had required an act of Parliament to grant it authority, despite being established through the royal supremacy. In other words the monarch could not delegate such power merely by the prerogative. Burnet also echoes this in his assertion that the Ecclesiastical Commission had been established through "a stretch of the supremacy, so contrary to law".<sup>3</sup>

This opposing view is revealing, for it demonstrates the evolution of the supremacy as documented by Elton; by the reign of Elizabeth, the Queen's ultimate power lay with the Queen-in-Parliament, not in the monarch alone as in the days of Henry VIII.<sup>4</sup> This had particular implications, for James, not surprisingly given his views on kingship, believed the supremacy to be independent. It also exemplifies the lack of provision in the Act of Supremacy for the future possibility of a Catholic monarch. It was the supreme irony that an

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<sup>1</sup>Morrice P, p.594.

<sup>2</sup>ST, vol XI, pp.1150-51.

<sup>3</sup>Burnet, pp.108-9.

<sup>4</sup>Elton, pp.333-336.

act which usurped the powers of the Pope and was made for the establishment of Protestantism should now serve as a means to re-establish Catholicism. This was not lost on James who commented to Barillon "that God had permitted all the laws made for the establishment of the protestant and to destroy the catholic religion should now serve as a basis for what he wanted to do for the re-establishment of the true religion".<sup>1</sup> The legality of the Ecclesiastical Commission for contemporaries, then, rested on the interpretation of the royal supremacy, rather than on whether or not it was in fact a resurrection of the High Commission. This is of significance for historians have generally based their conclusions of legality on the differences, or similarities, between the two Commissions.

The differing interpretations of the supremacy, like the dispensing power, reflect the difficulties engendered by the lack of clarity and demarcation in English law. While technically it could be argued that James was in the right, the evolution of the supremacy prevents the formation of an indisputable conclusion, and indeed I believe provides a strong argument that the Commission was illegal. This lack of definition had repercussions in the universities for the legality of the Commission was challenged in both Oxford and Cambridge, and encouraged continued resistance in these institutions after the cases closed. However, the use to which James put the Ecclesiastical Commission in the universities convinced most contemporaries that it was simply an instrument of Catholicisation.

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<sup>1</sup>Western, p.199.

#### 4. The Universities.

To appreciate the importance of the universities to the re-establishment of Catholicism, and hence to James, one needs to understand why they were of such significance and, consequently, what he hoped to achieve through their capitulation. To accomplish this, it is necessary to examine briefly the history of the universities themselves, the position they occupied in society, and the wide role they played. These factors help explain the strength and virulence of the conflict surrounding these institutions under James II.

The changes wrought by the Tudors in both government and the Church removed the universities from the strictly ecclesiastical, and into the secular world. Prior to the sixteenth century, the importance of the universities in society had been strictly limited, consisting as they did, of communities of poor scholars studying in pursuit of a career in the Church. By the sixteenth century the picture had changed considerably, with university education becoming highly esteemed, particularly amongst the upper classes. From the 1530's onwards the sons of the upper classes (particularly of the gentry) were sent to the universities in ever increasing numbers, and by the 1640's only 27 percent of graduates were of plebian origin.<sup>1</sup> The reasons behind this phenomenon were twofold. Firstly was the influence of Humanism and Protestantism, both of which emphasised the value of learning, and placed specific emphasis on education, particularly classical education. As a result university education became fashionable, as the explosion in student numbers throughout the later 1500's and early 1600's testifies. Secondly, trained and educated men were now needed to operate the extended administrative machinery developed by the Tudors. The marked change in composition in undergraduate society from poorer ecclesiastical scholars to principally fee paying students from wealthy backgrounds, with worldly ambitions, gives eloquent testament to this

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<sup>1</sup>J. A. Sharpe, *Early Modern England*, (London, 1987), p.258.

development in the university system.<sup>1</sup>

The enlarged secular dimension of the universities not only changed the nature of the institutions themselves but resulted in significantly increased political supervision. Because the universities were able to exert a considerable national influence, since those they educated took up many positions of secular authority and trust throughout England, the crown came to realise it had a vested interest in 'controlling' these institutions.<sup>2</sup> The fact that politics and religion were inseparable during this period made this doubly so, and was to see the addition of an important political dimension. Becoming incorporated into the royal patronage system via the crown's ecclesiastical supremacy, the universities came to accept high levels of royal interference as a common feature of university life. However, it needs to be added that by the 1680's this interference, like the dispensing power, came with certain expectations or qualifications, which were to have a considerable impact in the nature of the conflicts between James and the universities.<sup>3</sup>

The traditional role of the universities as seminaries of the clergy did not diminish in the face of increased secularization. Rather it became increasingly important, in light of the reformation. During the late medieval period, clergy without a university education had been at a serious disadvantage in seeking higher preferment, and by the end of this period there was an increasing number of university graduated priests in parish livings. With the reformation and the accompanying Protestant call for a more learned ministry, this process was accelerated and by the early seventeenth century the clergy had been transformed into

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<sup>1</sup>John Twigg, *The University of Cambridge and the English Revolution, 1625-1688*, (Cambridge, 1990), p.2.

<sup>2</sup>*ibid*, p.3.

<sup>3</sup>Gerald Harris, 'A Loyal but Troublesome College', *Magdalen College and the Crown. Essays for the Tercentenary of the Restoration of the College 1688*, (Oxford, 1988), p.30.

a graduate profession, making it difficult for ministers without a university education to obtain parish appointments.<sup>1</sup> In Leicestershire, for instance, only 15 percent of clergy had a degree in 1576, yet by 1642 the number was 90 percent.<sup>2</sup> The dominance of divinity in postgraduate studies during the seventeenth century reflects the continued importance of clerical training in these institutions at this point in time.

The ecclesiastical dimension, as well as the secular, of the universities was of considerable importance to the crown. With the reformation, the Church of England became the enemy of the Church of Rome, and its members were required to affirm their loyalty to the crown under statutory oath, something reflected in the Parliamentary requirement that all graduating students take the oaths of allegiance and supremacy. As the fonts of theological learning and the nurseries for the priesthood, it was important that the universities be ruled by men of "reliable opinions"<sup>3</sup> in order to maintain a uniform state religion. To this end the crown took an added interest as a means of not simply religious, but also political control.

It is necessary also to understand the nature of the crown's authority in the universities. Unlike today, the universities of the seventeenth century were not government founded and funded institutions. Rather they were a series of colleges established by private citizens, each with their own governing statutes, whose incomes were derived primarily from land and endowments. Given their private nature, the crown did not have authority in the universities by virtue of its own power or by the laws of the nation, but only by virtue of the ecclesiastical supremacy, vested in the crown at the reformation. Through the ecclesiastical nature of the universities, the crown, through its usurpation of the papal powers, gained

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<sup>1</sup>Twigg, p.2.

<sup>2</sup>Sharpe, p.187.

<sup>3</sup>Harris, pp.12-13.

jurisdiction over these establishments.

The private nature of the universities and the ecclesiastical authority of the crown over these institutions had the potential to create considerable difficulties, the two being to some degree mutually exclusive. These features created the situation whereby there existed a royal control or authority over what was basically private property, which was inviolate by the crown in law. Yet by their ecclesiastical nature, the universities were subject to the ecclesiastical supremacy of the crown. This contradiction was to make the issue of private property a contentious one in their conflict with James, particularly as it extended to include titles and positions. Not surprisingly then, legal wrangles were to form a prominent part of the proceedings.

The widespread permeation of the influence of the universities at both the secular and ecclesiastical level, is the key to understanding the position of prominence that they occupied in James' efforts to re-establish Catholicism in England. Education in the Catholic faith was to be one of the fundamental means of achieving this. That James saw education as important is reflected clearly in the establishment of the Ecclesiastical Commission and his inclusion of the educational facilities of the Church of England within the jurisdiction of the Commission demonstrates conclusively the weight James placed on the value of education in achieving his aims, and that he meant to intrude a Catholic influence at all levels within the educational system.

Should James be able to break the educational monopoly of the Church of England, the outcome of his efforts would go far beyond merely attaining converts. By the very nature of the universities and the extensive (if indirect) influence they wielded, conversions would have a much broader effect, going beyond the simply religious and entering the political realm. By forcing the universities to accept Catholics, James was effectively seeking to

establish a peaceful impetus for religious change from the inside, rather than a forceful external stimulus; since the universities played a vital role in forming the religious views of the sons of the ruling classes.<sup>1</sup> Denied the use of force by circumstances and his own conscience, 'infiltration' was one of the few effective, peaceful, options left open to him. The importance of the universities in establishing doctrinal changes was amply demonstrated by the historical record. Successive doctrinal changes in England since the time of Henry VIII had seen major royal interference in the universities. Henry VIII, Mary I, Elizabeth I, and Parliament had all intruded 'suitable' persons, expelling those who refused to submit to the new religious regime. Such a lesson was not lost on James.

The importance James placed on education as a means of re-establishing Catholicism reflects his belief in the prompt conversion of much of the Protestant population, should Catholics be able to compete on equal terms with the Church of England.<sup>2</sup> Believing in the inherent rightness of Catholicism, and personally dissatisfied with the Protestant religion, James placed much faith in the missionary abilities of the Catholic priesthood. His Jesuit advisers assured him that if they could get a foot in the door of the universities, "they would gain such a reputation by their methods of teaching youth, that they would carry them away from the university tutors, who were certainly too remiss."<sup>3</sup> This sentiment was echoed by the papal nuncio D'Adda, who wrote that should the 'true' doctrine be taught publicly, it would then "spread consecutively to other parts of the realm."<sup>4</sup> Morrice believed this to be naive to say the least. Catholic priests and Jesuits, he asserted, had no "great talent in

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<sup>1</sup>Miller, *James II*, p.169.

<sup>2</sup>*ibid*, p.169.

<sup>3</sup>Burnet, p.148.

<sup>4</sup>Bloxam, p.242.

disputation", while "experience tells us here that the preaching even of the best of them is quite unsavory to our common people and filled up with such idle tales that our ignorant people do nauceate it". Morrice partly attributes this ineptness to a lack of practice, but it is clear he regarded their preaching skills to be inferior to the Protestant.<sup>1</sup> This is peculiar, given that he regarded their intrusion into the universities to be a significant threat to Protestantism. One would think that if they were such poor preachers, the threat they posed should conversely be minimal, since their influence must rest on their ability to attract and convert students. James was further convinced as to the potential benefits of intruding a Catholic presence in the universities by his belief that many dons and students in the universities were in reality Catholic at heart, refraining from converting for fear of the consequences. A handful of conversions in Oxford in 1685-6 fuelled this belief.<sup>2</sup> His determination to establish a Catholic presence in the universities was motivated also by a sense of natural justice. Many of the colleges had been founded prior to the reformation for the benefit of the Catholic Church. It was unfair, he believed, that Catholics should be denied the opportunity to benefit from the endowments of their forefathers.<sup>3</sup>

As part of the Church of England, the universities were traditional allies of the crown. During the civil war Oxford had been the royalist headquarters, and as centers of royalist loyalism, both universities had opposed Parliament, for which they suffered considerably under Cromwell's regime. Ecstatically welcoming the restoration in 1660, they celebrated the accession of James to the throne in 1685, despite some trepidation on account of his Catholicism. During Monmouth's rebellion Cambridge ordered the Duke's picture burnt, and

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<sup>1</sup>Morrice Q, p.88.

<sup>2</sup>Miller, *James II*, p.169.

<sup>3</sup>*ibid*, p.169.

his name erased from all lists of university officers, while in Oxford a company was raised in support of the crown. Strong proponents of the doctrine of passive obedience, the universities taught the divine authority of monarchs, the subject's duty of obedience, and the sinfulness of rebellion. The "Judgement and Decree of the University of Oxford past...against certain bookes and damnable doctrines, destructive to the sacred persons of princes, their state and government and all humane society" gives ample evidence of this.<sup>1</sup> Written in the aftermath of the Rye House plot, it condemned all writings which advocated any sort of disobedience, rebellion or republicanism, regardless of royal provocation. In light of this, it is little wonder James saw the universities as obvious vehicles for the re-establishment of Catholicism. Traditionally loyal to the crown, and advocates of passive obedience, they were the perfect choice. While they would not welcome his efforts, they could be relied upon to acquiesce to the royal will. They wielded considerable national influence, but were considerably easier to discipline by virtue of the crown's ecclesiastical supremacy, than the Church of England as a whole.

While the universities were clearly royalist, it is essential to understand why this was so, for it had considerable impact on their reaction. Uppermost in the English seventeenth century mind was the importance of maintaining the status quo, particularly after the civil war. Religious conformity was widely regarded as integral to this. The advocacy of the doctrine of passive obedience by the universities, and their staunch royalism, were not the result of simple loyalty, but part of a comprehensive effort to maintain the all important status quo. As such, both Cambridge and Oxford were the "guardians of a body of traditional learning on which religious orthodoxy, political obedience and social order were thought to depend", whose principal tasks were to educate the sons of the nobility and gentry, and to

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<sup>1</sup>Morrice P, p.372.

provide large numbers of soundly trained clergymen whose religious duties in parishes were bound up with social and political influence.<sup>1</sup>

The universities, then, were of concern to James, as he sought peaceful means to re-establish Catholicism. Traditionally loyal to the crown, few other institutions were as vulnerable to royal interference, or as influential amongst the all important ruling classes. That this was recognised by the Church of England is proven by its determination to retain its exclusive hold on its educational institutions. With the developments of the previous 150 years, the Church was not slow to realise that the relinquishment of the universities would have more far-reaching consequences than a few conversions to the Catholic faith in the immediate future. Coming to epitomize the struggle between Protestantism and Catholicism, the conflict between James and the universities was fought out in an atmosphere of deadly seriousness, and with a feeling of "winner takes all".

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<sup>1</sup>quoted by Angus MacIntyre from G. V. Bennet, 'University, Society and Church, 1688-1714', *History of the University of Oxford*, in 'The College, King James II and the Revolution 1687-1688', *Magdalen College and the Crown*, p.34.

### 5. Cambridge.

The first move James made against Cambridge was relatively minor, and of little national interest. Stemming not from any policy directed specifically at the universities, but rather from his efforts to prevent public preaching against popery, it involved Edward Spence of King's College. Appointed to preach the traditional November the fifth sermon at the University, he cast satirical aspersions on the Catholic Church, contrary to the instructions issued by James that required the clergy to confine their sermons to neutral subjects. Upon receiving a complaint from Joshua Basset (a fellow of Caius College and a recent convert to Catholicism), the court required the University to obtain a recantation from the recalcitrant preacher, which was duly done. Noted only briefly by Morrice in his diary, the case roused little feeling either inside or outside Cambridge. It was recognised as simply a part of the wider effort to regulate the clergy, which, while not welcomed by the Church of England, in no way threatened or undermined the University itself. The incident gains significance however in the face of the ensuing conflict over the mastership of Sidney Sussex College, centering as it did around the admission of the same Joshua Basset as Master.

In January 1687, the mastership of Sidney Sussex fell vacant upon the death of Richard Minshull. Procuring from James a mandate for his election to the mastership and a dispensation from the oaths of allegiance and supremacy, which as Master he was required by law to take, Basset proceeded to the College. Interestingly enough, the mandate was procured for Basset on the recommendation of Alban Francis, a Benedictine monk, who was to become the center of controversy in the biggest dispute between Cambridge and the crown in the near future.

Not surprisingly, the fellows of Sidney Sussex were reluctant to admit Basset. Not only was he an avowed Catholic, but he was ineligible by the statutes of the college, which

as fellows they had sworn to uphold. The fellows sought the help of their Chancellor, the Duke of Albemarle, who agreed to write to James on behalf of the University, requesting that Sidney Sussex be allowed the "liberty and freedome in the choice of a Master as his royall predecessors had done", adding that "they were obliged by their statutes by oath to chose one duly quallified".<sup>1</sup> James responded that while he had the greatest respect for Cambridge, and in particular for Sidney Sussex, he had granted Basset his mandate and could not now revoke it.<sup>2</sup> For a man who believed in the divinity and earthly unaccountability of kingship, this was certainly an expedient statement.

Faced with James' refusal, the fellows sought to make the matter an issue of the Church of England as a whole, by taking it out of the confines of the University and into the wider Church. Taking a petition to London, they sought the help of Turner, the Bishop of Ely, and Sancroft, the Archbishop of Canterbury (possibly at the recommendation of Turner, Morrice wasn't sure). Turner, while expressing a willingness to help, maintained he would be of little use having at that time no interest at court, while Sancroft "gave them a faire complementall answer" but little else.<sup>3</sup> They then again asked Albemarle for help, who agreed to present their petition, on account of his being their Chancellor, despite the fact that the issue "was now a very ungratefull thing at Court".<sup>4</sup>

This petition was the same as the request made originally by Albemarle, to the effect that Basset was to them an incapable person, whom they could not admit without violation of the College statutes and their oaths to uphold these. They therefore "begged his

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<sup>1</sup>Morrice Q, p.45.

<sup>2</sup>Morrice Q, p.45.

<sup>3</sup>Morrice Q, p.81.

<sup>4</sup>Morrice Q, p.81.

Majestie...to give them leave to go to the choice of a Master."<sup>1</sup> The statutes the fellows referred to expressly forbade the admission of Catholics, Sidney Sussex being an Elizabethan foundation. In this instance James' assertion that the admission of Catholics was a matter of natural justice, lacks credibility. The college having been founded by a Protestant, for the benefit of Protestants, it cannot be said that it denied Catholics the benefit of their forefathers' endowments.

The petitioning of Turner and Sancroft indicates that the College regarded the issue as one of concern to the whole of the Church of England, (and therefore English Protestantism as an entirety), not just to the University itself. That the fellows went beyond the normal lines of intercession between the University and the crown (i.e. the Chancellor), directly to the hierarchy of the Church, reveals the level of concern. The case also shows that the Church at this time felt Basset's appointment posed insufficient threat to warrant challenge. While both Turner and Sancroft were sympathetic, neither was motivated to help in any other ways. That both Turner and Sancroft were not reticent in opposing James at a later date tends to confirm this. The accumulated effects of James' future actions in the universities had yet to take effect. The mobilisation of the hierarchy of the Church was not a feature of the dealings between Cambridge and the crown as it was to be in Oxford. At this time the simple matter of a single mastership was not of immediate concern, regardless of the opinion of the College.

The petitioning of the fellows also indirectly passes comment upon the access, or rather the lack of access, to the crown. Turner's statement that he "has now no interest at Court" demonstrates the increasing difficulty that those opposed to James' policies had in gaining access to the royal ear. Sancroft was in a similar position, having proven less than

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<sup>1</sup>Morrice Q, p.81.

accommodating to James' policies in the course of Compton's trial and the establishment of the Ecclesiastical Commission, so that by the end of 1686 he was "*persona non grata*" at court. Continuing to surround himself with supporters, so denying the Church of England leaders the opportunity to air their concerns, James ultimately forced them to stronger opposition in the case of Magdalen College, Oxford.

When Basset came to Sidney Sussex, Morrice reported that while the mandate and the dispensation "were very readily obeyed", the fellows nonetheless declined to admit him as master in face of his refusal to take the oaths required by the College statutes. The difference in oaths is critical, for while Basset had a dispensation from the oaths demanded by law, he did not have one for the oaths demanded by the College. It is little wonder Basset refused to take these oaths, for they required the Master of Sidney Sussex to "every month collate in the College upon some point in defence of the Reformation against Popery and that he shall in the publick schools once in a month or two defend some point of the like kind. And the like he is to do in some third place within limited time". Furthermore, "if the said master refuse, neglect or forbear to maintaine such points at such times and places in defence of the Reformed religion against Popery without a sufficient reason (alowed of by such as are appointed) the fellows of that College shall assemble together and actually displace and expel the said master". In light of this the fellows intended to assemble and remove Basset as Master for neglecting to defend the afore mentioned principles. However their intentions were betrayed "by some false brother amongst them" and the fellows were summoned to appear before the Ecclesiastical Commission.<sup>1</sup> Revising the College's statutes, the Commission removed all barriers to Catholics, and the fellows unhappily admitted Basset as Master. This was the first time the Commission had been used in either university, and it provides a good

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<sup>1</sup>Morrice Q, p.127.

example of its usefulness to James in his efforts to intrude a Catholic presence.

The failure of the fellows to continue to oppose James earned them a degree of criticism from within Cambridge itself. Isaac Newton wrote in February "I wonder that the Goodmen of Sidney doe not elect their Master. An honest Courage in these matters will secure all, having the Law on our sides."<sup>1</sup> The lack of further resistance failed to surprise Morrice, who commented on the original admission of Basset "so there was end of that affaire which is like to the end that the universities use to put at all times to all affaires of that kind."<sup>2</sup> This pertinent comment demonstrates the traditional loyalty of the universities and the reliance James placed on it. While unhappy with the royal recommendation, and willing to voice their concern, ultimately they would defer to the royal will. It is not surprising then, that Morrice expected the case to end as it did.

James' interference in the election of the mastership in Sidney Sussex reflected the importance that the position held. Like the changes in the universities themselves over the preceding centuries, the status of masterships had likewise undergone substantial change. By the sixteenth century, the Master of a college held considerable authority, having extensive statutory power within colleges in such matters as the issuing of leases, the election of fellowships, and the allocation of pupils to college tutors.<sup>3</sup> This last point was of particular importance, in light of the change in emphasis from lectures to a more personal tutoring system. Tutors not only taught, but supervised the spiritual and moral welfare of their charges, and so were able to exert considerable influence on the beliefs of their charges. The

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<sup>1</sup>quoted by Twigg, p.279.

<sup>2</sup>Morrice Q, p.85.

<sup>3</sup>Twigg, p.6.

Master's religious outlook could therefore have far reaching consequences.<sup>1</sup>

What is lacking in the Sidney Sussex case is contention surrounding the dispensation from the oaths of allegiance and supremacy. According to Morrice, this was readily accepted by the College. While the king's dispensing power had been legally established as above the law in the *Godden vs Hales* ruling, a dispensation from two such important oaths was a matter of considerable concern, as was amply demonstrated in the later conflict surrounding Alban Francis in Cambridge. It is also interesting that the fellows accepted the mandate and the dispensation from the college's statutes, despite their oaths to uphold these. While it was true James was within his rights in issuing a mandate, it was not legally established that they must obey, as Morrice duly notes in reference to the Francis case.<sup>2</sup> Furthermore, it was beyond the authority of the crown to insist upon, or to sanction perjury, which the breaking of oaths constituted. There are a number of possible explanations. It is feasible as Twigg points out, that an individual College might not feel sufficiently confident to oppose the crown on this point, unlike the University as a whole.<sup>3</sup> Most likely to my mind, was the fact that Basset's intrusion was only the first real assault James had launched on the universities. As a singular event it lacked stature; as the beginning, and part of a concentrated policy against the universities, it gained considerable importance, although unfortunately only in retrospect.

The ensuing relationship between the new Master and the fellows was anything but cordial.<sup>4</sup> However, the election of Basset to the mastership of Sidney Sussex had the desired

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<sup>1</sup>*ibid*, p.7.

<sup>2</sup>Morrice Q, p.79.

<sup>3</sup>Twigg, p.281.

<sup>4</sup>*DNB* (Basset). The source quoted is Joseph Craven, future Master of Sydney Sussex, who, it should be added, was hostile to Basset.

effect. Mass was said in the Master's lodge, and while the College chapel remained Protestant, it was said that Basset threatened to take it over. Certainly on November 5 he locked it to prevent the traditional service in remembrance of the gunpowder plot.<sup>1</sup> In the same month, two students from Caius were admitted. Probably former students of Basset's, one, William Thompson, was certainly a Catholic (having received a dispensation from the oaths of allegiance and supremacy earlier on<sup>2</sup>), and the other, Valentine Husband, was in all probability also Catholic. In establishing Basset in Sidney Sussex, James was providing a college where Catholics, and those inclined towards Catholicism, could be sure of acceptance and a welcoming atmosphere.

In selecting Basset, James was demonstrating his intention to intrude a Catholic presence, or influence, within the universities. Unlike the incident surrounding Spence, the actions James took in Sidney Sussex were unquestionably part of a policy directed at the University itself, and not simply the consequence of an unrelated policy. If this case raised little outside concern at the time, it had the effect of placing retrospective alarm bells. While legally in the right, both in his use of the dispensing power and the issuing of a mandate, James was using his authority in a way that was perceived to be detrimental to the good of the Church. While there was little serious resistance in Sidney Sussex, it was the first signs of unease in a University renowned for its loyalty to the crown, and a portent of noteworthy proportion. That Morrice recognised this is undoubted. He regarded the initial refusal of Sidney Sussex as "very considerable", particularly because it was "very unlike what the temper and usage of the University has been in all times, and upon all occasions."<sup>3</sup>

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<sup>1</sup>Twigg, p.278.

<sup>2</sup>CSPD (1686-1687), p.375.

<sup>3</sup>Morrice Q, p.79.

The third and final assault James launched on Cambridge came in February 1687, beside which the Sidney Sussex case pales into relative insignificance. Encouraged by his earlier success, he determined to create a precedent in the University to allow Catholics to study for degrees, which would effectively break the monopoly of the Church of England on university education. This attack affected the entire University, and raised considerable outside interest and concern. On February 9, a mandate was delivered which stated "That hearing much in commendation of one Alban Francis, a Benedictine, the king was pleased to command the University, that they should admit him to the degree of master of arts, without administering to him any oath or oaths whatsoever, any law or statute to the contrary in any wise notwithstanding, with which his majesty was graciously pleased to dispense in the behalf of the said Alban Francis."<sup>1</sup>

Usually a relatively simple matter, the granting of a degree by mandate was not an uncommon occurrence at either Cambridge or Oxford. The difficulty lay in James' choice of recipient. By nominating a Catholic, James changed the whole perspective on the granting of degrees, so turning a simple matter into one with political and religious connotations. While studying for degrees was not expressly prohibited by Parliamentary statute to Catholics, they were effectively barred by the statutory requirement that graduates take the oaths of allegiance and supremacy upon conferment of their degrees. By granting such a dispensation, James was effectively seeking to overturn Parliamentary statute through the prerogative and allow Catholics to study for degrees by way of precedent.

Upon receiving the mandate, and hearing concern voiced throughout the University, the Vice-Chancellor John Peachell (also Master of Magdalen College, Cambridge) called a meeting of the heads of the colleges, declaring that "he did conceive it was utterly

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<sup>1</sup>ST, vol.XI, pp.1315-1318.

inconsistent with their oaths and with the statutes of the University to comply with his Majesty's pleasure to admit persons under a disability and incapacity".<sup>1</sup> It was decided that the matter should be placed for vote before the House (or convocation), the ruling body of the University. Putting to the vote the acceptance of a royal mandate for a degree was a highly unusual (if not unprecedented) event. It is at this point that we see the wider effects of Basset's election to the mastership of Sidney Sussex.

The usual way to bring a matter before the House for vote, was first to place the matter before the Head of the House. Consisting of six men, each had an arbitrary voice and power to stop proceedings and prevent it going before the House. At this time, one of the six in the Head was none other than Basset, a strong supporter of Francis' cause. In view of this, it was decided that the normal proceedings should be set aside, as it was presumed that Basset would stay the matter.<sup>2</sup> Unable to bring the matter before the House in the usual manner, the House was forced to use an alternative, and less formal method, whereby it would voluntarily testify its concurrence with Peachell's declaration, and advise him not to admit Francis. That all but three (who were Papists) of the House did support Peachell, advising him "to forbear the admitting Mr. Francis till the king had been petitioned to revoke his mandate"<sup>3</sup> demonstrates that opposition to James was virtually unanimous throughout the University, and that the issue of mandates to Catholics was regarded as a serious threat to the University as a whole, and one which had to be dealt with by the University as a united body. The unanimous opposition of Cambridge represents one of the main differences between it and Oxford in their dealings with the King, for while the case of Magdalen, Oxford was

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<sup>1</sup>Morrice Q, p.79.

<sup>2</sup>ST, vol.XI, p.1321.

<sup>3</sup>*ibid*, p.1321.

undeniably the zenith in the conflict between the universities and the crown, opposition was based in a single college rather than emanating from the University as a whole. This difference illustrates the contrast in the nature of James' 'interference' in the two universities.

The threat posed to the University by Francis' mandate went beyond the surmised wider danger to the Church of England posed by the possible effects of a Catholic influence in the universities, and touched the very governance of Cambridge, and in a very real manner. The master of arts degree had importance beyond its immediate qualifications, for it granted the holder a vote in the House, the ruling body of the University. The implications of Catholics in this body become immediately apparent, as, no doubt, they had earlier to James. Because every master of arts had a vote in the House, it was felt that to accept Francis would set a precedent which would subsequently see not only "all the king's priests...let in upon them", but the introduction of "great distraction and contentions" in the as yet uniform House. Furthermore, it was quite possible that they could in the future become the majority,<sup>1</sup> a prospect which would render the entire University defenseless against the doctrines of Catholicism. Cambridge felt it had no alternative but to refuse the mandate, as indeed it did not if it wished to retain its Protestant, and more specifically Church of England, doctrines.

On reception of the original mandate an idea was floated (by "some feeble or false men" according to Burnet) that the degree should be granted, but with the proviso that it should not be treated as a precedent. This idea was scarcely entertained, it being felt that obedience once paid would be a much stronger argument for continuing to do so, than any proviso against it.<sup>2</sup> This was a wise decision, for the founding argument for the dispensing power in the *Godden vs Hales* case demonstrates the correctness of this assumption. The

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<sup>1</sup>Burnet, p.149.

<sup>2</sup>*ibid*, p.150.

statute regulating the office of sheriff to one year only had also had a proviso against the use of the dispensing power to prolong the term of office. Yet this had been overturned once (according to Herbert), so establishing a precedent which was considered more binding in law than the original proviso. While this case was not directly related to the Francis affair, it demonstrates the strength of precedent and the relative merits of provisos in the face of these, and the dispensing power.

The outright refusal of Cambridge surprised James and the court,<sup>1</sup> expecting as they were a similar scenario to that of Sidney Sussex - supplication to be released from obedience to the mandate then ultimately, concurrence. It also surprised Morrice. Should they actually adhere to their refusal, he added, then it was of much greater consequence than he originally anticipated.<sup>2</sup> Morrice's surprise (and indeed that of James and the court) was entirely justified, given the traditional position occupied by the universities as regarding the royal will.

The Duke of Albemarle, as Chancellor, was once again requested to intercede with James on behalf of the University. On receiving a negative answer from the King, however, he advised the University to send a petition to James as one body, believing that this "might prove better and more successful." Still unable to gauge or solicit support through the normal procedures, due to Basset's presence in the Head, they again decided to use the method of voluntary support. At this point, it was felt that for each member of the House to personally address Peachell would appear 'tumultuous' (there being 150-200 members in the House), which they were eager to avoid. To this end it was decided that it would appear "more quiet, decent, and respectful" if each House communicated its decision to Peachell by a messenger.

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<sup>1</sup>*ibid*, pp.149-50.

<sup>2</sup>Morrice Q, p.79.

The result was a unanimous agreement (bar the "three Papists and one or two besides") "that the admission of Mr. Francis without the usual oaths, [was] illegal and unsafe, and for that reason advised the king might be petitioned, in the doing which they were ready to join and make it their act."<sup>1</sup> At this point Francis was again asked if he would take the necessary oaths, but upon insisting on the King's dispensation, he was refused entrance to the degree.

The concern shown by Peachell and the University as to the appearance of their refusal, is notable. Eager to place their refusal in the best possible light, they were concerned that James should realise their intransigence was based not on elements of rebellion, but on conscience. The letter sent to Sunderland requesting the admittance of a petition to the King, in which it was stated that their refusal was not the result of "principles of disobedience and stubbornness, but a conscientious sense of obligation to [the] laws and oaths"<sup>2</sup> reflects this. This emphasis on conscience rather than rebellion is very telling, both with regards to James' professions of support for liberty of conscience, and the wider seventeenth century abhorrence towards any hint of rebellion.

The issue of conscience was one that James seemed unable to grasp. Persisting in seeing the University's refusal in terms of simple disobedience to a command with which he saw no problem, he interpreted its actions as mulish stubbornness. Unable to see beyond this to the painful decision based on conscience made by the University, he viewed its refusal in the worst possible light. Had he been able to appreciate, or at least understand, that conscience lay at the base of their decision, he may have proceeded with greater caution in his subsequent dealings with the universities, and in particular with Magdalen College. However, obtuseness has long been a characteristic popularly (and correctly) attributed to

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<sup>1</sup>ST, vol.XI, p.1321.

<sup>2</sup>*ibid*, p.1322.

James, and his inability to ascertain the true cause of the conflict comes as no surprise. The charge of obtuseness should not, however, be applied without qualification. The decision made by Cambridge was established on certain Protestant premises, namely the inherent evilness of Catholicism. Believing their Church and religion to be under threat, the decision reached was certainly conscience based. James being a devoted Catholic however, did not share these premises, therefore it was not entirely surprising he should reject such a claim. What he was guilty of, was a lack of political astuteness. By simplifying the conflict in Cambridge to a simple matter of disobedience, James not only worsened the situation, but denied himself a crucial warning which would have stood him in good stead not only in the up and coming battle in Magdalen, but in his dealings with the nation as a whole.

The University experienced considerable difficulty in placing its concerns before the King, something which Morrice fails to convey, but which is obvious in the account of the case in the *State Trials*. Sending its letters to London, it sought to access Sunderland (as the secretary of state through whose hands the mandate had passed) requesting that he acquaint James with the University's readiness to present a petition regarding the mandate to Francis. Having failed in several endeavors to access Sunderland, the messenger from Cambridge was finally able to present his letter after considerable delay. Sunderland however, failed to give any "significations that it would be acceptable [to approach James]", and the University was again forced to seek the intercession of the Duke of Albemarle.<sup>1</sup>

Sunderland's failure to act promptly, or to even show a measure of concern possibly reflects to a lesser degree, his actions in the Magdalen college case. It has been suggested that Sunderland deliberately neglected to acquaint James with the concerns of the fellows of Magdalen, believing that they would eventually concede to the King's wishes, as the

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<sup>1</sup>*ibid*, p.1322.

universities traditionally did. It is quite possible then that he regarded the refusal of Cambridge as temporary, and therefore a matter of little urgency. It is possible James also believed this, for he too showed little inclination to deal with the objections of the University promptly. The lapse of nearly three months from the original issuing of the mandate to the appearance of the Vice-Chancellor before the Ecclesiastical Commission, supports this supposition. The traditional loyalty and acquiescence of the universities appeared to work against Cambridge in this instance, removing any sense of urgency or seriousness, and the measure of warning which the nature of Cambridge's refusal should have roused in James and the court. It is also possible that Sunderland felt that acquainting James with Cambridge's petition would be worse than useless, given the King's lack of receptiveness to opposition.

Albemarle having been dismissed from the King's presence without any particular answer, the University on the advice of some "eminent lawyers" who "concurred on the approbation of what was already done, and for the future could advise no better course than to humbly represent the case to his majesty, and entreat him not to think amiss of so loyal a body", wrote and dispatched a second batch of letters to London.<sup>1</sup> That the University felt their best chance to secure satisfaction lay in petitioning the King, rather than in a trial at law is interesting, for as Morrice mentions it was the opinion of "great lawyers" that it had never been legally established that the crown could grant mandamuses, or that the universities were "bound to let them take place."

The authority of the crown to issue mandates to the universities had not, as the 'great lawyers' correctly asserted, ever been legally established. This was not because the issue had never come before the courts, but because this authority was regarded as part of the crown's

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<sup>1</sup>*ibid*, p.1322. Somewhat ominously, one lawyer added that they would do so "at [their] own peril".

ecclesiastical supremacy, which was unassailably bound in law. Mandamuses had, as Morrice correctly asserts, "been very frequently granted by the crown" both before, during, and after the Parliamentary "usurpation",<sup>1</sup> and under these terms, or rather this precedent, James' issuing of a mandate for a degree was entirely legal. What was not so clear cut, was the legality of issuing a mandate to an "incapable person", or in other words, to a person who refused to swear the oaths. Morrice's qualification "but I thinke not for incapable persons"<sup>2</sup> of the royal authority in the granting of mandates is an important one, and the one which formed much of the basis of Cambridge's defence. The issue of 'incapable persons' as the basis of controversy, highlights the wider legal difficulties surrounding the relative merits of precedent as a legal basis, the dispensing power, the ecclesiastical supremacy and Parliamentary statute.

The second batch of letters to London were again addressed to both Sunderland and the Duke of Albemarle. In this instance the messengers were instructed to "apply themselves to several persons of quality and character, that they would join forces, and think it a common cause; for so addressing to the king, the success would be more probable, and the honour done to the university the greater."<sup>3</sup> The effort to enlist a broader support base, and to widen the issue was indicative of the seriousness with which the University regarded the matter. It was also an early indication of their intentions to continue their opposition.

Albemarle, despite having twice interceded with James on behalf of Cambridge to no avail, incurring the King's displeasure in the process, agreed "with all the goodness in the world" to make another attempt, feeling himself obliged "to omit no endeavour for the

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<sup>1</sup>Morrice Q, p.72.

<sup>2</sup>Morrice Q, p.79.

<sup>3</sup>ST, vol.XI, p.1323.

university's safety and advantage."<sup>1</sup> On March 14, Albemarle was finally able to deliver the letter to James, which stated that their refusal was based both on the illegality of the admission of Francis, and the "many ill consequences that were likely to ensue from it".<sup>2</sup> Not surprisingly this found little favour with the Catholic monarch, and the messengers were informed three days later that the King "was offended at the proceedings of the university".<sup>3</sup> On April 9, the Vice-Chancellor and the University, in the form of deputies, were summoned to appear before the Ecclesiastical Commission on the 21st of the same month.

Morrice considered the trial of Cambridge before the Ecclesiastical Commission to be "an extraordinary great cause", an opinion not confined to himself, as is evidenced by the large public attendance at the initial hearing.<sup>4</sup> The level of public concern illustrates conclusively that the case was recognised to be of wider consequence, rather than simply an internal university affair.

At the commencement of the initial hearing Peachell requested time to "put in their answer in writing or by counsell, or by word of mouth", because "he owed such a deference to their Lordships' honours and to the University that it was not fit for him to give an answer upon a sudden, without further consideration".<sup>5</sup> After consultation with his fellow Commissioners, Jeffreys agreed to Peachell's request and the hearing was adjourned until April 27.

At this point Morrice raises the issue of legal representation for the University. At the

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<sup>1</sup>*ibid*, p.1323.

<sup>2</sup>*ibid*, p.1322.

<sup>3</sup>*ibid*, p.1323.

<sup>4</sup>Morrice Q, p.105.

<sup>5</sup>Morrice Q, p.105.

conclusion of the initial hearing, a self professed 'friend' of Cambridge "having a great affection for the University and understanding all the concerns thereof" recommended a Dr. Barhart as a suitable counsel, Barhart having often expressed support for their cause and a willingness to represent them. Peachell and his fellow deputies however declined to retain the services of the redoubtable Barhart and decided to conduct their own defense, a decision I find singularly strange, not to mention inept, in light of the seriousness of the matter. The confidence expressed by the Cambridge delegation reported later on by Morrice as to their success, perhaps had some bearing on this decision.<sup>1</sup>

Morrice was highly critical of the failure of the University to take professional legal advice. Attributing the eventual failure of the University to win the case to this, he based this premise on the success of Exeter College, Oxford before the ecclesiastical commission. Exeter, he asserted, had secured "only...good advice and followed it", with the result that they were "quitt and discharged". Pressed to take advice, he writes, Cambridge refused, preferring to rely on "the justice of their cause, the reputation of the Church and the University." With such defenses they believed "they could be in no danger".<sup>2</sup> Fear of blemishing their loyalty to the detriment of their case lay behind this decision wrote Morrice, and in light of the University's efforts to avoid any hint of 'tumult', I think he was correct. The University expected a fair hearing from the crown, and so was content to rest its case, and its future, on its record of unblemished loyalty.

The faith Morrice placed in the securing of good counsel for their success before the Ecclesiastical Commission, based on the Exeter College case, was, I believe, unfounded. The Exeter case was quite different from that of Cambridge, involving as it did a dispute between

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<sup>1</sup>Morrice Q, p.105

<sup>2</sup>Morrice Q, p.147.

the descendant of the founder of the College, and the fellows of the College.<sup>1</sup> The absence of a royal factor in the case was crucial I believe, and the primary reason for their success, but is something not considered by Morrice. Having no relevance to the re-establishment of Catholicism, the Exeter case was of no interest to James, and as such was able to proceed without royal interference. The case of obedience to royal mandates in Cambridge was an entirely different matter, and quite clearly central to the King's efforts to intrude a Catholic presence. Both Morrice and the University severely underestimated the determination of James to succeed, failing to appreciate it as a critical step in the establishment of toleration, the hub of James' Catholicising policies. This is unusual with regards to Morrice, when one considers his reactions to the *Godden vs Hales* verdict, the establishment of the Ecclesiastical Commission, and the Declaration of Indulgence. All perceived as blatantly illegal by Morrice, it is surprising he should consider good counsel and a strong legal case to be any protection against the obvious efforts of James in favour of Catholics. It is possible that he was merely reflecting Maynard's perspective.

Appearing before the Ecclesiastical Commission on April 27, Peachell submitted a written defence, which stated that the principal reason for the University's noncompliance with the King's mandate, was that the granting of degrees without tendering the oaths was illegal. For, the defense continued, there were three acts of Parliament which specifically required themselves, and all graduates, to take the oaths of supremacy and allegiance. Furthermore, the last statute, enacted under James I, also required the Vice-Chancellor and the University senate to administer the oaths to graduates, a statute which he (Peachell) and his colleagues had sworn to uphold. Hence despite James' dispensation, Peachell and his fellow deputies felt themselves bound in conscience to stand by their oaths, as they "were

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<sup>1</sup>Morrice Q, pp.33, 45, 50, 72, 73.

designed for the security of the religion of the Church of England established by law &c, and for the preservation of the King's person".<sup>1</sup>

The emphasis placed on the protection of the Church of England is emblematic of the conflicts over the use of the dispensing power under James. While the primacy of the dispensing power over statute had been legally established in the *Godden vs Hales* case (if somewhat dubiously), the uses to which James put this power in Cambridge was perceived to be overtly threatening, and therefore a matter of opposition. In a letter to Samuel Pepys, Peachell wrote "the laws of the land, and the oaths we lie under, are the fences of God's church and religion professed and established amongst us; and I cannot suffer myself to be made an instrument to pull down those fences."<sup>2</sup> The unwritten qualifications attached to the dispensing power played a considerable part in the decision of the University to oppose the King, and illustrates well the continuing controversy between the dispensing power and Parliamentary statute, despite the *Godden vs Hales* ruling. The concern expressed by Cambridge over the effects James' dispensation to Francis would have for the wider Church, demonstrates that the Cambridge case was more than simply a matter of the granting of a degree. Combining elements of the altercation surrounding the dispensing power, it was indicative of the concerns of the wider Protestant population in the face of their King's Catholic policies.

James' insistence that the University obey the mandate and accept the dispensation from the oaths put Peachell and the delegates in a considerable dilemma, for they believed the King was asking them to choose between the crown and the law. Peachell's anguish is clear. In a letter to Pepys he wrote "the Oaths of Allegiance and Supremacy being required

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<sup>1</sup>Morrice Q, pp.111-112.

<sup>2</sup>quoted in Twigg, p.282.

by the Statutes...I could not tell what to do, decline his Majesties's Letter, or his Lawes".<sup>1</sup> That Cambridge felt this to be the case, despite the dispensing power having been declared legal, speaks volumes as to the perception of James' actions. Francis' dispensation was regarded as subversion of the law purely and only because it was perceived to threaten the Church. That Cambridge accepted other mandates issued by James containing dispensations evidences this clearly.<sup>2</sup> By insisting upon the mandate and dispensation, in light of the University's perception, James made the position of the crown as the supreme justice, appear incongruous.

Cambridge opposed the mandate on more than just statutory aspects. Peachell asserted in the written defense that the granting of a degree was not an ecclesiastical affair, but a civil matter, and was therefore not under the cognizance of the Ecclesiastical Commission<sup>3</sup> (and by inference, the crown). Morrice was of a like opinion. "The University of Cambridge's case about degrees is not at all of an ecclesiastical nature, or under ecclesiastical cognizance" he wrote. This assertion was a direct challenge to James' interpretation of the crown's ecclesiastical supremacy, for by removing the granting of degrees from the ecclesiastical to the civil, Peachell made the trial of the University under the Ecclesiastical Commission illegal, established as it was through the delegation of the King's ecclesiastical supremacy. Had Peachell been correct, as was entirely possible (this point never being decided, as the Commission chose to ignore it), the subsequent inferences were of considerable consequence.

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<sup>1</sup>Samuel Pepys, *Letters and the Second Diary of Samuel Pepys 1656-1703*, ed. R. G. Howarth, (London, 1933), p.177.

<sup>2</sup>For example, in 1685 Cambridge accepted the dispensation of one Gervas Needham, from the statute of Emmanuel College which prohibited there being more than one fellow from any particular county at one time. *CPSD* (1685), p.346.

<sup>3</sup>Morrice Q, p.112.

If the granting of degrees was a civil matter, then the crown had no authority to issue mandates requiring the University to grant them to designated persons. This point was briefly touched on by Morrice, who as previously mentioned, commented that it was the opinion of certain prominent lawyers that the authority of the crown in this matter had never been legally established.<sup>1</sup> Furthermore, it appeared that the majority of people in Morrice's vicinity agreed. Morrice was convinced that had Cambridge insisted upon the non ecclesiastical nature of degrees, then it would have been "very hard to conceive they would have been overruled."<sup>2</sup> This is slightly unfair I believe. The University did state this, but with the Commission choosing to ignore it, they had little opportunity to insist upon it. It is also incorrect to my mind, for the same reasons as the securing of good counsel was unlikely to have resulted in the University's success.

Peachell closed his defense with an additional attack on the Ecclesiastical Commission, this time not at its cognizance, but at the legality of its existence. The Commission, affirmed Peachell, (echoing Morrice's own sentiments), was illegal in view of the 1641 act of the Long Parliament which had abolished the Court of High Commission and made illegal the resurrection of a like court. Again, not surprisingly, this point was ignored by the Commission in the following hearings.

Upon the reading of the University's defense the hearing was adjourned until May 27, to allow the Commissioners time to consider the defense. Morrice reports that at this stage of the proceedings "the Vice-Chancellor and deputies came away very full of confidence...that their success would be very good and great", although he himself was not

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<sup>1</sup>Morrice Q, p.79.

<sup>2</sup>Morrice Q, p.147.

in concurrence with these sentiments, commenting "what ground they had for it I know not".<sup>1</sup>

At this point Morrice records evidence of dissent within the Ecclesiastical Commission itself, which is interesting in light of the regular portrayal of the Commission as unanimous in their support for James. It also evidences my earlier assertion that the Commissioners declined to be mere rubber stamps for James. Morrice writes after the adjournment that "It's suppose[d] they [the Commissioners] debated those matters all the while, and that they were divided, for the Lord Chancellor came out...with a very displeased countenance, and went immediatly to his Majesty. The rest of the commissioners came out a little after him more composed."<sup>2</sup> This was not the first instance of division documented by Morrice. After the first hearing, he commented that "The Lord Chief Justice Herbert refused to concur to some warrant or order about the Cambridge men."<sup>3</sup> What the warrant was I have not been able to ascertain, but the mention of dissent is significant, particularly in light of Herbert's ruling in the *Godden vs Hales* case.

On May 27, the trial re-adjourned. Conducted by Jeffreys in a ridiculing and badgering manner as per normal, Peachell, a man "not much conversant in courts of that kind",<sup>4</sup> made a hesitant defense. Questioned as to what the oath he took as Vice-Chancellor was, he answered he couldn't remember exactly. Under pressure from Jeffreys he finally managed to answer that in substance it was to well and faithfully administer the required oaths.<sup>5</sup> Jeffreys then sought to ascertain whether or not any persons had ever been admitted

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<sup>1</sup>Morrice Q, p.112.

<sup>2</sup>Morrice Q, p.112.

<sup>3</sup>Morrice Q, p.105.

<sup>4</sup>Morrice Q, p.122.

<sup>5</sup>ST, vol.XI, p.1329.

to degrees without first tendering the oaths, to which Peachell answered "our generall rule is this to admit princes and persons of quality that are of no particular profession to their degrees at the pleasure of the King, and as honourary to the University, but not to admit any persons of profession to their degrees without takeing the oaths".<sup>1</sup> This being, as Burnet contends, because recipients of honorary degrees (who included the likes of the Moroccan ambassador) would not settle amongst them and use their entitled vote in the convocation,<sup>2</sup> the implications of which have been discussed earlier.

Jeffreys then insisted that in fact a Dr. Lightfoot had been admitted to the degree of doctor without the required oaths. The University was prepared for this however, and had furnished in advance a defense. Dr. Lightfoot, maintained Dr. Cook, had subscribed to the 39 articles required by the University in addition to the oaths, the first of which was the king's supremacy. In his opinion therefore, "he did verily believe [Lightfoot] tooke the oath it selfe."<sup>3</sup> Jeffreys disagreed with Cook, answering "Is subscribing, swearing doctor?",<sup>4</sup> but did not press the point.

Unable to establish Lightfoot as a precedent, Jeffreys then inquired whether or not the king's mandate had ever been refused in the University. Answering yes, Peachell gave as an example a non-conformist by the name of Tatnell who had been given a mandate for a degree by Charles II. On his refusal to swear the oaths, he had been denied entry to the degree, and Charles, on being petitioned by Cambridge, had accepted this. The University had also prepared a second example, whereby two Catholic servants (Perara and Stephens) of the

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<sup>1</sup>Morrice Q, p.123.

<sup>2</sup>Burnet, p.149.

<sup>3</sup>Morrice Q, p.123.

<sup>4</sup>ST, vol.XI, p.1330.

Queen dowager had been given mandates for degrees, but had been denied entry upon refusing to swear the oaths. They were not permitted however, to submit this for consideration, which speaks eloquently of the nature of the trial.

Morrice provided another example in Cambridge whereby a mandate issued to someone (Morrice does not provide a name) for a fellowship in Christ College by Oliver Cromwell, was refused. Again this refusal was accepted by the Protector, and the matter dropped. While this example in all probability could not be used as a precedent for refusal (Cromwell's supremacy being commonly regarded and referred to as "the usurpation"<sup>1</sup>), it nonetheless demonstrates that the refusal of mandates, while not a common event, was not unprecedented. It was perhaps on this point that Cambridge based its expectations of success. It is also on this point that James' case was weakest. It was clear that precedent existed for the refusal of mandates, and that no law existed requiring their acceptance. The subsequent suspension of Peachell for failing to obey the mandate was therefore not consistent either in precedent or law.

The problem for Cambridge was not the issuing of mandates, for regardless of the fact that their authority had not been established in a legal case, they had regularly been accepted by the University. The problem was the attachment of dispensations, or perhaps more correctly, the nature of the dispensation. This distinction is important, for it was a matter of established fact that Cambridge had accepted dispensations from college statutes, and indeed had even requested such from the crown on occasion. The difference lay in that James' dispensations were from not college statutes, but the oaths of allegiance and supremacy held to be the safeguards of the Church.

Unable to establish that Cambridge had unconditionally accepted royal mandates in

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<sup>1</sup>Morrice Q, p.79.

the past, Jeffreys turned his attention to the methods by which the University had come to a decision to refuse Francis his degree. How, he asked, did the Vice-Chancellor know that the University had consented to disobey the mandate when the matter had not been debated in the senate? Why had he accepted "the sense of the whole house"<sup>1</sup> from only a few representatives? Could they not have been lying? Did they speak so loud that the House could hear? Did Peachell check the authenticity of their replies? Cutting short an explanation as to why the University had not been able to debate the matter in the usual way, Jeffreys ordered the Cambridge representatives to withdraw.

The haranguing of Peachell by Jeffreys on this point was rather unreasonable. Personally interviewing all the approximately two hundred members of the House to ascertain their opinions, was not a viable or sensible option. Furthermore, denied access to the normal procedures by the presence of Basset in the Head, they had, ironically, chosen this particular alternative in deference to the sensibilities of the King. The objections of the few had been duly noted, but being in the minority, the University had felt justified in their refusal. Additionally, Peachell had no reason to assume that the representatives were lying, particularly since each member had access to the Vice-Chancellor had any wished to dispute the decision. A deliberate falsehood would quickly have been discovered. Finally, the granting of degrees by mandate was normally the domain of the Vice-Chancellor. Jeffreys persistence on a point that was not directly related to whether or not the University should or should not have rejected the King's mandate, perhaps resulted from his inability to break the University's defense on the issue of precedence.

Peachell has often been described as a good but weak man, and his defense in a

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<sup>1</sup>ST, vol.XI, p.1333.

similar light.<sup>1</sup> I think however, that Morrice's observation that he was inexperienced in courts of that kind, is more appropriate. Faced as he was with Jeffreys, it would have taken, as Twigg correctly asserts, "a man of exceptional ability and assertiveness in debate to deal with [the Lord Chancellor's] hectoring and brow-beating tactics."<sup>2</sup> Denied the help of his fellow delegates by Jeffreys' caustic admonitions that until they were Vice-Chancellor, they should hold their tongues, Peachell was left to face alone a man few had successfully contended with. Morrice commented that "The Chancellor told them often of their canting, and treated them just as he used to treat the Fanaticks."<sup>3</sup> Despite being hesitant in his answers, Peachell managed to hold the University's defense in the face of considerable adversity, which he should be given due credit for.

Only an hour and a half after Peachell and his fellow delegates had been instructed to withdraw, the Ecclesiastical Commission returned its verdict. Peachell was found guilty of "great disobedience to the King's commands, and of other crimes and contempts".<sup>4</sup> As punishment he was deprived of the office of Vice-Chancellor, and ordered not "to meddle with any of the public business of the university."<sup>5</sup> In addition he was also deprived of the headship of his college "because the example of so ill a man may be a pernicious consequence to all under [his] government".<sup>6</sup> The punishment metered out to Peachell was by no means unanimously agreed upon by the Commission. Herbert, along with Sprat, felt that Peachell

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<sup>1</sup>Burnet, p.150. Macaulay, p.932.

<sup>2</sup>Twigg, p.282.

<sup>3</sup>Morrice Q, p.123.

<sup>4</sup>ST, vol.XI, p.1335.

<sup>5</sup>*ibid*, p.1335.

<sup>6</sup>*ibid*, p.1335.

should neither be deprived nor suspended from his mastership,<sup>1</sup> which reflects the difficulties James experienced in his moves against the Church even with the support of such 'compliant' men.

The position and concerns of Cambridge were outlined in a list of points published by the delegates in the face of Peachell's deprivation. Published by the deputies that "the world...should be satisfied upon what reasons they acted", and because they had no opportunity to express them at the trial, the list included the following. One, that if any master of arts had inadvertently missed swearing the oaths, it was totally unintentional and was not a parallel to this case in which the senate acted with leisure and deliberation. Two, that there was a distinction between honorary degrees given to strangers who were not going to use them, and degrees which men use in professions. Three, that even if any man had been admitted without the oaths (which they were sure had not happened), this was a breach of law and therefore could not be used as a precedent. Four, that in a matter which was contrary to the laws and one which so highly concerned their University and religion, to sit still and accept would have been the "greatest infidelity and negligence." Five, that failure to follow the normal procedures in debating an issue was not a bar, because their matriculation oath obliged them to assist both the Chancellor and Vice-Chancellor, and to defend the state, honor and dignity of the University. Lastly, that representation of the opinion of the whole House by a few was common practise, and deemed more respectful to the Vice-Chancellor than every man applying himself personally.<sup>2</sup>

Summoned before the Commission on May 12, the delegates were told that while

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<sup>1</sup>A. F. Havighurst, 'James II and the Twelve Men in Scarlet', *Law Quarterly Review*, vol.69 (1953), p.535.

<sup>2</sup>ST, vol.XI pp.1337-1339.

Peachell was chiefly to blame as the head, they too were not without fault "for being so much as uneasy under the king's commands". Reminded by Jeffreys that there had been a time, such as in 1667, when the King's letters "were so far from being disputed, that they passed for law among you, and do this day stand recorded among the solemn acts, and public statutes of the university", they were advised to readily obey James in the future, and by giving a good example of themselves in this respect so make amends for their mistakes.<sup>1</sup> Jeffreys ended his speech with the ominous statement that they should go their ways and sin no more, lest a worse thing come unto them.<sup>2</sup> The linking of a biblical reference to the disobedience to the king possibly reflects the Stuart belief in the divine right of kingship, a reflection which by inference equates disobedience to the crown with disobedience to God.

The 1667 example cited by Jeffreys to the delegates proved to be a poor parallel to the present case. The letters of the late King dated 1667, concerned the regulation of some of the public exercises in the University, the meaning whereof was this: "The king is their visitor, and whenever there is anything belonging to the local statutes and customs which they think ought to be altered, or any abuse which should be rectified and redressed, their way is to beg the king's royal injunction in the case, which they keep upon record and obey as statute." This was quite a different thing from obeying a private mandate, contrary to known laws of the land.<sup>3</sup>

The leniency towards the delegates was surprising, when one considers Peachell's deprivation. Morrice was under the apprehension that the original intentions towards the delegates had been much harsher, but that the court was made to "hesitate and relax at

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<sup>1</sup>*ibid*, p.1336.

<sup>2</sup>Morrice Q, p.130.

<sup>3</sup>ST, vol.XI, p.1336.

present". He believed that had the delegates been judged at the same time as Peachell, then "it was even certain they had been suspended and deprived as he was". Morrice bases this supposition on the fact that pleas for leniency to James had originally had no effect. James had earlier been entreated not to proceed too harshly against the delegates because of the likelihood of their being received by the University as martyrs should they all be suspended, and furthermore, it was not entirely wise to make "so great a body and so loyall, so very uneasie". The change in opinion noted by Morrice between the judgement against Peachell and that against the delegates, he puts down to "some forraigne or domestick occurent".<sup>1</sup> What exactly this was I am not certain, but it is clear that something warned the court not to press too far at this point.

These revelations of Morrice's are interesting for the reflections they cast on the composition and political awareness of the court itself, and its influence with James. James' original advisor was quite correct in his assertion that it was not wise to upset the University unduly, for the concerns of the University were also the concerns of the Church of England, and by inference the wider Protestant population. That the court either failed out of ignorance, or chose deliberately not to recognise this, is significant, for they were James' principal source of information and advice. As such their influence was considerable as is reflected in Morrice's statement that it was the court, rather than James that 'hesitated and relaxed' towards the delegates. Burnet echoes this when expressing his belief that it was the court that was behind the Cambridge affair, thinking to engage the King in "bold things", before he could see the "the ill consequences that might attend them".<sup>2</sup>

The question still begging at the conclusion of the trial, was that of Cambridge's

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<sup>1</sup>Morrice Q, p.130.

<sup>2</sup>Burnet, p.151.

compliance in the face of new mandates not just for Francis, but for the "many others of his persuasion" which would undoubtedly ensue. Opinion, according to Morrice, was divided over the predicted actions of the University. Many felt the University would concur on first one point and then another, until they could accept the situation. Others believed they would stand firm on this point, for to yield would ultimately lose them everything.<sup>1</sup> In the event, the latter proved correct. Morrice reports that on the renewal of Francis' mandate, Cambridge, under the leadership of the newly elected Vice-Chancellor John Balderston of Emmanuel College (who on his election had promised that "neither religion, nor the rights of the body [university], should suffer by his means"<sup>2</sup>) again refused to admit him. Morrice regarded this as "very strange", for it was "contrary to their constant practice", as he had mentioned a number of times, and he resolved to reserve judgement as to whether or not they would hold this course.<sup>3</sup>

In the event, Cambridge was not fully tested, the crown quietly dropping the case soon after. Why it did so is a cause of considerable speculation, for it was quite out of character for James to back down in the face of a challenge to his authority, believing as he did that to do so was to encourage "faction and disobedience".<sup>4</sup> It is likely that it was a combination of factors. At this point the opening exchanges in the battle between the crown and Magdalen College, Oxford, had been fired, which probably diverted the King's immediate attention away from Cambridge. James was also at this point making new attempts to win national support for his policies. Furthermore, the crown was in an awkward position as regards this

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<sup>1</sup>Morrice Q, p.130.

<sup>2</sup>quoted by Twigg, p.283. Surprisingly, the crown showed no displeasure at this choice.

<sup>3</sup>Morrice Q, p.131.

<sup>4</sup>Burnet, p.151.

case. Further disciplining was necessary, but it was no easy matter to discipline an entire university (as was required in this instance), short of a full visitation, which was beyond the crown's aims in the universities at this point.<sup>1</sup> Neither was it probably an opportune time for such a step, as Morrice's comments surrounding the 'hesitation and relaxation' of the court indicate.

The case against Cambridge gained the University much credit at large for daring to oppose the King's unpopular religious policies. Turner wrote "The scene opens to all Eyes, and the Mouths of all good men are full of the praises due to the whole University for making the first stand, and that in a brave Body...The good Archbishop mightily revived by this account."<sup>2</sup> For Morrice, the importance of the case lay in the fact that it could provide a foundation upon which to build opposition to James' Catholicising policies. "[F]or England" he believed "wants nothing but a back, and if they should but now make a stand, the common genius and strength of the kingdome would fall in with them, and a stop would certainly be put to all proceedings of this kind, or they would be carryed on very slowly, for the comon inclination and disposition of the kingdom is a rock that cannot be moved nor overborn."<sup>3</sup> It would seem that Morrice was divided in his opinion over the attacks James launched on Cambridge. While certainly threatening the Protestant religion, it could nonetheless provide the necessary stimulus to concentrate opposition to the King's unwelcome Catholicising policies.

To this end, Morrice heartily wished that Peachell would "bring his business to the

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<sup>1</sup>Twigg, p.284.

<sup>2</sup>quoted by Twigg, p.283.

<sup>3</sup>Morrice Q, p.131.

law".<sup>1</sup> By taking his case to the legal courts and keeping up a legal claim, he believed that the Vice-Chancellor could not have lost, particularly since "the common genius of the nation especially now runs that way."<sup>2</sup> Clearly England was restive under the Catholicising policies of its monarch. Should Peachell go to the courts, Morrice believed it would make a considerable point, particularly if others in a similar situation would follow suit. Besides point scoring, Morrice also regarded any legal proceedings taken by Peachell and others, as a means of gaining valuable time. He was not overly optimistic that Peachell would act in such a manner however, for "it is their principle that if the will of the Crown cannot by intreaty be altered...it [is] their supreme rule and law they must actively comply with it".<sup>3</sup> The doctrine of passive obedience was a powerful weapon in the crown's arsenal, and at this point still effective. In this Morrice was correct, Peachell did not take his case to court. He did however, continue to insist that he was the master of Magdalen, Cambridge, in law, and that no College act or deed could be done without him.<sup>4</sup> This was remarkable, for it represented the first clear break with the doctrine of passive obedience, even if somewhat minor. By continuing to assert his legal claim, Peachell was not acquiescing to the royal will as required.

The question of legality as regards James' actions in Cambridge is a contentious one, and one which has traditionally been defined in terms of the dispensing power, as discussed in the introduction. It is my belief however, in view of the short falls of such a system of examination, that the best place to begin is with the legality of the University's case, rather

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<sup>1</sup>Morrice Q, p.131.

<sup>2</sup>Morrice Q, p.147.

<sup>3</sup>Morrice Q, p.131.

<sup>4</sup>Morrice Q, p.131.

than with the merits of the King's, as is customary. By doing so, a considerable shift in emphasis becomes apparent. The issue for Cambridge was whether or not they had the legal right to reject royal mandates, or conversely, whether the crown had the authority to force the University to accept them. This is confirmed by the verdict returned by the Commission, in which Peachell was found guilty of "great disobedience to the King's commands".<sup>1</sup> When examining the strength of the University's case, the issue of mandates needs to be closely looked at. It was clear that acceptance of royal mandates was the norm in Cambridge. What is equally clear however, was that it was a matter of courtesy and tradition, and a part of the alliance between the Church and the crown, but that it was not a matter of legal obligation, for there existed no law requiring acceptance. While it could be argued that in a precedent based legal system there existed enough precedent to legally require Cambridge to accept royal mandates for degrees, it was undeniable that the University had always refused those who declined to take the oaths, regardless of any mandates recipients may have procured. Therefore, while precedent existed for acceptance of mandates, it also existed for rejection under certain circumstances, circumstances which existed in the Francis case. It would appear then, using precedent as a basis (as James did in the *Godden vs Hales* test case), that Cambridge was justified in rejecting the King's mandate, and that James was unjustified in punishing Peachell for having done so.

By looking at the case from this point of view, one is no longer forced to rely for a decision on the determination of the legality or illegality of the dispensing power, for the question of the dispensing power becomes obsolete. While it was undeniably a factor in the case, the bottom line was the ability, or lack of ability, of the crown to force the University to accept its mandates, which amounts in effect, to a struggle over the demarcation of the

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<sup>1</sup>ST, vol.XI, p.1335.

ecclesiastical supremacy, rather than the dispensing power. This is emphasised by a number of factors. One, Cambridge objected to the dispensation from the oaths and rejected the mandate on these grounds, it did not reject it on the grounds that James' use of the dispensing power was illegal; two, by the contention surrounding whether or not the granting of degrees was an ecclesiastical rather than civil affair; three, the fact that James was able to interfere in Cambridge only by virtue of the crown's ecclesiastical supremacy, not by the dispensing power; and four, the way in which the Commission prosecuted the case. Jeffreys devoted his attention to either insisting that Cambridge had to accept the mandate, or attempting to prove it had always done so unconditionally. He did not base his case on the dispensing power. Morrice too did not see the dispensing power as the pivotal issue, but rather as one of definition.<sup>1</sup>

Where the dispensing power played its principal role was in leading Cambridge to reject Francis' mandate. It is clear that the issuing of mandates was not the original issue, but the dispensations attached to it. However the issuing of mandates unavoidably became the central focus simply because it was the basis on which Francis (and by inference Catholics as a whole) were to become eligible for study of university degrees, and because mandates were the 'form' taken by the crown when exercising its ecclesiastical supremacy. The legality of the dispensation (and so of the dispensing power) was immaterial, for by refusing to accept the mandate Cambridge made it a secondary issue by default.

It is my opinion that while the dispensing power was certainly legal, and that James was within his rights in issuing a dispensation to Francis, this does not automatically translate into an acceptance of the legality of his actions as Twigg, in stating that technically speaking, James did not exceed his authority, the dispensing power being unassailably part of the royal

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<sup>1</sup>see above, p. 73.

prerogative, believes it should.<sup>1</sup> Such an approach not only fails to pin point the true point of contention, but fails to account for the two areas in which it was indisputable that James was acting illegally. The first is the deprivation of Peachell from the College headship. The only way a sitting head could be removed was through his failure to abide by the College's statutes, which as head he had sworn to uphold, and even then his removal came under the jurisdiction of the local visitor of the college, not the crown. In all the history of the crown and the universities, the crown had never removed a sitting head (although it had exerted pressure to obtain 'voluntary' resignation). Furthermore, by depriving Peachell from the freehold that was part of the headship, James was violating that which was inviolate by the crown - private property. He was also wrong in his insistence that Peachell disregard the oath he had sworn as Vice-Chancellor to administer the oaths of allegiance and supremacy. Oath breaking amounted to committal of perjury, an offence beyond the sanction of the crown.

With the threat posed by William of Orange in 1688, James rapidly back peddled in Cambridge. In October the suspension of Peachell was lifted and the alterations to the statutes of Sidney Sussex were rescinded in December. Basset fled soon after, and a new master was elected on December 9. There was anti-Catholic rioting in Cambridge by both students and townspeople to mark the downfall of the King, and the University's Catholics were said to have been singled out by the mob.<sup>2</sup>

The significance of the attacks launched in Cambridge lies not in the individual cases, but in the fact that a body of such strong loyalty to the crown should turn against it. Illustrating beautifully James' ability to turn even the most ardent royalists against the crown, Cambridge had been forced in the last resort to defend the Church of England, and in doing

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<sup>1</sup>Twigg, p.283.

<sup>2</sup>Twigg, p.285.

so won great credit for itself. While of less importance than the Magdalen College affair in Oxford, it nonetheless made an important contribution to the consolidating of national feeling against James. This is best summed up in the words of the Duke of Somerset, who wrote praising the University's "great fame and reputation ...spreade all over Christendome in your soe undaunted and unshakeable courage, by weathering the great threatning storme that was soe lately designed against your wholle foundation and then did oppose it to the last."<sup>1</sup>

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<sup>1</sup>quoted by Twigg, p.285.

Oxford.

The initial move James took against Oxford was considerably less antagonistic in comparison with Cambridge. His accession to the throne in 1685 had been the signal for those who concealed leanings towards Catholicism in the Universities to express openly their devotion to the Catholic faith. This afforded James both an opportunity to begin the facilitation of his Catholic policy in the University, and a means of muting the inevitable opposition to such a move, for it did not involve the intrusion of a new Catholic face. A policy of surprising (and uncharacteristic) caution, the conversion of Obadiah Walker, master of University College, furnished James with such an opportunity in Oxford.

Long suspected as a papist, Walker's conversion came as little surprise to the University. While always conforming to the Church of England rites, he had nonetheless supported Catholic doctrines as far as was possible. On the accession of James he had openly declared his Catholicism and began rigorously to promote his new faith, refusing to attend Church of England prayers, and converting his lodgings into a popish chapel.<sup>1</sup> Drawn to the attention of James, he was granted a dispensation allowing him to retain his mastership in face of the Parliamentary statutes and the statutes of the College to the contrary. Excused from attending prayers, services, and administration of the sacrament according to Church of England rites, he received authorization for the conversion of his rooms into a Catholic chapel.

By virtue of his mastership the immediate effects of Walker's dispensation were of greater consequence than is first apparent. The importance of the office of master has already been discussed in reference to the Sidney Sussex case, and it needs to be noted for its implications in Oxford were similar, as Morrice notes. As master of University College,

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<sup>1</sup>Morrice P, p.527.

Walker's influence was considerable; this is aptly demonstrated by Morrice in his comment that Walker "has turned two of the fellowes of his Colledge to be Papists, and has gotten a mandate for other two Papists to be made fellowes".<sup>1</sup> The conversion or subsequent conversion of five of the twelve fellows in the College was not only of considerable concern, as Morrice realized, but a testament to the importance of masterships and their usefulness to James in his efforts to break the educational monopoly of the Church of England.

The effects of Walker's dispensation went beyond the College hierarchy, affecting the student body in a way not associated with the influence of teaching. With the 'Catholicisation' of University College, Morrice reports that the sons of papist noblemen and gentlemen were recalled from St. Omers and other Catholic educational institutions overseas, to be entered in Oxford.<sup>2</sup> The consequences of this would be considerable, for the influx of a sizable number of Catholic students would have a large impact on the nature of the College, and in the long term, on the University itself. This report seems, however, to have been fiction rather than fact, for it was from this point that a distinct drop in numbers of graduates from Oxford became apparent, many students having been "frighted away for feare of popery endeavoured to be spread throught the University by the endeavours of Obadiah Walker."<sup>3</sup> It was not until the romanisation of Magdalen was complete that any concrete evidence of Catholic 'imports' in the University exists.

In addition to allowing Walker to retain his mastership, James granted him a patent under the broad seale to print Catholic literature for "the instruction of youth and scholars",

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<sup>1</sup>Morrice P, p.532. The two converts were Nathaniel Boys and Thomas Daine, both of whom duly received dispensations from James.

<sup>2</sup>Morrice P, p.532.

<sup>3</sup>Wood, p.293.

provided he did not print "above 2000" of any of the 40 books named in the patent.<sup>1</sup> This illustrates well the emphasis James placed on the role of education and the part it was to play in the re-establishment of Catholicism. Understandably enough, the University had little liking for this, and Walker's patent sparked a vociferous, and somewhat acrimonious, pamphlet war in Oxford. Voicing his displeasure over this to Gilbert Ironside, the Vice-Chancellor, James received a somewhat abrupt answer to the effect that Walker's press having attacked the established religion, it was felt it was the University's duty to answer these attacks, and that if these answers came with "perhaps...more sharpness than [was]...acceptable", then "the aggressor" had no one to blame but himself.<sup>2</sup> This was a particularly courageous reply, for by implication Ironside was laying the blame squarely at the feet of the King. Further evidence of the unpopularity of Walker's patent can be found in the difficulties he had in obtaining a printer. Approaching Dr. John Fell, the Bishop of Oxford, Walker was refused the use of his printer with the words that "he would as soon part with his bed from under him than his press".<sup>3</sup>

The evidence of a (sanctioned) pamphlet war in Oxford constituted one of the only signs of opposition from the University in this case. While angry and alarmed by James' attempt to undermine the national Church in one of its chief strongholds, opposition was muted. Morrice wrote that the University had held a convocation to consider Walker's case, but had "thought fit to do nothing against the Master."<sup>4</sup> As in Cambridge, Walker's dispensation was the first instance of a policy with sinister undertones directed specifically

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<sup>1</sup>Morrice P, p.532, 537.

<sup>2</sup>Bloxam, p.91.

<sup>3</sup>Wood, p.290.

<sup>4</sup>Morrice P, p.527.

against the universities, the accumulated effects of which had as yet to establish themselves. Furthermore, Walker was not a newly intruded Catholic, but an established figure within the University whose conversion, while not welcomed, was not unexpected. Evidence of a press war is interesting however, as it represented one of the chief reactions to the dictate issued by James forbidding preaching against Catholicism. Anti-papist sermons were certainly curtailed as a result in the University,<sup>1</sup> but the pamphlet war was allowed to continue unimpeded in Oxford, something which was in line with the wider national scene.

While the University's reaction to Walker was muted, the public response was anything but quiet. Wood reported the scholars "threaten [Walker]; he hath the curses of all, both great and small."<sup>2</sup> Besides personal abuse of Walker, it would seem from Wood's account that a campaign of public harassment was carried out against the unfortunate man, involving both the citizens of Oxford and the students. Wood recounts various instances of heckling during Walker's sermons, including an instance in which a boy took a cat into the chapel under his coat, which he pinched unmercifully to make it howl as Walker tried to preach.<sup>3</sup> In perhaps the most significant of Wood's accounts, a heckler was arrested by the resident soldiers and placed in Cross Inn, but was promptly released by a Protestant officer.<sup>4</sup>

Morrice records an instance in which the soldiery was not just sympathetic to the opposition, but directly involved. Early in May 1686, a riot broke out involving both students and a group of soldiers belonging to the Earl of Peterborough's regiment quartered in Oxford;

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<sup>1</sup>Morrice P, p.527. Morrice records the Vice-Chancellor of Oxford as positively forbidding a minister to preach against popery.

<sup>2</sup>Wood, p.293.

<sup>3</sup>*ibid*, p.273.

<sup>4</sup>*ibid*, p.223.

Walker's chapel was broken into and the holy water defiled.<sup>1</sup> Although the miscreant was cashiered, the involvement of soldiers in a riot aimed directly against Walker was particularly significant, for soldiers were in the service of the King, and responsible for keeping his peace. Perhaps their involvement somewhat restored Morrice's faith in the army as a means of protection against popery. The incident, though minor, highlights the levels of opposition James was rousing.

Public opposition to Walker was not confined to harassment and riots, but found expression in theater as well. In July Morrice reported the satirization of the play 'The Committee' by a group of actors in Oxford. Written soon after the Restoration, it depicted puritans in a less than flattering light. Long a favorite with Oxford audiences, the play found an even greater rapport with its viewers in 1686 through one of its most conspicuous characters, an old hypocrite appropriately named Obadiah. The enactment of this play, claimed Morrice, was "interpreted [as] a reflection upon Mr. Obadiah Walker turned Papist", a point reinforced by his comment that the players went to Oxford and acted this play despite there being none scheduled.<sup>2</sup> Following the traditional script, Obadiah was dragged onto the stage with a noose around his neck by a cavalier, who is then asked what should be done with the prisoner? The cavalier gives the expected answer of 'hang him', and the crowd gives the traditional call of "why, why?" It is at this point Morrice records a notable deviation from the original script. Rather than the expected 'because he will not drink the king's health', the reply in this instance was "because he has changed his religion". Morrice was not sure who gave this answer, the cavalier or the crowd. Macaulay maintains it was the player, although

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<sup>1</sup>Morrice Q, p.120.

<sup>2</sup>Morrice P, p.580.

Morrice thought it most likely to have come from the crowd.<sup>1</sup>

Not surprisingly, the public reaction to Walker found little favor with James, and he stationed a regiment at Oxford to prevent further outbreaks of violence. That he felt it necessary to do so is remarkable, for (to use Macaulay's expression) Oxford was traditionally a "tranquil and majestic city", and the stronghold of royalist principles.<sup>2</sup> Agitation in a royalist city was particularly ominous.

The lack of opposition expressed by the University found a poor reception in Morrice. "[T]he players", he maintained "have done a great deal for their religion but what has the university done [?]". It was his opinion that "publicans and sinners" were more concerned with keeping popery out than Oxford.<sup>3</sup> Such an assertion ignores however, the strength of the royalist tradition in the University and its adherence to the doctrine of passive obedience. It also reveals some inconsistency in Morrice, for in discussing Cambridge's reaction to Peachell's deprivation, he concludes that the adherence to this doctrine played a major role in the University's decision not to contest the ruling of the Ecclesiastical Commission. The reason for Morrice's disparaging comment can perhaps be found in his belief that the universities and most of the clergy of London were not just simply reconcilable to a diluted form of popery, but "very reconcileable to it rather than loose their livings".<sup>4</sup> The predicted adoption of a modified form of popery by the universities and London clergy was a considerable threat in the eyes of Morrice, for he believed that the rest of the nation's clergy would follow their example.

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<sup>1</sup>Morrice P, p.580, Macaulay, p.933.

<sup>2</sup>Macaulay, p.933.

<sup>3</sup>Morrice P, p.580.

<sup>4</sup>Morrice P, p.599.

Morrice's estimation of the susceptibility of the universities to a softened version of popery is intriguing, for they were the cornerstones of the Church of England and as such, principal components in the maintenance of the status quo. To state that the universities were reconcilable to popery (in any form) is akin to stating that the Pentagon was reconcilable to communism during the 1950's, and assumes a lack of moral principles, or religious convictions, on behalf of the universities. The possible explanation for this apparent contradiction can be found in Morrice's specific reference to "the Hierarchy" when discussing this point. The 'Hierarchy' (Morrice's term for High Anglican) were commonly held, by both Protestant and Catholic, to be little removed from the Catholic Church. Indeed James himself saw little difference between High Anglicanism and Catholicism, as is evidenced in his comment to Barrillon that "the Anglican Church is so little removed from the Catholic that it should not be difficult to bring the majority of them to declare themselves openly".<sup>1</sup> This is reflected in the strategy espoused by the Bishop of Condom<sup>2</sup> for the reconciliation of the Church of England and the Catholic Church, to which the less palatable of the Catholic doctrines were to be modified to become acceptable.<sup>3</sup> Such a perception makes Morrice's estimation appear valid, rather than incongruous. In reaching such a conclusion however, Morrice underestimates not only the position the Church of England occupied in the maintenance of the existing social order, of which it was very conscious, but the strength of the anti-popery tradition in England, to which he himself was subject. Perhaps the explanation

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<sup>1</sup>Miller, *James II*, p.127.

<sup>2</sup>Jacques Bossuet, Bishop of Meaux and formerly of Condom. He was the author of *An Exposition of the Doctrine of the Catholic Church in Matters of Controversie*, second edition, (London, 1686).

<sup>3</sup>Morrice P, p.599. For example transubstantiation, a major sticking point, was to become 'the real presence'.

lies in Morrice's Presbyterianism, for it cannot be expected that he should share the same perceptions as the Church of England, although as one of the last comprehensionists, he cannot have adhered, for example, to the premise that religious diversity would result in social collapse.

For James, the conversion and subsequent retention of Walker as master of University College was an unmitigated success in the short term. Through Walker, he was able to establish a Catholic presence in Oxford with minimum effort and maximum results. By simply granting a dispensation to a convert of long standing in the University allowing him to retain his position, James achieved the same potential results as in Sidney Sussex, but without the contention surrounding the intrusion of a Catholic 'alien'. The University had refrained from opposing his actions, and while the public response had been negative, it had been relatively insignificant and easily contained. What James should have noted however, was not the apparent ease of success, but the evidence of public aversion to Walker's dispensation in a city of such royalist convictions. Such a warning, at such an early stage in his reign was invaluable. That it was lost on the "dull, stubborn, selfwilled tyrant", as Macaulay so predictably put it, comes as no surprise, and James continued in his efforts to open Oxford to Catholic influence. Had he been satisfied at this point and ceased his efforts, or at least proceeded with greater caution, it is possible the course of history could have been changed.

In October of the same year, another opportunity was afforded James in Oxford upon the death of Dr. John Fell, dean of Christ Church. The deanery of Christ Church, described by Morrice as "one of the gentlest, desirablest preferments in the kingdome and more valluable then both the Bishoprick, and the living annexed in commendum to it",<sup>1</sup> and by

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<sup>1</sup>Morrice P, p.637.

Burnet as "the most important post in the university"<sup>1</sup> was an office of considerable stature, due in part to the Bishopric annexed to it, despite Morrice's assertion to the contrary. The establishment of a Catholic in such a prominent position, which James now proposed, constituted a great step up from simply allowing a convert to retain the living he had obtained as a member of the Church of England.

According to Morrice, James initially offered the deanery to Walker, only to have it refused, for what reason Morrice was not entirely sure. Walker stated that he declined it in order to deny the world an opportunity to accuse him of changing his religion purely for the sake of preferment. Morrice however, believed it was possibly because Walker aspired to "some greater advance", to wit the Bishopric of London should Compton be deprived.<sup>2</sup>

The candidate eventually selected by James was John Massey, a fellow of Merton College, who "solicited very powerfully for the Deanery".<sup>3</sup> Massey's interest at court was apparently high, for Morrice comments that Dr. Samuel Parker, Bishop of Oxford, had been denied the deanery through Massey's efforts. Perhaps Walker also had a hand in promoting Massey, who had once been his sizar. The two have long been linked in both contemporary estimations (Wood commented that people pitied Massey as Walker's tool),<sup>4</sup> and historical works.

The appointment of Massey to the deanery scandalized the canons of Christ Church, not only because of his religious convictions, but because, to quote Burnet, he lacked "the

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<sup>1</sup>Burnet, p.146.

<sup>2</sup>Morrice Q, p.39. Morrice compares Walker's avarice to Crewe's hopes of gaining the Archbishopric of Canterbury should Sancroft be deprived.

<sup>3</sup>Morrice P, p.637.

<sup>4</sup>Wood, p.198.

gravity, the learning [and] the age" appropriate to such a dignity.<sup>1</sup> Such lack of qualifications, however, were in the eyes of James more than amply compensated for by his conversion. That Massey was "an avowed" Catholic as Macaulay maintains at the time prior to his appointment, is not entirely clear.<sup>2</sup> Morrice maintains that he was "not a professed Papist", although he was seldom at church and had been seen recently in a Catholic chapel.<sup>3</sup> Similarly Burnet comments that upon his installation as dean, Massey "at first went to prayers...[b]ut soon after, he declared himself more openly."<sup>4</sup> It is possible that Massey was chosen because, as Morrice perceived, "[h]e seems very reconcilable to Rome",<sup>5</sup> and then established as "a maxim, to encourage all converts",<sup>6</sup> as Burnet comments, in the face of his subsequent conversion. It is also possible that James saw the appointment of a 'reconcilable' Protestant as a means of diffusing the inevitable antagonism such an appointment was bound to engender. While it is certainly uncharacteristic for James to exhibit such caution, such a proposition should not be immediately discarded as 'fanciful' for it was entirely in line with the general strategy employed by James against the universities, that is, the application of steadily increased interference over time. This was particularly noticeable in Oxford.

Upon installation in the deanery, Massey openly professed Catholicism and received a dispensation from attending and conducting Church of England services. This was little short of ludicrous. For such a high dignitary to be so excused, simply made a mockery of the

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<sup>1</sup>Burnet, p.147.

<sup>2</sup>Macaulay, p.740.

<sup>3</sup>Morrice P, p.637.

<sup>4</sup>Burnet, p.147.

<sup>5</sup>Morrice P, p.637.

<sup>6</sup>Burnet, 147.

office of dean. Furthermore, it directly contradicted the King's assertion that he had never taken any preferment from the national Church.<sup>1</sup>

Official opposition to Massey's appointment was somewhat greater than that expressed at Walker's dispensation. In January 1686/7, a month after Massey was established as dean, Morrice reports that Dr. Aldridge (the sub-dean) and the other canons of Christ Church submitted a certificate to the King's Bench stating that Massey had failed to take the oath of Supremacy when they had tendered it to him, although they were quick to make it clear that the submittal of this certificate was done to meet the requirements of the law, and not to "complain nor informe against the party". This effort to define the nature of their report mirrors that of Cambridge in the Francis case, although in a slightly different sense. For their own security, they stated, they had presented a certificate to the court "as they were bound by the statutes under the penalty of one hundred pound".<sup>2</sup> Despite the dispensation from the oaths granted by James it is interesting that they felt compelled to report the instance to the courts of law. The incident represents the only instance in either Cambridge or Oxford in which a case was taken, albeit somewhat meekly, out of the ecclesiastical and into the legal sphere. Morrice, nonetheless, believed the case would be inquired into by the Ecclesiastical Commission, although in the event this proved incorrect.

It would seem, however, that the courts were less than eager to deal with the certificate tendered by the sub-dean and canons. Morrice reports it was passed "from one judge to another".<sup>3</sup> Such a lack of appetite for the case comes as little surprise when one considers the repeated judicial purges conducted by James. With the issues surrounding the

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<sup>1</sup>*ibid*, p.147, editor's comment.

<sup>2</sup>Morrice Q, p.51.

<sup>3</sup>Morrice Q, p.51.

certificate being so contentious, the chances of committing career suicide were considerably better than average. Caught between the law, and a king determined to use the prerogative in a manner generally held to be marginal, if not illegal, to achieve an objective at odds with the will of the nation, the situation was fraught with danger for those in the legal profession. Morrice's comment that Mr. Brodereck, the original recipient of the certificate "was affraid on't as every body else was and sneakeingly offered it to Mr. Aston" gives further testimony to this.<sup>1</sup>

Surprisingly, opposition to Massey's appointment was to come from Nathaniel Crewe, Bishop of Durham. In May 1687, he advised James to appoint another dean to Christ Church as Massey was "utterly incapable thereof by law". At the same time he also advised that Sidney Sussex be granted leave to elect a new master in the place of Basset who was also "unqualified on the same account".<sup>2</sup> This comes as a considerable surprise, for Crewe was regarded as 'amenable' to the King's designs not only by James and other contemporaries, but in historical opinion. As a member of the Ecclesiastical Commission he had been selected specifically for this 'quality', and his failure to concur with James on this point offers further evidence of independence in the Commission.

As could be expected, public opinion was noisily opposed to Massey's appointment. Students and citizens of Oxford attended mass at the dean's chapel, not for the purposes of devotion, but to engage in disruption and personal abuse as he sought to preach. Riots, too, were not uncommon, as Wood delightedly demonstrated in his account of a fight which broke out in the chapel after a disruptive master of arts was ejected. Laughing and grinning at the dean, the student was removed by one of Massey's men, who was in turn attacked by the

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<sup>1</sup>Morrice Q, p.51.

<sup>2</sup>CSPD, (1686-1687), p.443.

members of the congregation for doing so!<sup>1</sup> Particularly telling are Wood's comments concerning the decline in student numbers at this time. Many families, he reported, were reluctant to send their sons to Oxford once Walker converted and Massey was made dean.<sup>2</sup> The resultant "paucity of scholars" saw a drop in trade, which did little to recommend Walker, Massey or James to the local citizens.<sup>3</sup> The decline in numbers of students is particularly well illustrated by the record of matriculations. In March 1687, 120 students matriculated rather than the usual 160. This number was to drop to less than 50 by December of the same year in the face of the 'romanising' of Magdalen College.<sup>4</sup> The corresponding decline in numbers of gentlemen commoners from 36-37 to 2, and in numbers of noblemen from 8-10 to zero, in Christ Church upon the appointment of Massey, provides another graphic illustration of the effects of James' romanising policy.<sup>5</sup>

In the face of continued attacks on Walker and Massey, James, on his progress, visited Oxford to admonish the town and University. Recommending the virtues of love, charity and understanding to both citizens and students, he added that "in the king my father's time the church of England's man and the Catholics loved each other and twere, as 'twere, all one; but now there is gotten a spirit among you which is quite contrary, and what the reason is I cannot tell."<sup>6</sup> This statement is a classic example of James' inability to understand or appreciate either the prevailing religious and social attitudes of his subjects, or the position

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<sup>1</sup>Wood, 244.

<sup>2</sup>*ibid*, p.202.

<sup>3</sup>*ibid*, p.209.

<sup>4</sup>*ibid*, pp.215, 246.

<sup>5</sup>*ibid*, p.257.

<sup>6</sup>*ibid*, p.239.

in which he was placing the Church of England. Any alliance between the Catholics and the Church of England under Charles I was because they shared a common cause, support of the monarchy. The situation by 1686-7 was radically different. The Catholics were no longer allies in a common fight, but a direct threat to not only the Church of England, but Protestantism and constitutional government.

On May 25, 1687 James instructed Massey in the event of the chaplaincy of Christ Church falling vacant, to "forbear conferring the same on any person", and to retain the profits of the post which were to be applied to such uses as James determined.<sup>1</sup> This last part concerning the revenues of the office was certainly immoral, if not illegal, for to use the profits from an office of the Church of England for the furtherance of the cause of Catholicism (as was in all probability to be the case) was little short of pilfering. With speculation rife that James intended to keep the Archbishopric of York vacant in order to bestow it at some future date on Petre,<sup>2</sup> the instructions to ensure the chaplaincy remained unfilled were incautious, and again negated the King's assertion that he had never taken preferment from the national church.

For James, the establishment of Massey in the deanery of Christ Church was another resounding success. Again he had achieved the establishment of a Catholic influence in the heart of the Church of England, and with minimal official opposition. Public animosity too, had remained localized and was therefore easily contained. The apparent capitulation of Oxford, and by inference the Church of England, must have heartened James, for it represented one area in which his policy of religious toleration had met with success. Elsewhere Parliament had blocked his efforts to repeal the tests and oaths, the Declaration

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<sup>1</sup>CSPD (1686-1687), p.433.

<sup>2</sup>Miller, *James II*, p.171.

of Indulgence had met with a mixed response (mostly hostile), and public discontent was growing. It is therefore not surprising that he should endeavor to push his perceived advantage to the limits in Oxford, and ignore the warnings occasioned by the public response.

The death of Henry Clarke, president of Magdalen College, Oxford, on March 24, 1687 was to herald the final and most celebrated conflict between James and the universities. Clarke's death provided an opportunity to acquire a college in Oxford for Catholics, much as Sidney Sussex had been acquired in Cambridge. James therefore determined that the new president should be amenable to his religion. He was particularly encouraged by precedents in Magdalen seemingly favorable for the election of a royal nominee; most recently Clarke himself had not been the choice of the fellows in 1672, but owed his election to the Presidency to the royal mandate of Charles II.

The decision to 'romanize' Magdalen effectively dismissed the moderate proposal that the King should instead endow a college in Oxford himself for Catholics. This aroused considerable consternation, as is evidenced by the actions of the Earl of Aylsbury who got down on his knees and begged James to leave Magdalen alone and build his own college "altho' it was not according to the constitution." That he offered to contribute 1000l. himself, despite being Protestant, is indicative of his strength of feeling.<sup>1</sup> The refusal of James to follow this course of action is demonstrative of the ascendancy of the extremist element at court I believe, rather than because "to bend and break the spirits of men gave him pleasure; and to part with his money gave him pain".<sup>2</sup> Macaulay's proclivity in assigning to James the basest of all possible motives serves to overshadow the issue of the King's advisers in this case, which is 'unfortunate', for they certainly played a pivotal role in Oxford as elsewhere.

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<sup>1</sup>Burnet, p.148.

<sup>2</sup>Macaulay, p.934.

The presidency of Magdalen was, as Morrice noted, "a very desireable preferment",<sup>1</sup> the College being one of the wealthiest and most important colleges in either university. Amongst those contending for the office was a fellow of Magdalen, Dr. Thomas Smith, commonly known as 'Rabbi Smith'. Smith applied to Samuel Parker, the bishop of Oxford, for a recommendation to James for the presidency, upon which Parker informed him that "the king expected that the person he recommended should be favorable to his religion". When asked how he could accommodate James in this, Smith answered that he would make it his business to "advance piety and learning, to keep men dutiful and obedient to his person and government, and truly loyal, and to promote true Catholic Christianity" but that this was all he could do. To Parker's rejoinder that this "will not do", Smith replied "[t]hen let who will take the presidentship for me".<sup>2</sup>

Smith's rebuttal comes as no surprise when one reads Morrice's record of John Dryden's efforts also to obtain the presidency of Magdalen. Dryden actively sought to unite all the interests he could in his support, and "had great hopes of obtaining it".<sup>3</sup> Dryden's conversion and subsequent efforts to obtain considerable preferment are closely followed by Morrice in his diary.<sup>4</sup> Most of the offices Dryden sought lay in the universities, but his ambitions were frequently frustrated. In this case he was told that "that place was not to be given to him that had declared, but to one that was yet to declare". The "sarcastick denyall" of this answer, reported Morrice, made Dryden very "pensive and melencholy".<sup>5</sup> In light of

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<sup>1</sup>Morrice Q, p.93.

<sup>2</sup>ST, vol.XII, p.53.

<sup>3</sup>Morrice Q, p.93.

<sup>4</sup>For example, Morrice P, pp.568, 590; Q p.44.

<sup>5</sup>Morrice Q, p.93.

such an answer, it is not surprising that Smith was considered unsuitable as a possible candidate. The rejection of Dryden for such a reason indicates that James considered using the presidency of Magdalen as a 'carrot' to effect the conversion of a person of some importance or standing. He had moved from allowing a convert to retain his position upon declaring in University College, to the installation of a privately declared but publicly undeclared papist in Christ Church. Now he considered the appointment of a fully declared Catholic in Magdalen.

In the event however, it appears that James abandoned such machinations, either from choice, or from lack of success in effecting the desired conversions, for he settled on one Anthony Farmer of Caius College as the next president designate. A convert of only six months standing, Farmer was of dubious morals, and of little importance either personally or otherwise. Granting him a mandate in which James proclaimed that "we are well satisfied of the piety, loyalty, and learning of our trusty and well beloved Anthony Farmer", he dispensed with "any statute, custom, or constitution to the contrary", and ordered the fellows to elect him to the presidency.<sup>1</sup> This was perhaps the most foolhardy decision made by James in all his dealings with the universities, for Farmer was unqualified in every aspect of the College's statutes, which required that the president must have been a fellow of either Magdalen or New College, and that he be of good character, and be a Protestant. By selecting a candidate so eminently unsuitable, James virtually guaranteed opposition.

The difficulty for Magdalen, and hence for James, lay not in the dispensation from the College statutes, for the dispensing power of the crown was generally undisputed, but in the oath taken by the fellows on entry to their fellowships. This oath contained a specific clause which required each fellow to swear "not to procure, accept, or make use of, any

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<sup>1</sup>Bloxam, p.14.

dispensation from his oath, or any part of his oath, or any part thereof, by whomsoever procured, or by what authority soever granted."<sup>1</sup> To further complicate the issue, the fellows were also obliged to swear, before casting their votes in the election of a new president, to select a fellow, or ex-fellow of Magdalen or New College, who was "most proper and sufficient, most discreet, most useful, and best qualified for it".<sup>2</sup> The issue of oaths was a central one, for as in Cambridge, it turned the conflict into a matter of conscience rather than simply a matter of obedience, which James perceived it to be.

The issue of 'good character' was a particularly contentious point. The estimation of Farmer's personal qualities listed by James in his dispensation, differed radically from virtually all other contemporary assessments. Morrice states that Farmer had missed out on a fellowship at Cambridge through having "neither parts, morality nor interest to commend him".<sup>3</sup> Burnet described him as "an ignorant and vicious person",<sup>4</sup> and Wood, upon hearing of Farmer's recommendation, wrote "[w]as there ever such a ridiculous thing knowne that a mandamus for such a person should come from the king? Sure if the king had a right understanding of things and men he would not have commended such a person".<sup>5</sup> Similarly the fellows of Magdalen could scarcely believe it was James' pleasure to elect a person so unsuited in character to such a position, and conceived that they were duty bound to believe that James had been misinformed as to the character and capacity of Farmer.<sup>6</sup>

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<sup>1</sup>ST, vol.XII, p.7.

<sup>2</sup>*ibid*, p.15.

<sup>3</sup>Morrice Q, p.93.

<sup>4</sup>Burnet, p.152.

<sup>5</sup>Wood, p.217.

<sup>6</sup>ST, vol.XII, pp.7-8.

Perhaps Wood and the fellows were correct, for it appears that Farmer's recommendation was a result of court intrigue. Peter Mews, the Bishop of Winchester and visitor of Magdalen, believed that "great endeavours" were used with James to recommend Farmer, despite his lack of qualifications, a lack which, he added, "I am confident some, who promote Mr. Farmer's interest, cannot be ignorant of".<sup>1</sup> That Farmer's recommendation came from Obadiah Walker and one of the Jesuit Fathers at court (which one, Morrice fails to reveal), makes it more than likely that James was indeed ignorant of his nominee's character.<sup>2</sup> It appears that James accepted the nomination at face value, and felt no compunction to investigate any further, Farmer having fulfilled the primary qualification of being Catholic. In doing so, James committed a fatal error of judgement, for he would have been far better served to have chosen a less contentious nominee sympathetic to his cause. Had he done so the confrontation might have been less acrimonious, or even avoided altogether. The implications of this on James' deposition are considerable, for the Magdalen College affair was central to the formation of public opinion. The 'unsavory' character of Farmer well illustrates a major problem facing James and the court, the lack of reputable Catholic persons available for preferment. The number of converts amongst the higher echelons of English society was minimal; most converts were to be found in the lower orders, Farmer being a prime example.

By all appearances, Mews had some prior intimation of the designs of the court, for in a letter to Magdalen written four days before James issued Farmer his mandate, he earnestly pressed the fellows to the "observacon of [their] statutes in the Election of a

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<sup>1</sup>Bloxam, p.15.

<sup>2</sup>Morrice Q, p.93.

Successor".<sup>1</sup> The College too had qualms about the court's intentions, and in a letter dated March 31 requested Mews to "patronise" them in the choice of a president according to their statutes, and secure them "from ye designs of those who wish ill to us".<sup>2</sup>

The 'directives' issued by Mews to the fellows of Magdalen provide concrete evidence of the decision by the national Church to actively oppose James, a decision which became increasingly obvious as the case progressed. Mews himself was a considerable heavyweight in the Church of England, well qualified to conduct a defense against the crown. He had served as a captain in the royalist army during the civil war, and had received rapid ecclesiastical preferment after the Restoration. He was president of Saint John's College, Oxford 1667-73, then bishop successively of Bath and Wells (1672), and Winchester (1684). A former vice-chancellor and visitor to four colleges, he was both unquestionably loyal to the Stuarts, his last military engagement had been at Sedgemoor against Monmouth at age 66, in which he had been wounded, and devoted to the Church of England (a combination which until the accession of James had been entirely harmonious).<sup>3</sup> It cannot be doubted that in issuing guidance and support to the fellows, Mews had more than visitorial concern at heart. That the Declaration of Indulgence was issued only days prior to the presidential election underlines this point. The issuing of the Declaration was central to the involvement of the Anglican hierarchy in the Magdalen College case, for it constituted a general assault on the national Church. The lack of support from the Anglican authorities experienced in Cambridge in the absence of the Declaration, helps to confirm this. The dispute over the presidency of Magdalen resulted in the mobilization of an important section of the Church of England in

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<sup>1</sup>Bloxam, p.13.

<sup>2</sup>*ibid*, p.13.

<sup>3</sup>*DNB*.

support of the beleaguered College, as an act of resistance to James and his policies.

Receiving the mandate to elect Farmer to the presidency, the fellows deferred the election and petitioned the King on the advice of Mews. Rejecting Farmer as being disqualified by their statutes, they requested that James either "leave us to the discharge of our duty and consciences, according to your majesty's late most gracious toleration, and our founder's statutes, or to recommend such a person who may be more serviceable to your majesty, and to this your majesty's college."<sup>1</sup> The appeal by the fellows to the newly issued Declaration of Indulgence contains a certain irony. Suspending the penal laws, tests and oaths, it was designed to open the way to Catholicism. That it should be used by Magdalen against the installation of a papist, demonstrates that the Declaration was a double edged sword in the hands of its creator. It is interesting too that Magdalen (and by inference the Church of England which so bitterly opposed the Declaration) should enlist it in its defense. Such an appeal demonstrates that James' activities were seen not to be in keeping with his professions of liberty of conscience, which was particularly serious in view of the protestant myth surrounding the nature of Catholicism. The appeal to liberty of conscience, and the King's perceived inconsistency were to become increasingly common features as the case escalated, serving to underline again that the issue at stake was conscience.

The election for the presidency of Magdalen was deferred three times while the fellows waited for a reply to their petition from James. Dr. Charles Aldworth, the vice-president, made a point of reading out the College statutes regarding the election of presidents, and the statute *5 Eliz.* against corrupt elections, to the fellows during this period, effectively signifying preparation for defiance should it be necessary. Deferred for the last time until April 15, the last day permissible by the statutes for the election, a reply finally

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<sup>1</sup>ST, vol.XII, p.6.

arrived. Uncompromising in tone, it bluntly stated that James expected to be obeyed, which raised a degree of consternation amongst the fellows as to their next course of action. Three, Drs. Henry Fairfax, Alexander Pudsey, and Thomas Smith, were for petitioning James again, despite the lapse in time for presidential elections prescribed by the statutes. The rest voted to proceed with the election. The College statutes were read again, and the oath necessary for the nomination of a president taken, with the exception of two of the fellows, Robert Charnock and Jasper Thompson, both of whom were papists elected to their fellowships by mandates from James.

There remains to this date a large question mark surrounding the fate of the fellows' petition, for it seems more than likely Sunderland never informed James of its existence. This supposition is evidenced by Jeffreys lack of knowledge about any petition from Magdalen. Smith's narrative of the case recalls that on April 11 he prevailed upon a friend, Sir Theodore de Vaux, to sup with Jeffreys to enquire as to the fate of the petition. Upon de Vaux's comment that he had heard that Magdalen had petitioned James, Jeffreys answered not only did he believe the College to be too proud to do such a thing, but that he had been at the council meeting the last night before James arrived, and after he left, and that there had been no mention of a petition, let alone one produced.<sup>1</sup> From this, Smith concluded that Sunderland had suppressed the petition, which possibly explains why he voted to re-petition James rather than proceed with the election. That Jeffreys had no reason to deny the existence of a petition, unlike Sunderland who claimed that James did know, lends credibility to this theory. The likely suppression of the petition is important; if James did not know of it, he would see the fellows actions in the worst possible light. It also denied James the opportunity to avoid conflict by selecting a more acceptable candidate (although it is unlikely he would have

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<sup>1</sup>*ibid*, p.55.

chosen to do so). While William Penn was "very solicitous to clear Lord Sunderland of suspicion" in this case when talking to Hough at a later date, and to throw "the odium upon the Chancellor",<sup>1</sup> Penn was a close friend of Sunderland, and in view of this and the aforementioned reason, I do not think he was correct.

Sunderland's situation was particularly difficult. James had proved unreceptive to the petitions from Cambridge, and indeed had become increasingly irritated by them. It was unlikely that the petition from Magdalen would meet with any better reception, and more than likely that Sunderland would be on the receiving end of the King's displeasure. Furthermore, he risked losing favor by bringing it to James' attention. Sunderland's difficulties again illustrate admirably the problems posed by a King who surrounded himself only with supporters, and who refused to hear anything that constituted 'bad news'. Faced with few options, Sunderland may have believed (or hoped) the fellows were bluffing or protesting merely for the sake of form, and would obey if given no alternative, much after the manner of Sidney Sussex. The late arrival of an answer to the petition was also possibly a tactic employed to push the fellows into electing Farmer, for it left them little room to move, since failure to elect a president within the time allotted by the statutes would open the way for unrestrained royal intervention.

In the event Dr. John Hough was elected to the presidency, with Farmer receiving two votes from Charnock and Thompson. Angus MacIntyre hypothesizes that he was selected for his connections, as the one time chaplain to the Duke of Ormonde, the chancellor of Oxford; he suggests the fellows saw this as a possible advantage in the up and coming battle with James.<sup>2</sup> This may well have been the case, although it is not a viewpoint shared by either

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<sup>1</sup>Bloxam, p.105.

<sup>2</sup>MacIntyre, p.43.

Morrice or Burnet. On Ormonde's death in July 1688, Morrice wrote that the now deceased chancellor of Oxford had been a "ready and obsequious toole...all his life, ready to do whatsoever he was bid, and at last doing whatsoever he was bid would not serve his purpose, for he had done so much to helpe to bring in arbitrary power and Popery that they needed his service no longer, but thought they could do it themselves without him."<sup>1</sup> Morrice is not entirely fair in these comments, for while Ormonde was certainly a firm royalist, he was also unbendingly Anglican and essentially moderate in his policies.<sup>2</sup> Burnet offers a considerably different viewpoint. The chief service that the universities expected from their chancellors, he stated, was interest enough at court to have such letters as that granted to Farmer, either prevented or recalled. Ormonde however, "had little credit in the court; and was declining in his age, which made him retire into the country."<sup>3</sup> Ormonde's lack of credibility at court was probably due to his unbending Anglicanism, rather than his lack of further use as a tool as Morrice speculates, for James had few prominent, respected supporters outside the Catholic Church. It is difficult to accept that James would have discarded such a figure as the Duke of Ormonde, had he in truth been such "a ready and obsequious toole".

The lack of an effective chancellor was a particular difficulty for Magdalen, for it meant it had no voice at court, and no direct access to the royal ear. If one compares this to Cambridge where the services of its chancellor were extensively used as a means of direct communication between University and crown, the contrast becomes glaring. The problems posed by the lack of an effective chancellor took on an even greater significance in light of

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<sup>1</sup>Morrice Q, p.166.

<sup>2</sup>MacIntyre, p.42; *DNB*.

<sup>3</sup>Burnet, pp.153-4.

the extremist advisers with which James had surrounded himself, for the University had no representation from the Church of England at court either. In the event though, even an effective chancellor would have made little difference to the outcome of the case, for James was determined in his efforts against the universities, as the outcome in Cambridge, despite the endeavors of Albemarle, attests.

Hough was a leading character in the conflict between Magdalen and James, for his personal courage and consistency went a long way towards holding the fellows together against the conflicting pressures which assailed them as the case progressed. He had been among the majority of the fellows determined to resist James, and accepted the presidency on these terms. A faithful follower of Ormonde's combination of firm royalism, unbending Anglicanism and essentially moderate policies, he was mild, straightforward, sound in judgement, and conscientious.<sup>1</sup> Of only average scholastic ability, it was Hough's involvement in the Magdalen case which catapulted him to fame. An orthodox churchman, he believed that James directly threatened the Church of England. "We have a religion to defend" he wrote, "[T]he Papists have already got Christ-Church and University College: the present struggle is for Magdalen, and they threaten that in a short time they will have the rest".<sup>2</sup> The accumulated effects of James' activities in Christ Church and University College are demonstrated in this statement by Hough, and illustrate their role in inducing the conflict in Magdalen, much as the role Sidney Sussex played in inducing the conflict in Cambridge over the matter of degrees.

The accumulated effects of James' previous activities cannot be too strongly emphasized, in the Magdalen College case. Not only did the fellows have the examples of

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<sup>1</sup>MacIntyre, p.42; *DNB*.

<sup>2</sup>MacIntyre, p.54.

University College and Christ Church before them, but the additional examples posed by Cambridge, and in particular that of Alban Francis. It was obvious to all by this stage that James was determined to open the universities to Catholics, and that the only two options were to fight or to acquiesce. Since the latter would only accelerate the demise of Protestantism (so it was perceived), opposition was the only possible course. MacIntyre believes that the relative youthfulness and lack of experience of the fellows was also a factor in their decision to disobey James. Most being in their thirties, with several even younger, their experience for the most part, he maintains, was of a world safe for Anglicanism and its institutions.<sup>1</sup> However, this should not be over-emphasized for the same cannot be said of either Peachell and the other Cambridge deputies, or other members of the Church of England outside the universities who opposed James.

News of the election reached the court quickly, and Sunderland sent a letter on April 16 to Mews, instructing him not to admit Hough as president until further order. Anticipating such a reaction however, the fellows had presented Hough to their visitor for approval on the morning of the same day and having received Mews' confirmation, he was rapidly admitted to the presidency. Expressing surprise that the fellows had disobeyed him, James ordered them to submit an account of their actions. Not satisfied with their answer, Magdalen College was summoned to appear before the Ecclesiastical Commission.

According to Morrice, some believed that it was Mews, as visitor, who was to appear for the College.<sup>2</sup> In the event, it was only the vice-president and five of the fellows who appeared before the Commission as delegates for Magdalen on June 13. Upon being asked what they had to say in their defense, the deputies submitted a written answer that they had

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<sup>1</sup>*ibid*, p.41.

<sup>2</sup>Morrice Q, p.142.

refused to obey the King's mandate because Farmer was statutorily unacceptable in every respect, and because they had taken oaths both to uphold the statutes of the College and to refuse any form of dispensation. Furthermore, the College was a corporate body, governed by local statutes granted by Henry VI and confirmed by his successors under the great seal of England. Having received James' mandate and decided that Farmer was unsuitable, they had apprehended, upon receiving no new nomination, "the right of election to be in them, and believed his majesty never intended to disposses them of their rights".<sup>1</sup>

The point raised by the fellows as to their confirmed right to elect is central, and in my opinion the key to determining the legality of James' actions regarding Magdalen. As a right granted by Henry VI and confirmed by successive monarchs, the crown ultimately had no legal right to insist upon the election of a royal nominee to the presidency of Magdalen, unless it first revoked the charter, for it was an undisputed fact that the royal prerogative could not invade the rights and properties of its subjects. Moreover, Magdalen was a private institution. While it was certainly true that the College had accepted royal nominees in the past, it had done so not because the crown had the right to do so, but because it was a strong adherent to the doctrine of passive obedience

.<sup>2</sup> In the fellows' written submission they allude to the sanctity of rights and property before the prerogative, and add that in times ancient royal mandates to colleges in Oxford had been only recommendatory "without any claim of right". Furthermore, they added, in later times

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<sup>1</sup>ST, vol.XII, p.10.

<sup>2</sup>Burnet's observation that as all great preferments in the Church of England were at the king's disposal it did not pay to refuse his recommendations lest it be remembered to your prejudice, may also have had some effect in the acceptance of royal nominees, p.152. This is an interesting point, for it possibly effected, in a small way, the fellows decision to elect Hough. It was clear under James to which quarter favor was going to flow, and that unless you were Catholic, or sympathetic to Catholicism, compliancy would make little difference to your chances of preferment.

mandates which had recommended statutorily unacceptable persons had, upon representation being made to the crown, not been insisted upon.<sup>1</sup> It is my belief that the fellows right to elect was indisputable and that by attacking the fellows for not obeying a mandate which had at best only recommendatory authority, James was legally in the wrong.

The issue of the right to elect was enunciated with particular clarity by the fellows before the subsequent visitation in October. Either they had the right and the power to elect, they stated, or they did not. If they did not, then why had James ordered them to elect Farmer? If they did, then their power to elect was either restrained to only qualified persons, or to whom they so pleased. By their statutes it was the former, and hence they were unable to elect Farmer, they not being invested with the power to chose those unqualified.<sup>2</sup> By ordering the fellows to elect Farmer, James was acknowledging their right to elect a president, even if obliquely, and so establishing the boundaries of the prerogative.

The refusal by the fellows to accept James' dispensation on account of the oaths they had taken was central to the case of the College against the crown. It is also, like the issue of rights, a key determinant in the legality of James actions. In their written defense, the fellows asserted that if they violated their oaths, then they jeopardied their legal interest and property, which by their statutes they were possessed, and by their oaths bound to maintain. Compliance with the King's orders would, they felt, amount to a committal of perjury, a criminal offence. MacIntyre maintains that underlying the conflict over oaths was an uncertainty as to the jurisdiction of the prerogative, and as a general observation I think he is correct.<sup>3</sup> As applied to the oaths in particular, however, I think he is wrong, for on this

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<sup>1</sup>Bloxam, p.60.

<sup>2</sup>ST, vol.XII, p.38.

<sup>3</sup>MacIntyre, p.44.

point the law was very clear. Perjury was *mala in se*, and as such, beyond the power of the crown to enforce or sanction. In light of this, the fellows were correct in their assertions, and entirely justified in refusing the dispensation. James was also occupying a morally indefensible position. As King, he was head of the state and supposedly upholder of the law. By insisting the fellows break their oaths, he was, fundamentally, demanding they commit perjury simply to accommodate the royal will.

The court in turn appealed to precedents as a basis for forcing the fellows to abandon this particular stand. There was, however, only one real parallel to Farmer's case, and that was of Walter Haddon who had been foisted on the College without election during the reign of Edward VI. Neither of Magdalen or New College, but a man from Cambridge, he was statutorily unqualified. Despite the apparent clarity of this case, Aldworth insisted that it did not constitute a precedent for their acceptance of Farmer because they were not responsible for any irregularities in that 'election' which had been under Edward VI; they did not know what pressures were brought to bear on the College at that time and lastly (and most pertinently), Haddon had always been accounted an intruder, a point reinforced by Haddon's fleeing of the College before the year of his election had elapsed.<sup>1</sup> In view of this "one single instance, 134 years Since, in troublesome times" it was asserted that there existed "no precedent for us to proceed contr: to y<sup>e</sup> express letter of our Oath, & Statutes."<sup>2</sup> Finally, they contended, departure from the statutes by previous fellows was not a precedent for them to do so. In a country with a precedent based system of law, this was a rather hopeful and somewhat naive assertion to make, although morally commendable. Unfortunately morals had little to do with the law, and even less with the court.

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<sup>1</sup>Bloxam, p.42.

<sup>2</sup>*ibid*, p.63.

Bloxam believed that there were two areas of strength in James' case regarding the oaths. These were one, the encroachments upon the statutes in the matter of elections to which the College had already been a party, and two, the College's neglect of certain aspects of its statutes which had resulted from the religious changes made since the time of Magdalen's foundation, in the course of the law.<sup>1</sup> Both these however can be effectively abrogated. With regards to the encroachment upon the statutes in the matter of elections, it has already been established that the only similar case was that of Haddon, who had never been elected, and who had never been held to be a legal president. The second point requires some consideration, for it was certainly true that in the course of changes to the law brought about by the reformation, some of the statutory requirements had been neglected. For example, the requirements that mass be served in chapter. It was argued that since the fellows had failed to observe this, weren't they simply pleading observance to the oaths as a expediency? Aldworth answered that the difference in the two cases lay in the fact that these parts of the statutes were disallowed by parliamentary statute. The law in effect had regulated the statutes of the College, and where these had been "totally nulld & abrogated by y<sup>e</sup> law of the land, our Oath as to such peculiars ceases."<sup>2</sup>

The issue of literal obligation to the oaths is one raised by Morrice also. Upon delivering up their statutes to the Ecclesiastical Commission on the thirteenth, he writes the fellows were questioned as to who had the authority to interpret the statutes. They answered, "that where there happened to be any doubtful clause their visiter had power to explain it, but they were not to receive the explication of any statute from any person whatsoever where the

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<sup>1</sup>*ibid*, p.xxix.

<sup>2</sup>*ibid*, p.64.

true literal sense was evident and plain &c."<sup>1</sup> This point is not evident in any other contemporary source, either official or unofficial, and was of some consequence, for it meant that the statutes were not open to interpretation, which effectively prevented the suggestion that the fellows had 'misunderstood' their statutes. The value of this limitation on interpretation proved itself when the fellows were accused of not obeying their statutes in having accepted Clarke as president, since he had not been in holy orders as, it was maintained, the statutes required. Aldworth replied that the statutes did not expressly say that the president must be in holy orders, only that he be theologically based, that is, a doctor of divinity.<sup>2</sup> Because only the fellows, and if necessary the visitor, had the authority to interpret the statutes, the establishment of an acceptable precedent for the violation of their oaths was avoided.

Ending their written submission, the delegates, echoing the plea of Cambridge, maintained that the election of a president was a temporal affair, an assertion based on the 'Act for the repeal of a branch of a Statute made in the first year of the late Queen Elizabeth, concerning Commissions for Causes Ecclesiastical' which repealed the jurisdiction of the court over such elections. However, the fellows were quick to make it clear that they had been, and indeed still were, willing to elect any nominee James cared to recommend as long as he was statutorily acceptable, although of course this was not now an option as Hough had been elected legally to the presidency. The stress placed on the legality of Hough's election was particularly evident in the fellows' defense, and was possibly an effort to deter further action from James.

Of the six delegates before the Ecclesiastical Commission, only five signed the

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<sup>1</sup>Morrice Q, p.151.

<sup>2</sup>Bloxam, p.46.

defense. The sixth, Fairfax, desired to be heard on his own. As one of the fellows who had wanted to re-petition James rather than proceed to the election, one could be forgiven for believing he wished to vindicate himself and set himself apart from the actions of his fellows. Certainly it appeared that Jeffreys felt this to be the case. Fairfax however, much to the surprise and enagement of the Lord Chancellor, proceeded to question the legality of the Ecclesiastical Commission, and demanded the Commissioners' commission of authority. He then insisted that the presidency and his own fellowship were matters of freehold and as such the case was one for Westminster Hall, not the Commission. Infuriated, Jeffreys, with typical abusiveness, suggested that Fairfax was mad and ordered his withdrawal.<sup>1</sup> Morrice expressed considerable surprise at Fairfax's words, for he believed the senior fellow had "alwayes been loyall...in armes for the King and...of a mild quiet temper very unapt to concern himselfe in any affaires, and particularly in this". In fact he had been so quiet, Morrice wrote, that some believed he was for accepting Farmer.<sup>2</sup>

Fairfax's refusal to sign the College's defense, his insistence that he be heard separately, and the completely different tack of his defense, is as intriguing as his explanation as to why he did so. The fellows, he stated "were not sent up as deputyes but every one was to answer for himselfe".<sup>3</sup> The reason why he felt compelled to distance himself from the fellows as a single body can be found in Morrice's comments on Fairfax's speech. Morrice wrote that the fellows of Magdalen had taken "very good advice" to the effect that the issue was a matter of freehold and so not within the jurisdiction of the Commission, but rather of the law courts. This "good advice" however, "they durst not follow" because some of the

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<sup>1</sup>Morrice Q, p.151.

<sup>2</sup>Morrice Q, p.151.

<sup>3</sup>Morrice Q, p.151.

fellows' relations in London, such as Dr. Aldworth's brother, "had good places and offices and it was thought their standing out might be a reflection upon them, and indanger the loss of their offices". Furthermore, he continued, the doctrine of passive obedience, to which the College adhered, prevented them from submitting such a defense, it being their belief that if the King's will could not be changed by petitioning they must submit to, and depend upon, his majesty's grace rather than make a legal defense. For these reasons, Morrice asserted, they put in as a defense a long narrative of plain fact, rather than an actual plea.<sup>1</sup> Smith's account of the case supports Morrice, for he reported that in discussing whether or not to petition James again on the day of the election, some "horrible rude reflections were made upon the king's authority, that he had nothing to do in our affair, and things of a far worse nature and consequence."<sup>2</sup> While it is clear Smith disapproved, it is equally clear that the defense espoused by Fairfax was originally the product of the fellows at the election, and not simply the advice of the legal profession. It would appear that the actual difference in opinion between Fairfax and the rest of the delegates was non-existent. This is not something that is evident in other contemporary or subsequent historical works, but Morrice's comments explain this otherwise considerable anomaly.

Fairfax, obviously, opposed the decision of the fellows not to present what was to his mind a very good defense. He felt so strongly, Morrice's explains, that he now "offered great violence to his own temper" by giving his separate statement because he had developed "other apprehensions of the danger the church and state [were] in then formerly he had", apprehensions so strong that he became "far more tender to the Dissenters" than before.<sup>3</sup> The

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<sup>1</sup>Morrice Q, p.152.

<sup>2</sup>ST, vol.XII, pp.57-8.

<sup>3</sup>Morrice Q, p.152.

other fellows had also recognized that danger existed for the Church (as their election of Hough rather than Farmer shows), but unlike Fairfax most were not yet prepared to jettison the traditional Church/crown alliance. That they elected Hough contrary to James' wishes shows that cracks were certainly appearing, but for the present the foundations remained sound. Fairfax however, appears to have anticipated the conclusion that the country came to in 1688. Perhaps his coming from a prominent parliamentarian (though not whiggish) family may have influenced his perception.

Morrice himself supported the legal defense made by Fairfax, which, in view of the comments he made on the point of legal advice with regards to Cambridge, is not surprising. Had the College submitted such a defense, he believed it "would have saved them." Of their "neglect" to do so, he was rather scathing, and accounts this as the reason for their subsequent loss.<sup>1</sup> Again quite possibly a reflection of Maynard's perspective, this seems a rather naive viewpoint. James by now, was obviously not going to allow the law to stand in his way.

On June 23, the Ecclesiastical Commission declared the election of Hough null and void, and his removal was ordered. At the same time both Fairfax and Aldworth were suspended from their fellowships for "contempt & disobedience to y<sup>e</sup> King".<sup>2</sup> These judgements raised the same issue as that associated with the fellows' right to elect, namely the unlawful extension of the prerogative. This extension arose through the fact that those invested into a fellowship or a presidentship, were also invested with the freehold titles accompanying these positions. By depriving Hough of the presidency, and suspending Aldworth and Fairfax from their fellowships, James was invading the property rights of three

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<sup>1</sup>Morrice Q, p.155.

<sup>2</sup>Bloxam, p.67.

of his subjects, rights which were immune to the prerogative, and which James, in stating "I shall never depart from the rights and prerogative of the crown, so I shall never invade any man's property", had expressly promised to protect.<sup>1</sup> The only way in which a fellow or president might be legally removed from his freehold was through his being incapacitated by the founder's statutes in some way, or through the courts of Westminster Hall. James himself was legally incapable of doing so through prerogative action. He was therefore certainly in the wrong, particularly since the fellows had a confirmed right to elect a president, and Hough's election was entirely legal.

Hough's deprivation from the presidency requires individual examination, for it was central to the refusal of the fellows to elect another to the now supposedly vacant position. It was entirely unprecedented; while the crown had pressured a number of presidents to resign in the past, it had never before removed a sitting president. Furthermore, it was generally accepted that the crown did not have the authority to do so. The fact that Hough's election was legal, in that it was wholly regular, and that he had been accepted by the visitor to Magdalen (who alone had the authority to refuse or approve a new president) made the actions of the crown appear even more objectionable. In view of this, both Hough and the fellows refused to accept the Commissions' ruling.

What needs to be understood with regard to the nullification of Hough's election is that the crown, despite assertions to the contrary by the fellows of Magdalen, did not regard the election as legal. It assumed rather, that royal mandates were of paramount authority, and that Farmer's mandate implied an inhibition on the election of another. These two assumptions are crucial in understanding the different positions adopted, for, needless to say, the College refused to accept either. As the fellows had elected Hough contrary to royal

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<sup>1</sup>Miller, *James II*, p.120.

instructions, the crown regarded the election as void, and Hough's occupation of the presidency as illegal. Therefore his removal was not a matter of contention. This interpretation ignores the College's indisputable right to elect a president of their choice, a right which the prerogative had no authority to invade.

At the same hearing before the Commission, the delegates submitted a detailed case against Farmer as a further defence. Producing sworn affidavits as evidence, their charges included lewd and immoral behavior, drunkenness, being of an argumentative and unpeacable humor, moral corruption of students under his charge, teaching unlicensed as an usher in an unlicensed nonconformist school, and making a false declaration for Catholicism.<sup>1</sup> Farmer claimed the charges were malicious and unfounded, and based on envy and hear-say and the attempt to blacken his character was simply a result of the fellows inability to justify their disobedience. He sought to demonstrate that the allegations against him were contrived after the election, so proving that the fellows were simply using him as a means of defense. Anyone who might have been recommended to the College by James, he continued, would have been similarly blackened.<sup>2</sup>

Farmer's protestations that he was being unfairly maligned may have had some basis, for his standing in Magdalen before the presidential election appears to have been sound. In November 1685 he had been supported by ten of the fellows for a living in Magdalen. In October 1686 he had received a testimonial signed by Aldworth and eleven others for a fellowship at All Souls, in which his attentive attitude to study, and his loyalty in volunteering at the time of Monmouth's rebellion, had been especially noted.<sup>3</sup> This suggests that the

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<sup>1</sup>Bloxam, pp.69-72.

<sup>2</sup>*ibid*, pp.72-74.

<sup>3</sup>MacIntyre, p.50.

problem was not so much Farmer's personal conduct, as his religion, and he was correct in asserting that the fellows would have objected to any other Catholic nominee. These facts assembled by MacIntyre, comprise the only defence of Farmer I have found. MacIntyre comments that this evidence was available to Bloxam, but not cited by him.<sup>1</sup>

MacIntyre believes that Farmer was not so much "contemptible", as a "disappointed and volatile young man, of modest aims and evidently not lacking in ability...who saw his chance of carving out a career as a Catholic *de convenance* under the new...regime". Farmer was indeed only a very recent convert, and the affidavit of three acquaintances of Farmers who swore he declared he had falsely converted in order to gain preferment, also bears out this suggestion.<sup>2</sup> Even if Farmer was not the immoral inebriate of most portraits, there is too much to explain away, as MacIntyre (wisely) concedes.

The Commission promised to acquaint James with the case against Farmer, upon which Morrice reports that the fellows "were exceeding well pleased, and did greatly triumph in the conquest they promised themselves over Mr. Farmer". He himself regarded their predicted triumph as something of a hollow victory, for, he reflects, they did not seem to realize that they had at the same time "lost their point and their privillidge", that their electing of Hough had been declared null, or that two of their members had been deprived of their fellowships. In their blind pursuit of the doctrine of passive obedience, Morrice believed they had suffered a loss of considerable significance without apparently realizing it. That the Commissioners themselves also believed this to be so, is evidenced by Morrice's comment that they "did triumph...that they [the fellows] had civilly parted with their right,

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<sup>1</sup>This is significant, given that Bloxam's work constitutes one of the main sources of material relating to this all important case.

<sup>2</sup>Bloxam, p.71.

and did no further insist upon it".<sup>1</sup> The failure of the fellows to justify their electing of Hough, or to protest the suspensions when appearing before the Commission again to prove their case against Farmer, did little to endear their actions to Morrice either.<sup>2</sup>

What both Morrice and the Commission failed to consider was the possibility that the fellows believed that if their case against Farmer was proved, then the suspensions of Fairfax and Aldworth, and the deprivation of Hough from the presidency would become obsolete, for it would in effect justify their actions. Thus the legality of Fairfax's suspension was questioned by the fellows (and others) because it was fixed to the College's gates after the Commission had ruled that Farmer was a 'very bad man' and morally unsuitable.<sup>3</sup>

Having passed judgement against Hough, Aldworth and Fairfax, the Commissioners sent a messenger to the senior fellow of the College with orders requiring him to call a meeting so that the ruling against the three could be read to the fellows. The messenger, conceiving Dr. Pudsey to be the senior, directed him to call the meeting. Pudsey however replied that he had no authority to do so as long as there was a president in the College, and refused to accept the orders. Morrice reports that Hough continued to occupy the president's lodgings, of which he was unlikely to quit without "some kind of legall process".<sup>4</sup> Pudsey's sidestepping and Hough's refusal to accept the nullification represents a conspicuous divergence from the traditional policy of passive obedience.

On August 14 James issued a new mandate requiring the College to elect the bishop of Oxford, to the presidency. Samuel Parker was an unpopular man whose elevation had

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<sup>1</sup>Morrice Q, p.155.

<sup>2</sup>Morrice Q, p.155.

<sup>3</sup>Bloxam, pp.81, 102.

<sup>4</sup>Morrice Q, p.159.

scandalized the nation. Strongly supportive of the absolute power of the crown, he desired to restrict the Church's authority to purely spiritual matters, which encouraged James to make him bishop of Oxford in 1686. Generally regarded by historians as a time serving crypto-romanist, he was also widely regarded as an avowed Catholic by contemporaries, although he refused all efforts to convert him to Catholicism on his death bed.<sup>1</sup> It is likely that Parker's zealous support of the crown's absolute power was mistakenly construed as support for Catholicism, in much the same way that William Penn was mistakenly regarded as a Catholic by contemporaries due to his support for toleration. James himself was not excluded from the confusion; speaking to d'Adda, he commented that he had wished to appoint a Catholic to the presidency of Magdalen but felt that the time was not right, but that Parker "is well inclined to us: he is one of us in feeling; and by degrees he will bring round his clergy."<sup>2</sup>

Petre did not share James' view: "I do not see how [Parker] can be further usefull to us in the religion which he is yet, because he is suspected and of no esteeme among the hereticks of the English church, nor do I see that the example of his conversion is like to draw many others after him because he declared himselfe too suddenly".<sup>3</sup> Parker's reputation was notorious, but Petre's astute remarks come as something of a surprise, since he was not renowned for his perception, tact or understanding.<sup>4</sup>

The fellows refused to elect Parker. Like Farmer, he was statutorily unqualified, having never been a fellow of either Magdalen or New College. However, the fellows rejected the mandate not because Parker's election would again violate their oaths, but

<sup>1</sup>*DNB*.

<sup>2</sup>Macaulay, p.740.

<sup>3</sup>Morrice Q, p.241.

<sup>4</sup>Morrice Q, p.200.

because they maintained that the presidency was already full. The issue, therefore had changed from one of obedience to royal mandates, to the ejection of a sitting president, although James (who regarded Hough's election as invalid) continued to see the conflict in terms of obedience.

James was enraged, and he deliberately included Oxford in his progress in September. Calling the fellows before him, he berated them for acting as neither gentlemen nor good subjects. Working himself into a passion he angrily asked if this was their idea of Church of England loyalty, and ordered them to "[g]et you gone, know I am your King. I will be obeyed...Go and admit the Bishop of Oxford...Let them that refuse it look to it: they shall feel the weight of their Sovereign's displeasure."<sup>1</sup> Withdrawing to consider James' command, all but one of the fellows (the papist Charnock) agreed that the presidency was already filled, and hence they could not elect Parker.

James' reference to the 'Church of England loyalty' illustrates the reliance he was placing on it to 'restrict' the opposition his actions aroused in Oxford. What he failed to realize was that this loyalty was not unconditional. The Church/crown alliance, of which the University was part, was not one-sided, but an agreement of mutual exploitation whereby both sides benefitted, through the maintenance of the status quo. It was not a right belonging to the crown to be used when convenient. By attacking the University, and by association the Church, James was making the Church's traditional loyalty not only incongruous, but immoral. The Vice-chancellor Ironside answered James' assertion that there were "wolves among you in sheep's clothing: men that pretend to be of the Church of England, yet act contrary to it, who are not so obedient to me, as your Church pretends", by stating "I hope your Majesty allows the University in a sober way to defend the religion it professes,

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<sup>1</sup>Bloxam, p.85.

especially when first attacked, as in our case."<sup>1</sup>

James rightly believed the fellows' opposition was a result of his granting of toleration. "I have given liberty of conscience to some of my subjects" he told Ironside, "therefore do not take it ill, for...I have not done harm to you".<sup>2</sup> It was inconceivable however, that the Church would see it as anything but dangerous, and it must have seemed inconceivable that he should expect it to do otherwise. James, however, was not famous for his insight.

At this point, William Penn became involved in the case. Macaulay painted his involvement in the blackest of colors, seeing Penn as James' agent, to "seduce the college from the path of right".<sup>3</sup> Macaulay claims that Penn failed to intimidate the fellows into obedience by declaring that they would face ruin if they continued to oppose James, and then went on to use bribery as a means of persuasion, suggesting that they should admit Parker because he was in very bad health and would probably soon die, upon which Hough could be made bishop of Oxford.

Closer scrutiny reveals that Macaulay's sources, and the conclusions he reached based upon these, are anything but reliable. The evidence Macaulay cites as proof of Penn's 'intimidation' was an anonymous letter sent to Dr. Baily, one of the fellows. Baily conjectured from its "charitable purpose" (the writer purported to have been moved from a "passionate concern for your interest"<sup>4</sup>) that it was from Penn.<sup>5</sup> Macaulay asserted that the

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<sup>1</sup>*ibid*, p.91.

<sup>2</sup>*ibid*, p.90.

<sup>3</sup>Macaulay, p.948.

<sup>4</sup>Bloxam, p.99.

<sup>5</sup>John Paget, *The New Examen*, (London, 1861), p.314.

letter was certainly Penn's, because Penn, he claimed, had never refuted the letter despite it having been printed and publicly circulated.<sup>1</sup> It has since been proven however, that Penn did indeed deny the letter. Furthermore, as Paget asked, why would Penn choose to write anonymously? If he wished to produce an effect, he was far more likely to do so by signing his name.<sup>2</sup> Besides, we know from his works that Penn was not afraid to write and sign what he believed.

Even supposing Macaulay was correct in attributing the letter to Penn, its contents do not support his conclusions. The writer counselled submission not because he was trying to intimidate the fellows or 'seduce them from the path of right', but because he believed it was the lesser of two evils. Convinced that the fellows could not win, he saw their submission as by far preferable to their overthrow, which, he believed, would afford "the enemy" an unmistakable opportunity for the destruction of the Church.<sup>3</sup> To his mind submission would offer survival, while overthrow would mean destruction.

Much of Macaulay's condemnation of Penn's activities in Magdalen is based on his interpretation of a letter written by Hough, which details the fellows' dealings with the Quaker. This interpretation has been rightly attacked for the degree of historical license Macaulay allowed himself and justifies the accusation that "he has drawn on his imagination for his facts".<sup>4</sup> Macaulay represents Penn as being employed to solicit the fellows; Hough represents the fellows as soliciting Penn. Macaulay represents Penn as trying to overcome the fellows' scruples' over committing perjury; Hough clearly states that Penn admitted that the

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<sup>1</sup>Macaulay, p.949.

<sup>2</sup>Paget, pp.314-315.

<sup>3</sup>Bloxam, p.99.

<sup>4</sup>Samuel M. Janney, *The Life of William Penn*, reprint, (New York, 1970), p.318.

fellows "gave...satisfactory answers" on this account. Macaulay seeks to demonstrate that Penn was willing, despite the gross injustice of it, to give the papists two or three colleges; again Hough negates this, stating that Penn believed the papists had a right to two or three colleges, at which point the Quaker believed they would cease further demands because it would be dangerous to ask for more. While Hough disagreed, Penn's answer cannot be construed as simple willingness to sanction injustice on the wishes of the King. Rather it stems from his belief in liberty of conscience, that is, that no single church had a monopoly on truth. He commented to Hough that he hoped they "would not have the two Universities such invincible Bulwarks for the Church of England, that none but they must be capable of giving their children a learned education."

Macaulay represents Penn as attempting to bribe the fellows into compliance through promises of future accommodation. Hough however states, "I thank God that he did not so much as offer at any proposal by way of accommodation, which was the thing I most dreaded". Commenting on Parker's illness Penn did ask the fellows how they would like Hough to be made bishop of Oxford, but it is clear from the answers he received that the remark was taken to be a casual joke. Hough suspected that a 'compromise' might be offered, and was ready to take alarm, yet he makes no comment that he believed this to be such an offer. The general tenor of the recounted conversation is quite different: Penn was no corrupt crown employee.

Neither does Macaulay's evidence support his argument, for he fails to take into account the actions of Penn on behalf of the College. Penn had accompanied James to Oxford where he had been approached by Creech, one of the fellows. The following day, after hearing the fellows statement, he wrote a strongly worded letter to James remonstrating him for the injustice of his proceedings, declaring they were "not very agreeable to his other

gracious indulgences."<sup>1</sup> Clearly it was at the request of the fellows that Penn entered the fray as a mediator. It is equally clear that Penn supported the College, yet Macaulay still asserts that Penn was an agent of the crown.

Such inconsistencies are remarkable in what is supposed to be an objective profession. Macaulay's tendency to pre-judge, a result of his Whiggish agenda, explains this tendency. Forming a preconception of a persons character, Macaulay then draws motives etcetera from this where no evidence exists. His "omniscience" then supplies the resultant shortage of evidence, which results in the suppression of facts and evidence not supporting his theories.<sup>2</sup> His continued insistence that he was correct, even in the face of irrefutable evidence to the contrary,<sup>3</sup> supports this analysis. Macaulay's account of Penn's involvement in Magdalen is a classic example of this line of thought, and casts considerable aspersions on the validity of Macaulay's work as a whole.

At this time a rumor was circulating that the fellows had submitted to James. The truth of this Morrice had not ascertained, but he considered it to be a "very significant occurrence" should it prove true, for he believed it to be in essence a submission of not just Oxford, but of the entire clergy of the Church of England. This conclusion was by no means confined to Morrice, and demonstrates that the case of Magdalen had come to represent the plight of the Church as a whole. By the outcome of the case would the Church stand or fall. The admonition of an anonymous writer to Smith which stated "[f]or God's sake as you are all men of loyalty and conscience be unanimous in your resolutions. The Liberty of the

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<sup>1</sup>Creech, quoted by Paget, p.308.

<sup>2</sup>Charles Firth, *A Commentary on Macaulay's History of England*, (London, 1964), p.268.

<sup>3</sup>*ibid*, p.272.

Church and University are involved in your conduct" illustrates this.<sup>1</sup> This association was central to the formation of the overall perception of the threat posed by James, and by inference, to the reaction to the invasion in 1688. It is also what sets the case apart from all the others. Morrice's comment that in the face of this rumor the papists were greatly encouraged, while "all others are greatly intimidated with jealousies lest [it] should prove true" illustrates this point.<sup>2</sup>

With the failure of his personal visit to Oxford, James ordered a visitation to Magdalen with the ominous instructions to "strictly...enquire into the management of the college affairs, and to see whether matter may not be found sufficient for a *quo warranto*."<sup>3</sup> The three visitors sent were Cartwright, Sir Robert Wright, a protege of Jeffreys; and Sir Thomas Jenner, a close advisor to James. Jenner was a second choice, the first having been Charles Hedges who had proven unreliable, and who was dropped in the face of his comments that while the College's actions constituted contempt to James, they were by law entitled to act as they had.

Proceeding to Oxford on October 20, the visitors were met with "no great rejoicing". Expecting trouble in the face of considerable public ire, the visitors entered the city in the company of two troops of horse, who were ordered to guard the visitors lodgings with weapons loaded and swords drawn.<sup>4</sup> This event alone speaks volumes, not only of the level of resentment aroused by James in his dealings with Magdalen, but of the part it played in the complete about face in public support for the crown that occurred in just three short

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<sup>1</sup>Bloxam, p.112.

<sup>2</sup>Morrice Q, p.182.

<sup>3</sup>editor's comment, Burnet, pp.148-9.

<sup>4</sup>Morrice Q, p.183; ST, vol.XII, p.89.

years. That representatives of the crown should need military protection in a city with a history of fervent royalism, was remarkable.

Summoning Hough and the fellows before him, Cartwright spoke at length before a large crowd which had gathered to hear the proceedings. Basically a rendition of the doctrine of divine right, he emphasized that the College was the "creature...of the crown" and that it was insolence to make their statutes "spurn against their maker."<sup>1</sup> In view of this, he stated, the oaths they had taken to uphold their statutes were of no consequence, for, to quote Morrice's summary of the speech, "men of loyall principles did not use to oppose the creature to the creator".<sup>2</sup> For Cartwright, such profaneness was a far greater danger to England than popery. Accusing the fellows of bringing the visitation upon themselves, he ended with a warning that "the eyes of the world were upon them", and they ought to take care how their practices might influence their "deluded admirers."<sup>3</sup>

Concluding his speech, Cartwright asked if they submitted to the visitation, to which Hough answered in so far as it was consistent with the laws of the land, and the statutes of the College, but no further. In other words, no. The issue of visitation was a controversial one, containing the same point of contention as the ecclesiastical supremacy and private property, namely the issue of jurisdiction. It was generally accepted that the king could not visit any college but of royal foundation where there were statutes that appointed a local visitor. Such was the case at Magdalen, and it was on this basis that the fellows rejected the visitation ordered by James.

The issue of visitation created division within the King's Council also. Some asserted

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<sup>1</sup>ST, vol.XII, p.28.

<sup>2</sup>Morrice Q, p.182.

<sup>3</sup>ST, vol.XII, p.28.

that James could not appoint a visitation to a college if its statutes appointed a local visitor, because they were private foundations conditionally constituted and founded, with the fellows taking an oath in which they swore to observe their statutes at their election as a condition of their places, the departure from which constituted perjury. Others argued that precedent existed for a royal visitation to a privately founded college, citing the visitation to Corpus Christi in the reign of Elizabeth I which was made despite the College having the bishop of Winchester as its local visitor, as evidence. This example however, according to an anonymous writer, could not be used as a precedent because it had arisen out of a defect in the statutes of the College, whereby the bishop had not been able to visit because visitations were statutorily limited to the quinquennial, and in this instance it had been only two years since the last visitation. Furthermore, in the royally appointed visitation the bishop had been appointed one of the visitors, and they had been instructed not to proceed otherwise than the ecclesiastical and municipal laws of the land, the statutes, ordinances, customs and privileges of the College, directed. In view of this, the visitation to Magdalen had been founded on a mistake, and hence the displacement of Hough was not consistent with the statutes, which in turn meant that his dismissal was not warranted by law.<sup>1</sup>

Without an indisputable precedent, and in view of the sanctity of private property, Hough and the fellows were legally correct in refusing to submit to the visitation. This is particularly so in view of a judicial ruling made during the reign of Elizabeth, in which it was declared that the Queen could not impeach the judgement of a local visitor in his decision to remove a sitting president.<sup>2</sup> While not directly comparable to the case of Magdalen, the ruling places the authority of a local visitor, within the confines of a privately founded college,

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<sup>1</sup>Bloxam, pp.111-112.

<sup>2</sup>*ibid*, p.111.

above the crown.

Not only did Hough refuse to submit to the visitation, but he rejected the Commission's authority, and by inference the King's, to alter the statutes. This rejection was again based on the oath they were obliged to take upon appointment to fellowships, for it not only required them to observe the statutes, but "to admit of no new ones, or alterations in these". Hough's rejection was not simply a means of opposing James as one could easily suppose, for he pointed out that he believed parliament also had no authority to alter the statutes.<sup>1</sup> The refusal of Hough and the fellows to submit to the visitation, or to accept its authority to alter the statutes echoes the arguments of Fairfax. This abandonment of tactics designed to fall in with the doctrine of passive obedience and to appease James represents the realization that reliance on the legal correctness of their actions and professions of loyalty were not going to win the case. Hough's comment to Penn that he believed "it is resolved that the papists must have our College, and I think all that we have to do is, to let the world see that they *take* it from us, and that we do not *give it up*"<sup>2</sup> is illuminating. Hough obviously believed the case to be doomed, therefore they had nothing to lose by making an assertive defence. It is clear Hough wished to make a point in the 'war' against Catholicism by ensuring James was forced to take the College, rather than their tamely giving it up. By ensuring this, they would be able to demonstrate conclusively to the wider nation the imminent danger posed by popery, and possibly force it to act. This was particularly shrewd manoeuvring on behalf of the College, for Magdalen had become a highly publicized case. It was also to prove very successful.

Hough refused to accept the decree of June 22 declaring his election void because he

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<sup>1</sup>ST, vol.XII, p.29.

<sup>2</sup>Bloxam, p.106.

had never been cited before the Commissioners, or heard before them in person or by proxy. He was the only man, he believed, who had been deprived of a freehold with which he had been legally invested, without being summoned or heard. He denied Cartwright's assertion that a mandate implied an inhibition on the election of another, and that the King had for the most part recommended the presidents of Magdalen. Only if a person qualified for the position is recommended does an inhibition apply he maintained, and as for crown recommendation of presidents, he was the twentieth, and of those, only four had been royal recommendations, three of which had been qualified in every way, the fourth (Haddon), having always been accounted an intruder.<sup>1</sup>

Hough's objections were fully supported by the fellows. In a submission to the visitors (which they were not allowed to read out) they objected to the visitors interpretation that a mandate implied an inhibition on the election of another on the grounds that it was not in civil or canon law. It was not reasonable that a mandate to elect an incapable person should include an inhibition on the election of a capable one. Even if this were so, it could not invalidate Hough's election. Furthermore, they could not be charged with disobedience in electing one qualified by the statutes over one who was not, for they were forced by their statutes to elect according to the statutes, within a certain time, and had taken an oath to do so. Surely James would not expect them to be either perjured or to forfeit their fellowships, particularly since he had declared that conscience ought not to be forced, and that none of his subjects would be molested in their rights and privileges. They were also of the opinion that Hough's deprivation was null and void, he having been deprived of a legal freehold.<sup>2</sup>

Appearing before the Commissioners the next day, Hough was asked if he submitted

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<sup>1</sup>ST, vol.XII, p.30.

<sup>2</sup>*ibid*, p.38.

to the decree declaring his election void. Refusing again, he added that he could not be deprived of his freehold "but by course of law in Westminster-hall, or by being some ways incapacitated by the founder's statutes."<sup>1</sup> He refused to give up the keys to his lodgings on the grounds that as long as he lived there could be no other president. Cartwright insisted that as visitors, they had the right to demand the keys, to which Hough replied that the College never delivered up the keys even to the bishop of Winchester, whom they held to have a greater visitorial power than Cartwright, let alone to a visitation whose legality was questionable. Unable to gain satisfaction, Cartwright ordered Hough to "depart peaceably out of the lodgings, and to act no longer as President, or pretended President of this College."<sup>2</sup> His name was then struck out of the Buttery Book by Cartwright and replaced with Parker's, the officers of the College having refused to do so.<sup>3</sup> A portent for the future relations between Parker and the residents of the College, this report was of particular significance not only in itself, but because it can be found only in Morrice's account of the proceedings.

On the afternoon of the same day the fellows were called before the visitors and asked if they would assist in the installation of Parker as president, to which all but two (Smith and Charnock) answered no. During this questioning Hough interrupted and requested liberty to speak. This being granted, he proceeded to protest against the proceedings of the visitors as illegal, and declared that he would seek justice in the courts. It was for this that Hough was most remembered, as is shown by the monument raised to him after his death in which he is depicted presenting his protest in the hall of Magdalen College.

The public response to Hough's protest was considerable. Morrice reports that "the

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<sup>1</sup>*ibid*, p.32.

<sup>2</sup>*ibid*, p.34.

<sup>3</sup>Morrice Q, p.184.

mobile which could[?] not be kept out gave a great hum", something which he considered "very unfortunate". The visitors were so incensed at this that they ordered Hough bound over to appear in Westminster hall on bail of 2000.l, deeming the public outburst to be a breach of the peace, and to which Hough had been privy.<sup>1</sup> Jenner demanded of Hough "do you thinke to huff us here with a hisse?", at which Morrice reports there was a great stamping from the scholars (this being a pun on Hough's name, which was pronounced 'Huff'), which gave further offence. The pun was of such quality that Morrice believed it would be remembered long after the proceedings had been forgotten!<sup>2</sup>

Hough's 'trial' at Westminster was little short of farcical. Arriving at the King's Bench on November 28 as ordered, the King's Counsel failed to appear and present the charges. With no prosecutors aligned against him, the Court was forced to discharge Hough for lack of a case. What is remarkable however, is that it appeared that no charges were even laid against Hough at all, for at the trial it was reported that the Attorney General had said that no prosecutors had come to him. The apparent unwillingness of the King's Counsel to deal with the case is possibly indicative of the growing public animosity towards the proceedings. The speed at which the Court discharged Hough, and vacated his recognizance is also open to speculation, as is evidenced by Morrice's comment that "[t]here was variety of glosses upon this transaction, that he should be thus easily and speedily discharged."<sup>3</sup> Possibly the Court was influenced by public feeling, or perhaps even supported Hough (a not unlikely supposition as James, despite his constant manipulation, continued to have trouble maintaining a 'reliable' judiciary).

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<sup>1</sup>Morrice Q, p.197.

<sup>2</sup>Morrice Q, p.183.

<sup>3</sup>Morrice Q, p.212.



Dr. Hough before the Visitors.<sup>1</sup>

<sup>1</sup>Illustration from J. R. S. Whiting, *A Handful of History - Political Playing Cards of the seventeenth and eighteenth Century, the Reign of James II, 1685-88, and the 1688 Revolution*, Audio-Visual Productions, Chepstow, Gwent, [1980].

On October 25, Parker was admitted to the presidency by proxy, with only Charnock present at the ceremony, the others having deliberately absented themselves. Sending to Hough for the keys to the presidents lodgings, the visitors were forced to send for a blacksmith to break open the door when he refused to comply. The procurement of a smith proved however, to be of greater difficulty than anticipated. Morrice reported that there were four found who refused to help. The fifth, having been commanded to accompany the visitors, absconded under the guise of fetching a crow bar to force the door. Finally procuring the services of a smith, the door to the lodgings were broken, although the visitors had first to threaten the reluctant smith with imprisonment to achieve this.<sup>1</sup> The unwillingness of the smiths to help the visitors demonstrates not only the strength of public opinion, but that the case was of concern to the lower orders of English society, as well as the higher, unlike much of the internal strife in England's history. What is surprising about the breaking open of the presidents lodgings is that it was interpreted as illegal by the visitors, in light of it having been done by a blacksmith, rather than the "posse committatus". This "violent possession" Morrice wrote, resulted in Parker's suspension from the profits of his fellowship during the King's pleasure.<sup>2</sup>

Upon being asked would they submit to the bishop of Oxford as president, the fellows agreed to do so "as far as [was] lawful and agreeable to the statutes of the college, and no way prejudicial to the right and title of Dr. Hough." This last clause they were persuaded to remove, on the assertion that nothing they could do could invalidate Hough's title, and that their submission still left them at liberty to both bear witness for him, and render their

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<sup>1</sup>Morrice Q, pp.184, 198.

<sup>2</sup>Morrice Q, p.186.

services to him in the recovery of his right.<sup>1</sup> Only Fairfax refused to sign the submittal, for which he was expelled, along with the sub-porter who had declared that Parker would never come in as president through the gate while he was porter. The student reaction to these expulsions was such that the vice-chancellor was forced to command them to be "civill and orderly" under pain of severe penalty. Morrice again objected to such "rudenesse" to persons of such "quality and character", as unbecoming of persons of civil education.<sup>2</sup>

The submission of the fellows was unpopular with the public, and there were many scornful references to "your Magdalen College conscience."<sup>3</sup> Morrice reported that many different interpretations were placed upon it, depending on how men were affected. Some, he commented, believed it to be an owning of the dispensing power, while others believed the fellows had perjured themselves, Parker being as unqualified as Farmer.<sup>4</sup> On face value such interpretations appear correct. However, the subsequent qualification issued by Dr. Baily, to wit that their submittance meant submittal to the kings authority, not to Parker, discredits such translations, although it has been hypothesized that this was issued from a sense of shame at their capitulation, and in an effort to regain popularity. This is not entirely fair, for it neglects to consider that it was made in the face of further demands from James, and not in the face of public outrage (although I would not deny it stiffened their resolve to refuse these subsequent demands).

While the fellows submission was been unpopular with the public, it certainly pleased the visitors, for they believed they had the submission of all the fellows bar Fairfax.

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<sup>1</sup>ST, vol.XII, p.39.

<sup>2</sup>Morrice Q, p.185.

<sup>3</sup>MacIntyre, p.61.

<sup>4</sup>Morrice Q, p.185.

Acquainting James with the outcome however, they were surprised to learn that "it found not so good acceptance as they expected."<sup>1</sup> The King, they were informed, required that the fellows acknowledge their contempt to his majesty's person and letters, that they acknowledge the jurisdiction and legality of the Ecclesiastical Commission, and that they promise future obedience. This complete and total abjuration demanded by James, has often been cited as an example of his characteristic vindictiveness. Had he left things as they were at this point, rather than proceed to exact 'revenge', many believe that his victory would have been complete. This supposition is sound if one applies it to Magdalen alone, however if one takes into account the aims behind the attack on the College, then it is not. The demands made by James were far from vindictive, rather they were a very necessary part of his strategy for establishing Catholics in the universities and clamping royal authority over all institutions. The fellows had submitted only on their own terms. They had not expressly acknowledged the Commissions legality or the King's power, while Hough and Fairfax had denied both. It was vital for James to extract from Magdalen an acknowledgment of both, in order to establish a clear precedent which in turn would enable him to continue his policy elsewhere.<sup>2</sup>

While James' demands were necessary to his cause, they were regarded as menacing by the fellows, as indeed they were. Should they submit to these new requirements, they believed they would be giving up the College's rights, and those of its successors. The College statutes, they surmised, were "agreeable to the King's laws both Ecclesiastical and Civil, and so long as we live up to them, we obey the King."<sup>3</sup> Furthermore, they did not consider they could acknowledge having "done any thing amisse" having acted only in

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<sup>1</sup>Morrice Q, p.185.

<sup>2</sup>MacIntyre, p.61.

<sup>3</sup>Bloxam, p.206.

accordance with the statutes, which was correct, and in accordance with their consciences. Neither could they confess to the crime of contempt, being unable to conceive that they had committed any such thing.<sup>1</sup> Baily stated that the visitors had read more into their submission than intended, they having meant only that they submitted to the King's authority and would not resist Parker's installation, not that they submitted to Parker himself. Posing the question 'will you submit to the bishop of Oxford' separately to each fellow, all but three (Charnock, Thompson, and Smith) answered in the negative. The case was adjourned until November 16.

The likely fate of the fellows was much debated amongst contemporaries. Morrice believed the fellows would be deprived of their fellowships, however unfair this might seem.<sup>2</sup> What is interesting to note however, is that despite the level of public animosity, some believed they should be deprived for their "obstinacy against the King's will and pleasure". This suggests that adherence to the supremacy of the royal prerogative still held to some degree, despite the battering it had taken. That this adherence was only partial however becomes clear in the reply to this assertion by a Mr. Wallop, who stated "I know no fault they are guilty of, nor that they ought to be deprived for, unlesse it be for unskilfullness in logick particularly in silogizing, for they have been makeing the premisses 27 yeare together, and never once thought till now of the necessary and naturall conclusion".<sup>3</sup> This last comment is astute, because in teaching the doctrine of passive obedience, the universities had never made allowance for a hostile crown or atypical circumstances. Hence, by premising that the preservation of the status quo lay in a partnership between the crown and the Church, a partnership in which the Church acquiesced to the will of the crown, they effectively placed

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<sup>1</sup>Morrice Q, p.186.

<sup>2</sup>Morrice Q, p.201.

<sup>3</sup>Morrice Q, p.187.

themselves at the mercy of the monarchy. This in essence endangered not only that which they sought to preserve, but the Church itself, for it allowed them no room to manoeuvre should it be necessary to conduct a defence, as it became under James.

Wallop's assertion the Oxonians had been less than logical in their "silogizing" is a little hard, for the universities (and the Church) in teaching the doctrine of passive obedience, were working from the premise that future circumstances would remain the same as those of the past, or in other words, that the Catholic threat would not come directly from the crown. One needs also to consider the determination of seventeenth century contemporaries to maintain the status quo, in which an alliance between crown and Church seemed guaranteed to provide. The one point on which a charge of carelessness (rather than a lack of logic), could be laid is in their failure to take into serious consideration the Stuarts tendency to favor Catholicism.

In the event Morrice proved to be correct. On November 16, twenty five fellows were deprived of their fellowships for disobedience and contempt to the King. Following Hough's example they registered a formal complaint against the proceedings of the visitors, and their intention to seek legal redress. This decision was a considerable deviation from everything the doctrine of passive obedience taught. It in particular demonstrated the breach in the walls of this doctrine more than any of the previous acts of defiance, because while the doctrine of passive obedience allowed for opposition, it taught acceptance of the consequences which might result from it.

The punishment of the fellows did not end with their expulsion. In a controversial decision, the Ecclesiastical Commission decided to incapacitate them from all ecclesiastical appointments. This idea originated with Sunderland, who suggested that the expulsions had been carried out by the Commissioners only as visitors, not as Ecclesiastical Commissioners,

therefore they could be further punished by ecclesiastical censure. Carried by only a majority of one, even the King's Counsel opposed such a step, believing that the fellows offence was not ecclesiastical. Even had it been so they argued, the fellows had been proceeded against in both capacities already. Ignoring the Counsel, the decision was passed, and all archbishops, bishops, and other ecclesiastical officers were ordered to obey the sentence. While such a "vigorous measure" appeared to be somewhat vengeful, it stemmed from the knowledge that many of the gentry and nobility intended to bestow livings on the ejected fellows, rather than from vindictiveness.<sup>1</sup>

Macaulay depicts the fellows as ruined and pathetic after their expulsions, but this picture does not align itself with the facts. Collections of money were set up, with Princess Mary herself making a contribution of 200l. Hough mobilized in London his connections with wealthy sympathizers with such success he earned James' displeasure and was forced to flee. Several bishops chose to ignore the ban, and eight of the fellows were taken into noble households as chaplains. Despite Macaulay's assertions, there exists no evidence to suggest that any of the fellows suffered during their eleven month ordeal. The one exception was possibly Thomas Smith, who had signed the submission. Widely believed to be a Catholic, his subsequent expulsion regained some of his credibility although he was to remain in somewhat 'strict' circumstances. Such blatant disobedience in the face of the ban demonstrates just how far James had alienated not only the Church, but the ruling classes.

The expulsion of the fellows did not end the conflict in Magdalen. The demies in particular proved to be every bit as determined as the fellows in opposing the installation of Parker. Refusing to acknowledge the authority of Parker, or Charnock, or anybody else,

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<sup>1</sup>Bloxam, p.223.

being "deprived of their Deans and lawful officers",<sup>1</sup> they ran their own disputations and exercises, read prayers in the chapel, conducted acts of disorder and defiance in the Hall, and refused to cap. Expecting expulsion for their intransigence, this did not prove a deterrent, preferring as they did to "beg their bread with a safe conscience than to yield themselves to perjury."<sup>2</sup> Even the vice-chancellor registered his opposition to Parker, although in a less obvious manner, by refusing to dine with the bishop having no taste, he declared, "like...Colonel Kirk to dine under the gallows".<sup>3</sup> On January 17 the demies expectation was confirmed, when twenty of their number were expelled.

With the fellows expelled, James began methodically to fill the College with Catholics. On December 31, twelve Catholics were admitted to fellowships by order of James. Including John Dryden (son of the poet) and the jesuit Dr. Thomas Fairfax, several of the number were priests. Requiring the admission of several more Catholics to degrees over the following three months, he then ordered the installation of nine more to fellowships in March, an order which was quite literally to prove the death of Parker. Having become increasingly agitated in the face of the 'Catholicisation' of Magdalen, Parker was reported to have said in the face of this latest order "[t]here is no trust in man: there is no trust in Princes. Is this the kindness the King promised me? To set me here to make me his tool and his prop! To place me with a company of men, which he knows I hate the conversation of", upon which he had a seizure and died.<sup>4</sup> Visited by a number of Catholic priests on his death bed, he refused to convert, claiming that he was, and ever would be, under the Church of England. His 'heretical' death,

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<sup>1</sup>*ibid*, p.217.

<sup>2</sup>*ibid*, p.225.

<sup>3</sup>*ibid*, p.217.

<sup>4</sup>*ibid*, p.240.



Eviction of Protestant Students from Magdalen College.<sup>1</sup>

<sup>1</sup>Illustration from J. R. S. Whiting, *A Handful of History*.

not only much displeased James, but demonstrated beyond the bounds of self delusion, the extent of his misinterpretation as to the bishop's religious leanings and usefulness.

It is possible that doubts as to the wisdom of placing Parker in Magdalen had occurred to James prior to the president's death, for Morrice reported that there was a flying rumor that Parker was to be removed from the office.<sup>1</sup> Parker's appointment had failed to yield the anticipated results, both because he failed to prove to be "one of us [Catholic] in feeling", and because the College had refused to accept his authority. This last point must have demonstrated conclusively to James his misjudgment of Parker's standing in the Church and wider community, and of his ability to provide a reputable example. In the face of these realizations, Parker's death must have been particularly expedient for the King.

Abandoning any sense of caution after Parker's death, James appointed Bonaventure Gifford, titular bishop of Madaura, to the presidency of Magdalen. This appointment was made to accommodate the suggestion made by Sunderland, that Magdalen should be attached to the direction of one of the new prelates in order that there could be established in Oxford a place "where the true doctrine should be publicly taught, and thence spread consecutively to the other parts of the realm." Described with approval as a "learned and zealous man"<sup>2</sup> by D'adda, Gifford was not elected, but placed, in the presidency. Given wide powers to fill fellowships without the consent or approval of the fellows, he was completely exempt from the visitors authority.

While such measures appear drastic, James had no alternatives if he was to succeed in his aims. The appointment of a supposedly sympathetic member of the Church of England to the presidency had failed to further the establishment of a Catholic center of learning in

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<sup>1</sup>Morrice Q, p.238.

<sup>2</sup>Bloxam, p.242.

Oxford. It had also been made abundantly clear that the College was not going to co-operate or compromise in any manner. It was obvious that only the appointment of confirmed Catholics would yield the desired results, and such appointments required extensive use of the royal prerogative, and an all out assault on the College.

Using extensively the authority granted him, Gifford proceeded to complete the Catholicisation of Magdalen. Turning the College chapel over to Catholic rites, he proceeded to expel seven more fellows. The College was then stocked with students from the Catholic school established by James and run by jesuits in the Savoy, so confirming the rumor reported by Morrice in conjunction with that of Parker's imminent removal, that there was to be a "nursery...bred up in the Savoy to fill that College...from time to time."<sup>1</sup> That the College was stocked with Catholic students from the Savoy suggests indirectly that student numbers were declining, something which directly belied James' belief that despite the Catholicisation of Magdalen, numbers would be maintained on account of the College being wealthy.<sup>2</sup> This suggested decline in numbers is confirmed as fact by Wood's comments concerning the marked drop in student numbers.<sup>3</sup> This decline also suggests a lack of 'local' Catholic students willing to fill the College, which is not surprising given that many English Catholics opposed the policies of their monarch, regarding them as inflammatory and potentially lethal to their cause. That this view point was particularly prominent amongst the Catholic gentry and nobility, the classes from whence university students primarily came, supports this supposition. It is possible to construe the influx of students from the Savoy as an effort to establish a strong Catholic foundation in the University, Protestant students

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<sup>1</sup>Morrice Q, p.238.

<sup>2</sup>Bloxam, p.243.

<sup>3</sup>see above, p. 101.

having 'initially' proven unreceptive to the "true doctrine". Without proof however, this remains no more than conjecture, although the rumor that the Savoy school was to be the nursery to fill Magdalen "from time to time" suggests it was to provide a booster for the cause if necessary.

Despite James' belief that the romanisation of Magdalen would have no adverse effects, in truth it could not have been more damaging. Previously James' actions could be explained in terms of punishment for disobedience to the crown, which while unpopular, was not unacceptable. With the installation of the papists however, James made it clear that Magdalen was to be a popish seminary, in view of which his actions became overtly threatening. By romanising Magdalen, James aroused the fear and alarm of all those who had previously believed him justified in punishing Hough and the fellows. No where is this better demonstrated than by Smith himself. Commenting to Parker "I have served the king as far as I can; but withal, I am not only content to lose my fellowship, but my life too, in defence of the church of England",<sup>1</sup> he was expelled by Gifford in August of 1688, being unable to accommodate James any longer.

The public reaction to the romanisation of Magdalen was anything but positive. Services in Magdalen Hall were repeatedly disrupted by towns people and scholars who came merely to keep the papists out, and to "grin and sneare" during the sermons. The Catholic fellows were harassed not only in the streets, but in their own gardens by students, so forcing them to lock the gates to their quarters.<sup>2</sup> On April 25 the vice-chancellor refused to hear the traditional St. Marks day sermon in Magdalen, stating that he did not wish "to heare e[u]logies on the Virgin Mary", Thomas Fairfax having been selected as the preacher.

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<sup>1</sup>ST, vol.XII, p.75.

<sup>2</sup>Wood, pp.301-3.

Appointing his own preacher to preach the sermon at St. Mary's, Wood reports that Fairfax's sermon was "a dull one", while the other was good!<sup>1</sup>

The lack of caution demonstrated by James in handling Magdalen can be directly related to his advisers. Having discarded all those who did not support his policies, or who refused to simply tell him what he wished to hear, by 1687-88 his advisers were mostly Catholic extremists who had little understanding of the situation. The one exception, Sunderland, chose not to exercise his powers of discernment on behalf of the King. Representing opposition as motivated by fear and self interest, they increasingly urged boldness and firmness, declaring that only this would result in compliance. Cut off from all sources of reliable information and political assessment, James acted (or reacted) in accordance with this advice, and from within the parameters of an artificial environment created entirely by his self delusion. The extent of this self delusion was evident even to the French: in 1688 Bonrepaus reported "The English court is very badly informed of what is happening abroad and is even ignorant of most of what happens in London and the provinces".<sup>2</sup>

Nowhere were the effects of this state of ignorance, or the strength of the influence wielded by his advisers demonstrated better than in Magdalen, and in particular in the romanisation of the College. Faced with opposition based on what he believed to be unfounded fears and self interest, he reacted with increasing heavy handedness as advocated by his advisers, failing to register any signs of unrest. The influence of his advisers is illustrated in Smith's comment that everything is done now by Father Petre, and that even the

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<sup>1</sup>*ibid*, p.265.

<sup>2</sup>Miller, *James II*, p.174.

recommendations of Cartwright and Parker have no effect.<sup>1</sup>

The extent to which James' advisers were held accountable for Magdalen by contemporaries is elucidated in the declaration issued by William of Orange. While roundly condemning James' actions, the declaration squarely places the blame for all these actions, including those taken against the universities, on the shoulders of his advisors. "[T]hose Counsellors" it declared, "who have now the Chief Credit with the King, have overturned the Religion, Laws and Liberties of those Realms, and subjugated them...to arbitrary Government". Commenting specifically on Magdalen, the declaration asserted that the College had been stocked with papists by the "evil counsellors" rather than the King.<sup>2</sup> Even the Catholic interest placed the blame similarly. In writing to the Provincial of the Jesuits at Rome, Father Con asserted that the failure of the Catholic cause came from "our own imprudence, avarice, and ambition...The good King has made use of fools, knaves, and blockheads".<sup>3</sup>

The conviction that James' advisors were to blame rather than James himself smacks directly of the Whig assertion that the King is blameless and only the advisory can be held accountable. This is remarkable when one considers it was this assertion by the Whigs which contributed to their downfall prior to the accession of James and it is intriguing that it should re-surface in the face of his deposition. Possibly it was part of the on going effort to justify the deposition of a rightfully anointed king which so pre-occupied parliamentarians after James had fled. It is also, I believe, an incorrect conviction, for while James' advisors did wield great influence, they were nonetheless merely a reflection of himself. James' advisors

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<sup>1</sup>ST, vol.XII, p.75.

<sup>2</sup>*Journals of the House of Commons*, vol.10, (reprinted 1803), pp.1-2.

<sup>3</sup>Bloxam, p.266.

clearly reflected his religious fanaticism and lack of political astuteness. By laying the blame for his actions in Magdalen at the feet of the advisory, one removes all vestiges of self-determination, and relegates James (and in effect the crown) to a position of impotent spectatorship, as was recognized by the Tories during the exclusion crisis.

By October 1688, faced with widespread discontent and the likelihood of a Dutch invasion, Morrice reports that discussions between the court and the hierarchy were established. Obviously alarmed, James was seeking a way to mollify the Church and realign public opinion. In light of these communications, Morrice fully expected the suppression of the Ecclesiastical Commission, and the restoration of Magdalen to result,<sup>1</sup> expectations which were in due course fulfilled. On October 5 the Ecclesiastical Commission was abolished in order "that all suspicions and jealousies to the contrary might be removed".<sup>2</sup> Six days later James ordered Hough and the fellows restored to Magdalen as evidence of his promise to "preserve the Church of England, and all its rights and immunities".<sup>3</sup> These negotiations reveal exactly what the Church considered to be its principal threats. That it was the Ecclesiastical Commission and the Magdalen affair, rather than the Declaration of Indulgence, is significant, though to my mind not surprising. While the Declaration suspended the penal laws and tests, it did not directly pave the way for complete Catholic domination of the Church, as did losing control of the offices and institutions of the Church.

Coming as it did in the wake of the Dutch declaration of war however, the restoration of Magdalen failed to restore confidence in James or his promises. Many, including Morrice, believed it to be simply the result of expediency. The declaration of the nobility, gentry and

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<sup>1</sup>Morrice Q, p.300.

<sup>2</sup>Morrice Q, p.301.

<sup>3</sup>Bloxam, pp.252-3.

commonality at Nottingham provides a good example of this. Declaring that the restoration of Magdalen was "but to still the peace, like plums to children, by deceiving them for a while", it asserted that once James was secure, the papists would oppress "with greater vigour", their principal rule being "*That Faith is not to be kept with Hereticks*".<sup>1</sup>

Unfortunately for James, the delay that took place in restoring the College gave credence to this conviction. It was a commonly held belief amongst contemporaries that upon receiving news that the Dutch fleet had been blown back, James ordered the restoration of Magdalen stopped. Morrice himself believed this to be the case, commenting that in the face of reports of damage to the Dutch fleet, the "Court put a stop to those orders for the restoring of Maudlin College", only reversing their decision when the "report of the Dutches loss prove[d] false".<sup>2</sup> Closer scrutiny of the facts however, disproves this. While it is true that Mews was summoned back to London before the restoration had taken place, his summons was issued on October 20, the day before the Dutch fleet was driven back. Moreover, Mews was not summoned back for a change of orders, but to attend the Privy Council meeting at which depositions concerning the birth of James' son were to be taken. Indeed, James was reported to have been displeased that the restoration had not taken place, it having been ordered on the eleventh, and ordered Mews back to Oxford for that purpose. Therefore if any blame is to be assigned it lies with Mews who, as Routh comments, "appears to have been previously very slow in his motions".<sup>3</sup> Why the normally prompt visitor should have taken so long to restore Hough and the fellows is open to speculation.

By a string of unfortunate coincidences, and a certain laxity on behalf of Mews, James

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<sup>1</sup>*Penal Laws and Test Act, 1687-8*, ed. George Duckett, (London, 1883), p.115.

<sup>2</sup>Morrice Q, p.306.

<sup>3</sup>Bloxam, p.259.

was made to appear faithless at a time when he could least afford to. That Morrice believed him to be so is without doubt. The machinations of the court he believed, provided a valuable insight into its true motivations, revealing, he asserted, "that the restauration proceeds not from inclination but from necessity". From this he concluded that the recent concessions made would be short lived once the "presend distresses were over."<sup>1</sup> These sentiments were by no means the sole prerogative of Morrice, as the Nottingham declaration demonstrates. Undermining his already precarious position, the damage this delay inadvertently inflicted was magnified by the highly public nature of the Magdalen case.

The case takes on an interesting twist in light of Morrice's subsequent report that James denied all knowledge of the inhibition on the restoration of Magdalen.<sup>2</sup> This revelation supports the now accepted fact that no inhibition was ever issued, but undermines the contemporary interpretation. Despite this however, Morrice makes no attempt to modify his interpretation of the case, or the conclusion he reached. The answer to this can perhaps be found in his separation of the King and the court. In his original reporting of the case he assigns the issuing of the inhibition to the court, but in his subsequent report it was James personally who denied knowledge of it. The inference of this is that it was the court who issued the inhibition in the King's name, a not impossible scenario given its nature and aims.

On October 25 Hough and the fellows were restored to their places "to y<sup>e</sup> unuterable joy" of all at Oxford.<sup>3</sup> On December 5 Lord Lovelace arrived in the town with 300 armed horse to defend "the Protestant religion and them", and was met with an enthusiastic welcome. On the sixth, the Prince of Orange's declaration was read publicly, and the

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<sup>1</sup>Morrice Q, p.306.

<sup>2</sup>Morrice Q, p.309.

<sup>3</sup>*The Flemings in Oxford*, ed. John Richard Magrath, vol.II, (Oxford, 1913), p.233.

University itself sent a flattering and supportive letter to the Prince. On December 15 the vice-chancellor personally condoned the invasion, stating "that never was there an invasion more just...I might say almost without rejoicing; that the Church of England has saved the king against his will".<sup>1</sup> That a town, and an institution of historically unwavering support for the crown, should now champion an invading Prince was extraordinary, and testifies uncompromisingly the extent to which James had alienated his subjects.

The question as to whether or not James was acting illegally in Magdalen has, as in Cambridge, no historical consensus. Ranging the entire spectrum, the only common denominator amongst the diversity is the basis of interpretation, namely the dispensing power. In view of this, the conclusion Morrice records as to the legality of the case is particularly interesting, for he makes no reference to the dispensing power at all.

In discussing the outcome, Morrice comments that the vindication of the proceedings of the Ecclesiastical Commissioners "takes it for granted that the Universities are of ecclesiastical foundations and cognizance" and therefore able to be visited by an Ecclesiastical Commission. Morrice believed this was incorrect on two counts. Firstly, he doubted that they were of ecclesiastical foundation, being both founded and filled by lay persons.<sup>2</sup> As such they constituted private property, which lay beyond the jurisdiction of the ecclesiastical supremacy. While not accepted by James, this argument certainly had some grounding, and illustrates the potential for conflict created by ecclesiastically based, but privately founded, institutions. Personally I believe this point is a difficult one to establish, for the universities were not only undeniably ecclesiastical in nature, but were also indisputably accounted as institutions of the Church.

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<sup>1</sup>ST, vol.XII, p.83.

<sup>2</sup>Morrice Q, p.229.

The second point raised by Morrice is much easier to accept. Even assuming the universities were of ecclesiastical foundation and under ecclesiastical jurisdiction, he asserted, it did not follow that the nomination and election of offices was of an ecclesiastical nature. This argument Morrice based on a distinction between the person and the title. One must, he stated, "distinguish between visiting the persons...and visiting the title which is freehold, and not visitable or cognizable by Ecclesiastical Commissioners." This meant that while incumbents of ecclesiastical institutions such as nunneries, hospitals, and abbeys may be subject to an ecclesiastical visitation and deprived, the visitation may not install a new incumbent, for the right of nomination and election belonged to the patron and founder of the institution.<sup>1</sup> Hence even had Magdalen admitted the jurisdiction of the Commission, this did not automatically grant it the right to interfere in the election of a president, for a Commission must keep within its express legal boundaries.

The implications of this argument for the Church as a whole are considerable. By separating the person from the title, and by assigning the right to nominate and elect to the patron and founder, based on considerations of private property, the jurisdiction of the ecclesiastical supremacy is severely curtailed. While still allowing the crown the ability to discipline, it removes the ability to control a large percentage of the Church's offices (most being private foundations), which effectively removes the Church from the patronage system, and hence the control, of the crown. In doing so, it relegates the issuing of royal mandates for the election of offices to little more than an empty gesture, for it makes their acceptance a matter of courtesy rather than a matter of compliance to the ecclesiastical supremacy. This is not as radical as it sounds, for as Morrice commented in reference to Cambridge, it was not established in law that the crown had the right to issue mandates. In view of this, it would

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<sup>1</sup>Morrice Q, p.230.

appear that the traditional acceptance of mandates was as much a matter of tradition itself, than of legal compliance. In effect, the traditional acceptance of mandates had created a state of 'law' which in reality had no firm legal basis, although operating in a legal system based on precedent this point is certainly arguable.

Taken to its full extreme, the argument proffered by Morrice is nothing less than radical. However, it was not designed to challenge the role of the ecclesiastical supremacy, but simply to prove James in the wrong, as Morrice makes clear in his statement "This is the substance of what the lawyer said about the proceedings of the Ecclesiastical Commissioners against Maudlin Colledge."<sup>1</sup> The reference Morrice makes to "the lawyer" is noteworthy for it is one of the few instances in which he attributes his legal interpretation of a case directly to a source other than himself. Usually one is left to speculate as to the source of his determination, such as in the case of Exeter College. Unfortunately the name of "the lawyer" remains unknown, it being written in shorthand, although it is possible to speculate that it was Maynard, he being a contact of Morrice's.

What is particularly useful about this argument is that it defines the Magdalen case in terms of the ecclesiastical supremacy, rather than the dispensing power. A radically different approach, its principal merit lies in its disassociating Magdalen from the dispensing power. The breaking of this traditional linkage is important, for the conclusions reached by historians of this period as to the legality of the case, invariably reflect their conclusions as to the legality of the dispensing power. The extremes in conclusions so typical of historical works on this case, illustrates this well. In doing thus, historians have not only failed to give due consideration to what I consider to be the central issue of the affair, the fellows right to elect, but have linked their conclusions to their personal bias' regarding the reign of James II.

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<sup>1</sup>Morrice Q, p.230.

While it is true that total objectivity is impossible to achieve, by linking their conclusions to such a contentious issue as the dispensing power, a degree of clarity, and an opportunity for a fresh appraisal, is lost.

For these reasons Morrice's approach is particularly valuable. However, to define the case purely in terms of the limitation of the ecclesiastical supremacy is as incorrect as defining it purely in terms of the dispensing power, for it is undeniable that the dispensing power played a role in Magdalen. Furthermore, the jurisdiction of the ecclesiastical supremacy is itself not without contention, which the issue of private property demonstrates. For this reason the best place to begin ones appraisal of the legality of Magdalen is with the fellows right to elect, for if this is established, it is immaterial whether or not the dispensing power was legal, or if the ecclesiastical supremacy had jurisdiction in privately founded institutions.

Unlike many of today's historians of the Stuart era, I believe that James' actions in Magdalen were illegal, for it is my opinion that the fellows had an indisputable right to elect a president. This conclusion is based on a number of factors, the first of which is that reiterated by Morrice. In maintaining that a distinction can be drawn between a person and a title, and in relegating the right to nominate and elect to the founder of a college I believe that he is correct, based on the considerations that surround private property. Secondly, the fellows right to elect had been established by royal charter, and reaffirmed by subsequent monarchs. While it is true James was not one of these, he had nonetheless failed to revoke the charter before engaging in the conflict, which, as was duly pointed out, bound him by default to it. Thirdly, while it was arguable that the crown could dispense with the College's statutes, it was not arguable that it could dispense with the fellows right to elect, for the dispensing power had no legal jurisdiction over either the rights or the properties of English

subjects. Even Herbert, one of the strongest proponents of the dispensing power, declared that while the King had the right to dispense with the laws of government, he could not dispense with laws that "vest any the least right or property in any of his subjects". Spoken with direct reference to Magdalen, he added "when the king's right against the college was endeavoured to be asserted by a dispensation granted by himself, I utterly denied that dispensation to be of any force at all, because there was a particular right and interest vested in the members of that college, as there is in the members of many other corporations, of choosing their own head."<sup>1</sup> Therefore, even supposing it was accepted that James could dispense the statutes of Magdalen, so removing the presidential qualifications, he still could not insist that Farmer or Parker be elected. The crown's practice of sending mandates to college's recommending the election of a certain nominee strengthens this argument, for in doing so the crown was acknowledging, if somewhat indirectly, the college's right to elect its own president. Had the college not the right to elect its own head, James would simply have ordered the installation of his choice. While it was true that mandates were generally accepted, the College was not legally bound to do so, particularly since it was not even clear that the crown had a legal right to issue mandates.

Aside from his violation of the fellows established right to elect a president, the illegality of James' actions were compounded by his depriving Hough and the fellows from the freeholds associated with their positions. Only the Courts had the jurisdiction to do so. Similarly, James was acting illegally in insisting that the fellows abandon their oaths to accommodate his will. Again he could not dispense the fellows from their oaths to abide by the statutes, the crown not having the authority to sanction, let alone insist upon, the committal of perjury. Furthermore, there existed no watertight precedent for the crown's right

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<sup>1</sup>Burnet, p.159, editor's comment.

to intrude a president, while there was precedent for the College's rights to take precedence over the crown's in certain circumstances. Neither was there a reliable precedent for the ordering of a royal visitation to a college not of royal foundation.

As in Cambridge, the main issue became inadvertently the legal compulsion to accept royal mandates, for in objecting to Farmer's dispensation the College turned the conflict into one of the crown's jurisdiction in the universities. This meant, as had also been the case in Cambridge, that the dispute effectively centered around the demarcation of the ecclesiastical supremacy, rather than the legality of the dispensing power. That the central feature of the trial was that of elections demonstrates this conclusively. Neither the Commission or the College based its case around the dispensing power or the dispensation attached to the mandate, beyond ascertaining that it was the reason for the rejection. Both instead concentrated on what each considered to be its respective rights in the matter of elections, so, in essence seeking the defining of the ecclesiastical supremacy. While it is undeniable that the dispensing power was a principal factor, the basic issue at stake was the College's ability, or inability, to reject royal mandates and elect its own head.

While historians have wrestled with the legalities and technicalities of the case, the issues raised in the outcome were more political than legal, especially for contemporaries. A highly public dispute, the importance of Magdalen to the deposition of James cannot be underestimated. By attacking the College, he was perceived to have struck at the whole estate and temporalities of the Church, laying open all its offices and properties to his disposal, in direct violation of his express promise to maintain the Church "as by law established".<sup>1</sup> In doing so he convinced many that the destruction of the Church of England was his ultimate aim. Confirming the prejudices of his subjects, Magdalen was accepted as irrefutable proof

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<sup>1</sup>Burnet, p.159.

of his ill will, and an example of what was to follow on a national scale.

The accuracy of this perception was, to say the least, suspect. While it was true that James aimed to reinstate Catholicism as the dominant religion, he aimed to do so not by physically destroying the Church of England, but by a true representation and teaching of his religion. His attack on Magdalen was launched with this in mind. Reality however, rarely plays a part in the development of perception or judgement. With the boundaries of his subjects perception defined by the all pervading Protestant myth, their interpretation of James' actions was pre-determined. In light of this, James could not realistically expect otherwise, and proved beyond doubt his political ineptitude in seeking to alter the unalterable in such a rough shod manner.

Perceived not only as a threat to the Church, but to the law, and the rights and properties of English subjects, the attack on Magdalen increased alarm accordingly. By employing an Ecclesiastical Commission widely believed to be illegal, by violating the right of the fellows to elect a president, by ejecting Hough and the fellows from their freeholds, and by acting in an arbitrary manner, James convinced many that not only was destruction of the Church at the base of his designs, but the subjugation of the law and the establishment of absolutism. The deprivation of Hough and the fellows from their freeholds was particularly alarming. By using the dispensing power to deprive subjects of their private property, James directly threatened the security of every property owning subject in England. Containing elements of the four principal concerns of Englishmen, religion, law, property, and absolutism, Magdalen epitomized the reign of James.

Transforming Magdalen from a loyal Tory college, consistently faithful to the royalist cause, to the leader of the political and religious opposition to the King, the attack effectively completed the alienation of the Church from the crown, and the abandonment of the doctrine

of passive obedience. Having destroyed all sense of security and roused the concerns of churchmen from the highest bishop to the lowest clergyman, James provided both the impetus and a clear starting point for a united Church of England offensive, something which the trial of Compton had failed to do. Coming from a quarter from which the King had always relied on for support, the Church offensive was consequential as a result of its wide influence, due entirely to its affiliations with its clergy scattered throughout England's 20,000 parishes. The effect on public opinion was similar. Uniting public opinion against the King, Magdalen provided a focal point for the already existent, but unfocused opposition generated prior to the affair. In view of this, Burnet's comment that as a result of Magdalen James now had "the body of the whole nation, both laity and clergy" to deal with, was particularly astute.<sup>1</sup>

A contributing factor in the decision to invite the Prince of Orange to invade, Magdalen was cited in the Prince's declaration as one of the reasons he decided to accept the invitation. Politically devastating for James, the case was the straw that broke the proverbial camel's back. An affair of historical infamy, its importance to the deposition of James is best summed up in the answer given the Duke of Wellington in 1834, who upon approaching Magdalen asked which college was this. "That is Magdalen'" came the reply, "against which King James II<sup>d</sup> broke his head."<sup>2</sup>

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<sup>1</sup>Burnet, p.231.

<sup>2</sup>Bloxam, p.271.

iv. Conclusion.

The principal importance of the universities to the reign and subsequent deposition of James II lies not so much in the details of the individual cases, but in their collective impact, for in seeking to implement a policy of religious toleration extensively through the universities, he unintentionally focused attention on this unpopular policy, rather than away. Embodying his policy of religious toleration, his dealings with the universities provide a graphic illustration of the methods he proposed to use in pursuit of this objective.

The strategy James proposed to re-establish Catholicism through the educational institutions of the Church of England was flawed in many respects, and not least in his failure to consider the implications of the physical character of the universities themselves. Cambridge and Oxford were the only universities in England, and they were highly localized. By concentrating his efforts to educate the population to an acceptance of Catholicism via these institutions, James instead provided a 'mini-theater', the events of which were not only easy to follow, but easily construed to the wider national perspective. The consequences of this were considerable, particularly in view of the Protestant myth, for it meant that from a confined sphere of activity, James' actions were misconstrued to the overall sphere, to his ultimate disadvantage.

Of perhaps even greater consequence was his unwitting provision of a focus for discontent. Prior to the university cases, despite having previously generated considerable ill feeling, discontent had remained generalized, and therefore of considerably less danger. His attacks on Cambridge and Oxford however, focused national concern at a time when he could least afford it. This proved to be disastrous, for the provision of a focus sharpened discontent and gave it both strength and direction. The attacks launched against the universities were highly influential in uniting and consolidating Protestant opposition, providing both a rallying

point for the Church and the general populace, and a foundation on which to oppose the King.

James also underestimated, or failed to appreciate, the position the universities occupied in the national psyche. Perceived to be the guardians of religious conformity, the maintenance of which was uppermost in the English mind, the universities were not only the cornerstones of the Church of England, but the bulwarks against the evils of Catholicism. By attacking these institutions, James threatened not just the universities, but the Church as a whole, and ultimately, the status quo. Similarly, he failed to understand that the universities were royalist supporters, not as a result of simple loyalty but as a part of a mutually beneficial alliance designed to maintain the status quo. The implications of this were considerable, for he ensured that the entire Church would align itself against him. With its vast social network and influence at every level of society, this mistake was fatal. The universities too had a nation wide network of ex-graduates which, more importantly, were located primarily in the upper echelons of society. That most positions of authority in local, and in particular national government, were occupied by members of these classes gives adds weight to this fact, for in attacking the universities he excited the resentment of a powerful, active and intelligent class.

In seeking to use the universities to facilitate the re-establishment of Catholicism, James also failed to appreciate that by the later seventeenth century it was expected that doctrinal interference from the crown was a thing of the past. It was generally presumed that the religio-political strife begun in the 1530's, and ended only with the restoration of the Stuarts in 1660, was over, and that the Church of England and both the universities could now expect to remain undisturbed. Having experienced the reformation, and the rapid doctrinal changes imposed successively by Mary I, Edward VI, Elizabeth I, Parliament, and

finally Charles II, the attacks on the universities were not only unlooked for, they were unwelcome, for they appeared to bode the return to the factionalism of the previous era.

Failing to understand the national significance of the universities, or the basis of their traditional support for the crown, meant that the methods by which James proposed to establish a Catholic presence in the universities were intrinsically flawed, based as they were on a false impression of the situation. His overestimation of the strength of the doctrine of passive obedience as a means of curtailing the Church's opposition provides a good example of this. The consequences of this were particularly serious for it meant he made few efforts to tread carefully, instead approaching the situation in a confrontational manner. While such a style was characteristic of James, his overestimation of this doctrine placed no restraints on this side of his character, which led him to overplay a hand which was at best only half strength. Similarly, James underestimated the strength of the anti-Catholic tradition with a comparable result.

As a consequence, James proceeded too quickly and with a complete lack of subtlety. Riding roughshod over all opposition, his actions were neither in line with his professions of liberty of conscience, or his promise to protect the Church as it stood in law. It was therefore not surprising his actions were perceived to threaten both the rights and properties of his subjects, and the Church itself. The repercussions of this interpretation upon his efforts to establish toleration, and ultimately upon his retention of the throne, were considerable, for it led to a complete rejection of this policy. It is in the development of this perception that the central role of the universities in the deposition of James can be found, for the conviction that he threatened all that was important was integral to the apathy expressed to the invasion of William in 1688. Fundamental to the success of the Prince, this astonishing disinclination to spring to the defence of King and country against a foreign invasion was one of the

primary reasons James lost the 'war'. It also demonstrates that the type of role played by Cambridge and Oxford was essentially psychological, rather than actual. By providing the Protestant population with 'irrefutable' proof that James sought to destroy the Church and Protestantism as a whole, their plight prompted an active national rejection of James and toleration, much as Morrice had hoped for in the aftermath of the Alban Francis case.

The influence of the universities can be found in a number of other significant features of James' reign also. Perhaps the most prominent, and most directly related to the universities, was the abandonment of the doctrine of passive obedience by the Church of England, the first real break with which appeared in Cambridge and Oxford. Having viewed the promotional efforts of the King to establish Catholicism in the universities, the Church was finally convinced that to continue to promote this doctrine was not only hypocritical, but lethal in terms of self preservation. This abandonment was of crucial importance, for it not only augured the breaking of the traditional alliance between the Church and the crown, but cemented it irrevocably in stone.

The breaking of this traditional alliance was unavoidable, given the methods James chose to establish toleration. By attempting to use the universities, the corner-stones of the Church of England, to promote Catholicism, James effectively forced an unnatural choice between the Church and the crown upon his subjects. It is perhaps here that the incongruity of his strategy, and his lack of ability to either correctly read a situation, or perceive the true result of his actions, is best demonstrated, for in essence the choice was perceived to be between either traditional adherence to the royal will, or the future of the Church and Protestantism as a whole. Given the gravity of the later, it comes as no surprise, (except to James), that the former should lose out.

There exists one point on which it could be argued that the universities played more

than an exemplary role, and this lies in the direct challenge posed by the two institutions to the ecclesiastical supremacy. By insisting that the crown did not have the right to force the universities to accept mandates, whether it be for degrees or elections, both Cambridge and Oxford were in effect seeking the strict demarcation of the ecclesiastical supremacy, something which not even the Church of England had demanded. Too much significance should not be attached to this however, for it is clear that the challenge was an indirect result of their fight to exclude Catholics from their halls, and not of a conscious decision to dispute the crown's ecclesiastical supremacy.

What it does however, is lend credence to the assertion that the ecclesiastical supremacy played a prominent part in the proceedings in conjunction with the dispensing power, and that as such, needs also to be considered in any attempt to determine the legality of the actions of either the crown or the universities. This is emphasised by three factors; firstly, the crown was able to interfere in the universities only by virtue of its ecclesiastical supremacy, secondly; the cases were tried by an ecclesiastical commission rather than a court of law, and thirdly; the acceptance or rejection of mandates was as much a part of the conflict as the acceptance or rejection of dispensations. In view of these factors it seems strange that the cases should persistently be defined in terms of the legality of the dispensing power. This is even more ludicrous when one considers that the cases took place within the Church, and that the Church was one of the adversaries.

The conflict between James and the universities was in essence, I believe, one of jurisdiction, of rights, in particular, those of the universities in the face of the crown's dispensing power and ecclesiastical supremacy. It was plain that the crown's dispensing was legal, as were the dispensations issued by it, and that by virtue of the supremacy it had the authority to issue mandates. What was equally plain however, was that these powers were not

unlimited, regardless of James' assertions to the contrary. While he certainly had the right to nominate persons for degrees or positions, the universities also had the right to reject such recommendations if they failed to fulfill certain criteria.

The advantage of looking at the question of legality in terms of respective rights is that one avoids issuing a blanket along the lines of 'the dispensing power was legal/illegal therefore James was acting legally/illegally in attacking the universities.' Twigg's statement that "[t]echnically speaking, James had not exceeded his legal authority. It was impossible to stand against the King's dispensing powers, which were unassailably part of the royal prerogative"<sup>1</sup> provides a prime example of this. This type of statement ignores completely those instances in which James quite clearly overstepped the bounds of his authority such as his removal of Peachell and Hough from their freeholds. It also ignores a number of other issues such as that of private property, or the constituted right of the fellows of Magdalen to elect a president. Both these need to be considered when attempting to determine the question of legality, yet both are ignored when the cases are defined in terms of a single authority. Statements such as Twigg's also seem to miss the central issue entirely. The dispensing power was not the issue, as neither was the prerogative. What was the issue, was the universities ability to reject royal mandates, and under what circumstances.

The real concern for the universities was of course, the religion of those named in the mandates. By nominating Catholics James destroyed the delicate political balance so necessary in controlling the inherent contradictions of a system which was neither absolute nor constitutional. It is perhaps this which best demonstrates James lack of perception, for when he looked to the universities he saw only their traditional acquiescence to the royal will, and interpreted this as vulnerability. What he did not see was that it was just that, acquiescence;

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<sup>1</sup>Twigg, p.283.

or that it was the result of a partnership which was underlined by a number of unwritten presumptions and guidelines. Instead he saw a master/servant relationship in which the traditional acquiescence became legally binding. The universities' traditional compliance to the crown hid many contradictions and potential conflicts, which needed only a minor divergence in the mutual aims of the Church and crown to pose considerable strife. The efforts of James to establish a Catholic base within the universities were anything but a minor divergence, and that they resulted in bitter conflict was not surprising.

Nowhere better is the extent of the dislocation, or the estrangement between monarch and subjects demonstrated than in the universities. This was particularly serious when many Englishmen, while accepting James' right to power, believed he should rely on a broad public acceptance of this right.<sup>1</sup> The consequences of his alienating his subjects were similar to those of Charles I; while James did not lose his head, he did lose his throne and was forced to live the rest of his life in exile.

As the invasion of William became a certainty, Morrice wrote "How strangely men's interest change their opinions. They that alwaies condemned that principle of takeing up arms in defence of their religion or civill rights now thinke it both lawfull, highly laudable and absolutely necessary". In writing thus, he inadvertently summed up the principal 'achievement' of the reign of James, and the area in which the universities made their greatest contribution. Key components in the dramatic reversal in public opinion that ensued, upon which Morrice so succinctly comments, their provision to the general public of an 'indisputable' example as to James' ultimate intentions ensured, as nothing else could, that, "they who counted it a capitall crime to exclude the Duke when he was a subject, counted it a duty to dethrone him now he is King."<sup>2</sup>

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<sup>1</sup>George Hilton Jones, *Convergent Forces, Immediate Causes of the Revolution of 1688 in England*, (Iowa, 1990), p.xiii.

<sup>2</sup>Morrice Q, p.300.

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