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THE TRIAL OF THOMAS MORE – ROBERT BOLT’S *A MAN FOR ALL SEASONS*

JONATHAN K. VAN PATTEN†

The path from Magna Carta to the United States Constitution and the Bill of Rights runs through the trial of Thomas More. Robert Bolt’s magnificent portrayal of that trial in A Man for All Seasons provides an opportunity to learn and reflect on how a political trial can teach us about the meaning of justice. The search for universals must be rooted in the particulars. The particulars in this case will also resonate with modern audiences who seek to understand their own politics in times of crisis.

I. INTRODUCTION

More is a man of an angel’s wit and singular learning. I know not his fellow. For where is the man of that gentleness, lowliness and affability? And, as time requireth, a man of marvelous mirth and pastimes, and sometime of as sad gravity. A man for all seasons.

Robert Wittington

Robert Bolt adopted Robert Wittington’s praise of Thomas More for the title of his play and movie, *A Man for All Seasons*.¹ In terms of a life’s summation,

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† Professor of Law, Emeritus, The University of South Dakota (USD) Knudson School of Law; Assistant Attorney General, State of South Dakota. The views expressed here are those of the author and do not represent the views of the University nor of the Attorney General’s Office. I wish to thank Derek Nelsen (Class of 2009) for his careful editing and to acknowledge the influence of Professors Thomas Simmons and Patrick Garry on this and other writings of mine. I first met Tom when he was a student at the USD Law School. Exceptionally bright and hard-working, I came to know him best through our respective roles as editor-in-chief of the Law Review and myself as the faculty advisor. There was much palace intrigue that year, although we survived and were better for it. I always tease him that I was the faculty adviser for ten years and quit after his year. To be clear, this was due to circumstances mostly beyond our control. Later, he joined the faculty at USD, and I came to appreciate his great knowledge and advice in the areas of probate and estate planning. Seeking legal advice from a colleague is a genuine measure of respect. He also earns the respect of his students with his gentle, but stellar, command in the classroom. Tom Simmons is a model for what it means to be a tenured law professor. He is also the advisor to the Law School’s St. Thomas More Society. Patrick Garry has been my colleague, friend, and confidant. An immensely talented writer in both fiction and non-fiction venues, he inspired me to revive my writing career, which had been sidetracked for many years. We developed a close relationship over many dinners and long conversations. We matured through honest talk. Each of us would listen as the other took the lead, followed by questions, comments, and new directions. True friendship lifts each through the happy exchange. If Thomas More, or better, if Henry VIII, had a friend like Patrick Garry, the end might have been different. Saints need someone wise to talk to and, even more so, do kings.

1. ROBERT BOLT, *A MAN FOR ALL SEASONS* (1962). This essay is based on the successful movie version *A MAN FOR ALL SEASONS* (Columbia Pictures 1966) [hereinafter *A MAN FOR ALL SEASONS I*]. A later re-make of the movie was produced with Charlton Heston in the lead role. *A MAN FOR ALL SEASONS* (British Lion Films 1988).

one could not hope to do much better than More. He was heralded as *Sir* Thomas More during his lifetime and as *Saint* Thomas More several centuries later.² Next to Atticus Finch, Thomas More probably earns the greatest affection from lawyers.³ As those who often play the devil's advocate, lawyers are a tough sell on the adoration scale. One has to go back nearly five hundred years to find a Saint who was also a lawyer.⁴

Thomas More was born on February 7, 1478, in the City of London, the son of Sir John More, a successful lawyer and later a judge.⁵ He was the second of six children and attended St. Anthony's School, then considered one of London's best schools.⁶ Young More served the Archbishop of Canterbury and the Lord Chancellor of England as a household page.⁷ He began classical studies at Oxford in 1492 (a fateful year)⁸ and became proficient in Latin.⁹ At his father's insistence, he left Oxford after only two years and began legal training in London at one of the Inns of Chancery.¹⁰ He later joined Lincoln's Inn, one of the Inns of Court, where he remained until he became a member of the bar.¹¹ According to his friend, Erasmus, More also seriously considered leaving law to become a monk¹² but ultimately decided to remain in the law.¹³ In 1509, he was elected to Parliament.¹⁴ He rose to prominence in London, assuming the duties of under-sheriff, judge, commissioner for public works, and teaching at Oxford University.¹⁵ He published *Utopia* in 1516, a philosophical description of "The

2. More was canonized in 1935 by Pope Pius XI on the 400th anniversary of his martyrdom. See Robert F. Drinan, S.J., *Renaissance Lawyer, Renaissance Man*, 99 HARV. L. REV. 499, 499 (1985) (book review).

3. See Edward McGlynn Gaffney, Jr., *The Principled Resignation of Thomas More*, 31 LOY. L.A. L. REV. 63 (1997); Michael E. Tigar, *Rationing Justice—What Thomas More Would Say*, 2 J. INST. FOR STUDY LEGAL ETHICS 187 (1999); Steven D. Smith, *Interrogating Thomas More: The Conundrums of Conscience*, 1 U. ST. THOMAS L.J. 580 (2003); Michael S. McGinniss, *Expressing Conscience with Candor: Saint Thomas More and First Freedoms in the Legal Profession*, 42 HARV. J.L. & PUB. POL'Y 173 (2019); Blake D. Morant, *Lawyers as Conservators and Guardians: Justice, the Rule of Law, and the Relevance of Sir Thomas More*, 2012 MICH. ST. L. REV. 647 (2012).

4. Gaffney, *supra* note 3, at 65-66; see also John H. Wigmore, *St. Ives, Patron Saint of Lawyers*, CATH. CULTURE, <https://perma.cc/4KNP-ZLXX> (last visited Oct. 26, 2022) (describing Saint Ives, who lived from 1253-1303, as the patron saint of lawyers); *Saint of the Day: Saint John of Capistrano*, FRANCISCAN MEDIA (Oct. 23, 2020), <https://perma.cc/KKQ8-PFJN> (stating St. John of Capistrano (1385-1456) is the patron saint of judges); *St. Genesius*, SAINTS PRESERVED, <https://perma.cc/5VYW-QKNA> (last visited Oct. 26, 2022) (describing St. Genesius, who was a theatrical leader around 300 AD, as the patron saint of actors, comedians, clowns, and lawyers). My thanks to Professor Tom Simmons for this information.

5. PETER ACKROYD, *THE LIFE OF THOMAS MORE* 6, 10 (1998).

6. *Id.* at 11, 19.

7. *Id.* at 29.

8. Europe's discovery of the "New World" in 1492 marked an epoch event for both Europe and the "New World." The arc of history for both changed irrevocably as a result.

9. ACKROYD, *supra* note 5, at 38, 45-49.

10. *Id.* at 53-54.

11. *Id.* at 59-60.

12. *Id.* at 96-98, 103.

13. *Id.* at 103-08.

14. *Id.* at 137-38.

15. *Id.* at 138-40, 151-53, 156-57.

Best Condition of a Society.”¹⁶ He was knighted in 1520¹⁷ and became speaker of the House of Commons in 1523 at the recommendation of the Lord Chancellor, Thomas Cardinal Wolsey.¹⁸

Prominent though More was before 1529, it was his principled opposition to Henry VIII’s divorce, re-marriage, and assumption of leadership in the English church that provides us with his memorable story of courage and conviction. It is a story about conscience and oaths, the rule of law and its corruption, the meaning of silence, and the meaning of justice.

II. COUNSELOR AND MEMBER OF THE KING’S COUNCIL

Robert Bolt began his narrative with the summoning of More to a meeting with Cardinal Wolsey,¹⁹ who held the second most important role in the English church and also served in the secular role of Lord Chancellor, the King’s chief advisor.²⁰ Wolsey’s rise from humble beginnings had coincided with Henry VIII’s accession to the throne at the age of seventeen upon the death of his father, Henry VII, in 1509.²¹ Wolsey had the ability and ambition to take care of the details of government, and he acted as the King’s alter ego on many matters, both domestic and foreign.²² Although this gained him enemies in the church and the government, Wolsey had managed to survive until he came up against a problem that perhaps no one could have solved—the King’s desire to produce a male heir to the throne.²³

16. *Id.* at 165, 170-71, 184. More dedicated *Utopia* to Wolsey in 1516. ARTHUR JOSEPH SLAVIN, *THE PRECARIOUS BALANCE: ENGLISH GOVERNMENT AND SOCIETY* 126 (1973).

17. ACKROYD, *supra* note 5, at 217.

18. THOMAS MORE’S TRIAL BY JURY: A PROCEDURAL AND LEGAL REVIEW WITH A COLLECTION OF DOCUMENTS xiv (Henry Ansgar Kelly et al. eds., 2011) [hereinafter THOMAS MORE’S TRIAL BY JURY].

19. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 0:39.

20. ACKROYD, *supra* note 5, at 180.

21. *Id.* at 130; *see also* G.R. ELTON, *ENGLAND UNDER THE TUDORS* 74 (3d ed. 1991) (stating “[t]he king’s death nearly wrecked a promising start, but late in 1509 Henry VIII made Wolsey almoner [the chief administrator of alms for the poor] and a member of the council”).

22. *See* SLAVIN, *supra* note 16, at 125:

Above them all, in the fifteen years that separated Hunne’s death from the Reformation Parliament, stood Thomas Wolsey. He was Henry VIII’s wheel horse, a careerist in government who had first come to notice as an Oxford don. He rose slowly in Tudor service until 1512-13, when his priestly talents found an unlikely outlet: he became a great war minister, the guiding genius of the French campaigns. And he was well rewarded. Perhaps only Becket or Henry Cardinal Beaufort had in the past equaled Wolsey’s accumulation of offices, wealth, and power. For this son of an Ipswich butcher was by 1515 a cardinal; over the next four years he established his mastery in the kingdom and in Europe’s diplomacy. In 1519 he added to the ordinary legatine powers of metropolitan bishops the special powers of a *legatus a latere*. This title he secured for life. It gave him the final leverage to elevate himself over Canterbury (William Warham) and the lay aristocracy.

See also id. at 102-03 (describing Wolsey’s genius and skill in fashioning a new basis for direct taxation).

23. ELTON, *supra* note 21, at 116-21; *The Wives of Henry VIII*, STUDENTS OF HIST., <https://perma.cc/YCG5-GQX3> (last visited Dec. 14, 2022).

Henry VIII was the second son of Henry VII and had not been expected to become king.²⁴ This changed with the sudden death of his older brother, Arthur, in 1502.²⁵ In anticipation of assuming the kingship when older, Henry was commanded to take on his brother's widow, Catherine of Aragon, to seal the growing alliance with an emerging Spain.²⁶ Catherine was the daughter of Spanish royalty, and the marriage was formalized when Henry became king in 1509 at the age of seventeen.²⁷ This marriage did not produce a male heir.²⁸ One daughter, Mary, survived to adulthood; all male children were stillborn or died in infancy.²⁹ By 1525, the matter had grown to an obsession with Henry.³⁰ He wanted to end his marriage with Catherine and to marry Anne Boleyn, a member of the Queen's entourage, who had attracted Henry's attentions.³¹

Henry resolved to settle the matter by seeking an annulment of the marriage to Catherine.³² Wolsey sought More's support because of his reputation for honesty and good judgment.³³ The two men approached the subject carefully, like two wrestlers sizing up each other:

Wolsey: You opposed me in the Council this morning, Thomas.

More: Yes, your Grace.

Wolsey: You were the only one.

More: Yes, your Grace.

Wolsey: You're a fool.

More: Thank God, there is only one fool on the Council.

Wolsey: Why did you oppose me?

More: I thought your Grace was wrong.

Wolsey: Matter of conscience. You're a constant regret to me, Thomas. If you could just see facts flat on without the horrible moral squint. With a little common sense, you could have made a statesman.³⁴

24. ELTON, *supra* note 21, at 38.

25. *Id.*

26. *Id.* at 38-39.

27. *Id.* at 38-39, 70; *Katherine of Aragon: Henry VIII's Most Devoted Wife and Queen?*, HIST. ROYAL PALACES, <https://perma.cc/UJ54-YLN5> (last visited Dec. 14, 2022).

28. SLAVIN, *supra* note 16, at 139.

29. *Id.*

30. ELTON, *supra* note 21, at 70. This was not some obscure fetish about succession. Henry VIII's succession in 1509 to the throne upon the death of his father was the first time that an English son had succeeded to his father's throne since 1422. Jonathan K. Van Patten, *Magic, Prophecy, and the Law of Treason in Reformation England*, 27 AM. J. LEGAL HIST. 1, 8, (1983). There was much political uncertainty, and even civil war, between 1422 and 1509 to prove this point. *See id.*

31. SLAVIN, *supra* note 16, at 140.

32. ACKROYD, *supra* note 5, at 263. Henry had cited Scripture to the effect that a brother was forbidden to marry his brother's widow. *Leviticus* 18. Catherine, for her part, argued that the first marriage had not been consummated and thus was no bar to the marriage with Henry. ACKROYD, *supra* note 5, at 272-73.

33. *Id.* at 264-65.

34. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 9:40. The dialogue in the movie retains the sense of urgency that characterizes the play. No computer-generated special effects, little change of scenery or sets, no small talk. The dialogue is tight; it gets right to the point.

They were interrupted by a trumpet herald in the distance.³⁵ The King had returned, apparently from a *liaison* with Anne Boleyn.³⁶ Wolsey was disgusted but brought the discussion back to the point of the meeting:

Wolsey: More, are you going to help me?

More: If your Grace will be specific.

Wolsey [exasperated]: Ah! You're a plodder. All right, we'll plod.³⁷ The King wants a son. What are you going to do about it?

More: I'm very sure the King needs no advice from me on what to do about it.³⁸

Wolsey [lowering his voice]: Thomas, we're alone. I give you my word, there's no one here.

More [glancing back toward the door with Secretary Thomas Cromwell surely on the other side]: I didn't suppose there was, your Grace.

Wolsey [surprised, disappointed]: Oh . . .³⁹ [Changing tact and speaking loudly so that Cromwell would hear]: Do you favor a change of dynasty, Sir Thomas? Do you think two Tudors are sufficient?

More [looking around, shaken]: For God's sake, your Grace.

Wolsey: Then he needs a son. I repeat, what are you going to do about it?⁴⁰

More: I pray for it daily.⁴¹

Wolsey [looking at More, scoffing, and muttering to himself]: [By] God's death, he means it. [To More]: That thing out there [Anne Boleyn], at least she's fertile.

More: But she's not his wife.

Wolsey: No, Catherine's his wife, and she's barren as a brick. Are you going to pray for a miracle?

More: There are precedents.⁴²

35. *Id.* beginning at 10:33.

36. *Id.* beginning at 11:08.

37. The Cardinal might as well have said: "Ah, you're a lawyer. All right, we'll play it your way."

38. So much for plodding. Wolsey got to the point, but clumsily so, and More deftly parried this thrust with humor. Wolsey may have been experienced in the ways of politics, but More was also very experienced in the courtroom give-and-take of argument.

39. Wolsey was expecting a private, candid answer. More's gesture in checking for Cromwell showed that he was well aware of the possibility of eavesdropping, despite Wolsey's assurance that they were alone. More, in effect, let Wolsey know that his assurance was a lie.

40. Having failed to elicit a candid statement, Wolsey asked More for a public statement on the issue of the day. But he lacked the lawyer's skill of setting a trap.

41. And so More deftly escaped the trap, however briefly.

42. *See, e.g., Genesis* 17:16-17 (describing the Biblical story of Abraham and Sarah, who bore a child, Isaac, when she was ninety years old); *Genesis* 25:21 (describing the story of Rebekah's pregnancy); *Genesis* 30:1-24 (describing the story of Rachel's pregnancies); 1 *Samuel* 1:18-19 (describing the story of Hannah's pregnancy with Samuel); *Judges* 13 (describing the story of Manoah's wife, who bore Samson).

Wolsey [pausing]: All right. Good. Pray. Pray, by all means. But in addition to prayer, there is effort. And my effort is to secure a divorce. [Leaning forward for emphasis]. Have I your support, or have I not?⁴³

Still seeking to avoid a categorical no, More chose not to answer his question directly.⁴⁴ Instead, he responded quite deliberately, answering the question with a question: “The Pope gave a dispensation so that the King might marry his brother’s widow for state reasons. Now we are to ask the Pope to dispense with his dispensation also for state reasons?”⁴⁵ Wolsey did not like this ploy and simply re-asked the question: “Well?”⁴⁶ But More had not run out of ways to avoid giving a direct answer: “Then, clearly all we have to do is to approach his Holiness and ask him.”⁴⁷ After more sparring about how this might work, Wolsey hinted that “pressure,” possibly confiscation of Church property, might be brought to bear on this request.⁴⁸ At this point, More finally gave a direct answer that he had so carefully sought to avoid: “No, your Grace, I’m not going to help you.”⁴⁹

With that, the verbal dance ended, and Wolsey lost his temper:

Wolsey: Let the dynasty die with Henry VIII and we’ll have dynastic wars again. Blood-witted barons ramping the country from end to end. [Banging his fist on the table]. Is that what you want?

More: [Silence].

Wolsey: [Calming down]. Very well. England needs an heir. Certain measures, perhaps regrettable, perhaps not. There’s much in the Church which needs reformation, Thomas. [More remains silent].⁵⁰ Alright, regrettable. But necessary to get us an heir. Now explain how you, as a councilor of England, can obstruct these measures, for the sake of your own private conscience.

More: Well, I think when statesmen forsake their own private conscience for the sake of their public duties, they lead their country by a short route to chaos. [Pause, as Wolsey is clearly not happy with More’s response. And then, with a wry smile]. And we shall have my prayers to fall back on.

Wolsey: Hmm. You’d like that, wouldn’t you. To govern the country with prayers?

More: Yes, I should.

43. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 11:32.

44. *Id.* beginning at 12:54.

45. *Id.* beginning at 12:53.

46. *Id.* beginning at 13:08.

47. *Id.* beginning at 13:10. Cf. Jonathan K. Van Patten, *Twenty-Five Ways To Say No*, 63 S.D. L. REV. 337 (2018) (discussing the many ways to give a non-positive response without ending the conversation).

48. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 13:19.

49. *Id.* beginning at 13:37.

50. Note how More used silence as a subtle weapon in argument. It drew out Wolsey’s candid assessment of what must be done.

Wolsey: I'd like to be there when you try.⁵¹

We see a role reversal from the conventional stereotypes, with Cardinal Wolsey expressing a cynical realism more in the style of a lawyer, while More displayed a piety normally associated with a man of the church.⁵²

Wolsey then shifted the discussion to another political issue, i.e., who should be the next Lord Chancellor?⁵³ More indicated that his preference was Bishop John Fisher.⁵⁴ Wolsey asked, perhaps impishly, what about Cromwell?⁵⁵ More, well aware that Cromwell was lurking by the door, stated cautiously: "He's a very able man." Wolsey pressed him, "But?" Without further elaboration, More simply stated: "Me rather than Cromwell."⁵⁶ Cromwell, eavesdropping, let out a smile, as he took in this bit of political intelligence for future use.⁵⁷ Wolsey responded to More's last remark with this advice: "Then come down to earth. Until you do, you and I are enemies."⁵⁸ Wolsey softened this harsh assessment and ended their meeting with a grudging compliment: "More, you should have been a cleric."⁵⁹ And this gave More an opportunity for an ironic last word: "Like yourself, your Grace?"⁶⁰ Skillful to the end, More played Wolsey like a matador, dealing with the fiery eyes and seething anger of the bull. But while this bull would soon be incapacitated, there would be others who would prove to be more lethal.

This scene, a memorable collaboration of two magnificent actors and the playwright, established the themes for what was to follow. Wolsey believed that certain measures were necessary, however regrettable, to achieve a political end—perpetuation of the Tudor reign without another bloody civil war. Private conscience was a luxury that could not be indulged in the face of an imminent crisis. More, on the other hand, believed that political expediency could not justify a departure from moral and spiritual principles. He thought that principles were paramount, that ideas have consequences.

On his way out from the meeting with Wolsey, More was besieged by numerous supplicants who sought More's influence on pending court cases.⁶¹ He distractedly accepted a valuable Italian silver cup from a woman and was offered food from another whose daughter had a cause in court.⁶² More promised to give the same judgment as he would his own daughter.⁶³ As More reflected on the "gift" of the silver cup and its meaning, he attempted to drop it in the Thames

51. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 13:51.

52. *Id.* beginning at 13:51 (referring to Cardinal Wolsey, a cardinal priest, and More, a lawyer).

53. *Id.* beginning at 15:07.

54. *Id.* beginning at 15:11.

55. *Id.* beginning at 15:16.

56. *Id.* beginning at 15:25.

57. *Id.* beginning at 15:28.

58. *Id.* beginning at 15:38.

59. *Id.* beginning at 15:52.

60. *Id.* beginning at 15:54.

61. *Id.* beginning at 16:13.

62. *Id.* beginning at 16:23.

63. *Id.* beginning at 16:43.

River.⁶⁴ But the boatman retrieved the cup before it sank and so More reluctantly kept it.⁶⁵ This brief interlude gave a simple illustration of the peril of maintaining integrity while avoiding temptation.

When More returned home at dawn, another type of supplicant, an office seeker named Richard Rich, was waiting.⁶⁶ More offered him a teaching post, but Rich was obviously disappointed.⁶⁷ More said that no one would offer Rich a place at court.⁶⁸ Rich countered, “Master Cromwell says he’ll do something for me.”⁶⁹ More shot back disdainfully, “Cromwell? Well, if you know Cromwell you don’t need my help.”⁷⁰ “Sir Thomas?” pleaded Rich, “[i]f only you knew how much, much rather, I had your help than his.”⁷¹ But More remained firm. “Not to a place at court.”⁷² More showed him the silver cup, saying it was a bribe.⁷³ He gave it to Rich, who was grateful.⁷⁴ More said he should be a teacher.⁷⁵ “A man should go where he won’t be tempted.”⁷⁶ There was too much temptation at court for a young man like Rich.⁷⁷ Rich revealed his ambition by saying that no one would know of him if he was only a teacher.⁷⁸ More admonished Rich: “Be a teacher.”⁷⁹

The return home brought little rest, only another predicament, this one domestic.⁸⁰ A young lawyer, Will Roper, asked More for permission to marry his daughter, Margaret.⁸¹ More turned him down flat because of Roper’s penchant for the teachings of Martin Luther, whom More regarded as a heretic.⁸² Jarring as this is to a modern ear, More’s “gentleness” and “affability” only went so far. More warded off his family’s inquiries about his meeting with Wolsey and dismissed the growing speculation that More would replace Wolsey as Lord

64. *Id.* beginning at 18:30.

65. *Id.* beginning at 18:50.

66. *Id.* beginning at 19:09.

67. *Id.* beginning at 19:50.

68. *Id.* beginning at 20:10.

69. *Id.* beginning at 20:15.

70. *Id.* beginning at 20:20.

71. *Id.* beginning at 20:26.

72. *Id.* beginning at 20:36.

73. *Id.* beginning at 20:41.

74. *Id.* beginning at 21:01.

75. *Id.* beginning at 21:31.

76. *Id.* beginning at 21:26.

77. *Id.* beginning at 21:20.

78. *Id.* beginning at 21:37.

79. *Id.* beginning at 19:10.

80. *Id.* beginning at 22:30.

81. *Id.* beginning at 23:01. It is perhaps appropriate at this point to note that Bolt’s narrative was mostly, but not completely, accurate. Roper courted and wed Margaret in 1521, well before the events depicted in the narrative. Susan Abernethy, *Margaret Roper, Daughter of Sir Thomas More*, FREELANCE HIST. WRITER (July 19, 2012), <https://perma.cc/4EQ7-XFCW>. Bolt’s re-arranging of the chronology served to intensify the drama without distorting it.

82. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 22:24.

Chancellor.⁸³ “There’ll be no new Chancellors while Wolsey lives,” he remarked.⁸⁴

III. CHANCELLOR OF THE EXCHEQUER

Thomas Cardinal Wolsey fell out of favor with Henry VIII in 1529, largely because of his inability to deliver on Henry’s desire for a diplomatic resolution of the divorce issue.⁸⁵ He was replaced by Thomas More, who was installed in a grand ceremony.⁸⁶ The Lord Chancellor was the highest-ranking officer in the King’s Cabinet, in charge of the functioning of the courts, including the Court of Chancery.⁸⁷ In the case of Wolsey, the Lord Chancellor also served as an adviser to the King, a Secretary of State for foreign affairs, and generally ran the government through King’s council while the King pursued his own interests.⁸⁸

One of More’s chief roles as Lord Chancellor was to be adviser to the King.⁸⁹ The King and his entourage visited More’s home in Chelsea on the Thames River.⁹⁰ Henry’s purpose was to solicit More’s support for the divorce, bringing both his charm and pressure to the effort.⁹¹ “Thank God I have a friend for my chancellor,”⁹² he began, distinguishing More from Wolsey. More praised Wolsey,⁹³ but this only served to ignite Henry’s ire at Wolsey and his failure to attain a solution to the King’s great problem.⁹⁴ After Henry calmed down, he made the basic argument that his marriage had been in violation of the Old Testament prohibition against marrying his brother’s widow.⁹⁵ Henry took his

83. *Id.* beginning at 24:39.

84. *Id.* beginning at 26:12. Through the magic of storytelling, Wolsey’s death was made to occur just prior to More’s appointment as Lord Chancellor. *Id.* beginning at 26:50. In fact, More assumed the position on October 26, 1529, and Wolsey’s death, at age 57, occurred more than a year later on November 29, 1530. ACKROYD, *supra* note 5, at 287-89.

85. ACKROYD, *supra* note 5, at 287.

86. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 27:50. The Duke of Norfolk read the proclamation, which took on ironic meaning in light of subsequent events:

I am straightly charged by the King himself here openly to declare how much all England is beholden to this man. And how worthy he is to have the highest room in the realm. And how dearly the King’s grace doth love and trust him not only for much good council deliberate council, but for better council yet that which is privy to the King’s person. And this same Sir Thomas More here made before you all to be Lord Chancellor of the Realm.

Id. beginning at 28:11.

87. *Lord Chancellor*, UK PARLIAMENT, <https://perma.cc/PCC4-8LGA> (last visited Dec. 12, 2022). This may explain why there were so many “supplicants” waiting outside of Wolsey’s office. They immediately gathered around More, with petitions and “gifts” when he came out of Wolsey’s office. *Id.* beginning at 16:18.

88. SLAVIN, *supra* note 16, at 125-26.

89. *Lord Chancellor*, *supra* note 87.

90. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 31:00.

91. *Id.* beginning at 32:08.

92. *Id.* beginning at 35:10.

93. “He was a statesman of incomparable ability, your Grace.” *Id.* beginning at 35:34.

94. *Id.* beginning at 35:39.

95. *Id.* beginning at 37:42. The reference is to Leviticus 18:16. *Id.* beginning at 37:46. There probably is a slight anachronism here in that English translations of the Old Testament were not widely

own experience as an affirmation of that proscription. Son after son had been stillborn or had died within the first month.⁹⁶ “I never saw the hand of God so clear in anything.”⁹⁷ Henry pressed More: “How is it that you cannot see? Everyone else does.”⁹⁸ More countered: “Then why does your Grace need my poor support?”⁹⁹ “Because you’re honest,” came the quick reply.¹⁰⁰ After more verbal skirmishing, Henry stated: “I’ll leave you out of it, but you are my chancellor.”¹⁰¹ Henry reiterated: “I don’t take it kindly, and I’ll have no opposition.”¹⁰² More expressed his reluctance to be in this position: “If I cannot serve your Grace in this great matter of the Queen”¹⁰³ This triggered Henry’s anger, once again:

I have no queen! Catherine’s not my wife! No priest can make her so. They that say she is my wife are not only liars, but traitors! Yes, traitors! That I will not brook now! Treachery, treachery, treachery, I will not brook. It maddens me. It is a deadly canker in the body politic. And I will have it out!¹⁰⁴

Seeing More’s obvious distress, Henry began to compose himself. “You see how you’ve maddened me? I hardly know myself.”¹⁰⁵ Henry sat down by More. “Have I not promised I’ll leave you out of it?”¹⁰⁶ And on that note, they amicably ended the conversation.

As the King and his entourage left, Cromwell noticed Richard Rich in the crowd and called him over.¹⁰⁷ Seeking information about More, Cromwell asked, “Are you coming my way, Rich?”¹⁰⁸ To his credit, Rich said, “No.”¹⁰⁹ “I can’t tell you anything.”¹¹⁰ Rich, clearly conflicted about what he should do, returned to the More household. Meanwhile, More assured his wife, Alice, that he was being careful: “Whatever may be done by smiling, you may rely on me to do. Alice, set your mind at rest.”¹¹¹ Pointing to himself, he said, “This is not the stuff of which martyrs are made.”¹¹² More was prescient about many things, but prediction about his own future was not one of them.

available at this time and thus not likely to be a part of this conversation. It should also be noted that More had argued against William Tyndale, who had translated the Bible into English. ACKROYD, *supra* note 5, at 307-11.

96. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 38:13.

97. *Id.* beginning at 38:23.

98. *Id.* beginning at 38:34.

99. *Id.* beginning at 38:36.

100. *Id.* beginning at 38:38.

101. *Id.* beginning at 40:38.

102. *Id.* beginning at 40:46.

103. *Id.* beginning at 41:06.

104. *Id.* beginning at 41:08.

105. *Id.* beginning at 41:52.

106. *Id.* beginning at 42:35.

107. *Id.* beginning at 44:40.

108. *Id.* beginning at 44:50.

109. *Id.* beginning at 44:52.

110. *Id.* beginning at 44:55.

111. *Id.* beginning at 45:30.

112. *Id.* beginning at 45:45.

Robert Bolt accelerated the pace of the narrative by placing certain events within the time frame of the story of More's service as Lord Chancellor. The courtship of More's eldest daughter, Margaret, and William Roper took place almost a decade earlier but it was inserted into this narrative to illustrate various roles—husband, father, counselor, lawyer, and Lord Chancellor—that played out simultaneously with this man for all seasons. In the course of asking for More's daughter's hand in marriage (a second time), Roper launched into an attack against King Henry, which More could not abide on account of his office as a minister of the King.¹¹³ There is no small talk in this play.

This political/theological interlude was cut short by the appearance of Richard Rich, who had come again seeking employment from More.¹¹⁴ Rich's ploy this time was the information that Cromwell had been asking questions about More.¹¹⁵ Implying that this could be cut off if Rich had a greater stake in the More household, Rich begged for employment.¹¹⁶ More turned him down, again.¹¹⁷ Rich pleaded, "I would be faithful."¹¹⁸ Taking the measure of the young man, More stated, "Richard, you couldn't answer for yourself so far as tonight."¹¹⁹

After Rich left, a heated discussion ensued:

Alice: Arrest him!

More: For what?

Alice: He's dangerous

Roper: Libel. He's a spy.

Margaret: Father, that man's bad.

More: There's no law against that.

Roper: There is. God's law!

More: Then God can arrest him.

Alice: While you talk, he's gone!

More: And go he should if he were the Devil himself, until he broke the law.

Roper [amazed]: So, now you give the Devil benefit of law!

More: Yes, what would you do? Cut a great road through the law to get after the Devil?

Roper: Yes. I'd cut down every law in England to do that.

More [rising]: Oh, and when the last law was down, and the Devil turned on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws from coast to coast. Man's law, not God's. And if you cut them down, and you're just the man to do it, do you really think you could stand upright in

113. *Id.* beginning at 46:32.

114. *Id.* beginning at 47:16.

115. *Id.* beginning at 47:30.

116. *Id.* beginning at 48:30.

117. *Id.* beginning at 48:33.

118. *Id.* beginning at 48:52.

119. *Id.* beginning at 48:56.

the winds that would blow then? Yes. I'd give the Devil benefit of law for my own safety's sake.¹²⁰

More's speech on the rule of law is what has made this story so memorable among lawyers.¹²¹ It is a classic statement about the value of the rule of law, not the rule of men.

For Thomas More, these were not just stirring words. They expressed a deeply felt commitment to the rule of law. He was able to act on that commitment in carrying out his duties at Chancery:

For thirty-one months Thomas More embodied the law of England. He was the presiding figure in Chancery and in the Star Chamber; he was known as "the keeper of the [K]ing's conscience" and, in that capacity, he was permitted to apply equity and moral judgment to the strict application of the law.¹²²

More's background served him well in this position:

Unlike Wolsey, More brought to the practice of justice a huge resource of knowledge and experience Part of his duty as Lord Chancellor was to introduce the principles of equity into the system of justice and, by ordering his conscience "after the rewles [sic] and groundes [sic] of the law", to remedy manifest injustice or assist those who seemed to be thwarted by the strict procedures in the ordinary courts.¹²³

* * * *

More's growing isolation from the king's counsels meant that he had far more time to devote to his duties than ever his predecessor did; Wolsey had received 540 chancery petitions

120. *Id.* beginning at 49:14.

121. See, e.g., Constantine L. Trela, Jr., *Some Thoughts on Justice Stevens and Judging*, 106 NW. U. L. REV. 839, 842-43 (2012) (discussing the influence of *A Man for All Seasons* on Justice Stevens's respect for the law); John W. Head, *Civilization and Law: A Dark Optimism Based on the Precedent of Unprecedented Crises*, 59 U. KAN. L. REV. 1045, 1049-50 (2011) (explaining the importance of the law in maintaining civilization); Stephen H. Sachs, *A Man for All Seasons: Heroism in "The Thickets of the Law"*, 41 MD. B.J. 54 (2008) (discussing the interplay between law and one's principles); William H. Pryor, Jr., *Moral Duty and the Rule of Law*, 31 HARV. J.L. & PUB. POL'Y 153, 153-54 (2008) (discussing the potential conflict of moral and legal duties); Thomas B. Griffith, *Lawyers and the Rule of Law*, 16 UTAH B.J. 12, 12-13 (2003) (utilizing *A Man for All Seasons* to explain the importance of law for all members of society); Herald Price Fahringer, *Are We Afraid to Be Free?*, 70 N.Y. ST. B.J. 6, 7 (1998) (addressing the role of law in preserving rights and maintaining freedoms).

Note also the additional lines, which appear in the original play version but not in the film:

Roper: Sophistication upon sophistication!

More: No sheer simplicity. The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal.

Roper: Then you set man's law above God's!

More: No, far below, but let me draw your attention to a fact, Roper—I'm not God. The currents and eddies of right and wrong, which you find such plain sailing, I can't navigate. I'm no voyager. But in the thickets of the law, there I'm a forester. I doubt if there's a man alive who could follow me there, thank God

BOLT, *supra* note 2, at 56.

122. ACKROYD, *supra* note 5, at 294.

123. *Id.* at 295.

each year, whereas the average for More was 900. It seems likely, then, that plaintiffs preferred the verdict of Thomas More rather than that of a jury Here was a lawyer who had reached the pinnacle of his profession, dispensing justice with equity in a manner which the prelates of the Church, his predecessors, had never been able to achieve.¹²⁴

Meanwhile, Richard Rich, humiliated by his rebuff at the More household, went to see Cromwell.¹²⁵ Thomas Cromwell had become the major rival to Thomas More.¹²⁶ He had gained power pretty much in inverse relation to More's waning power.¹²⁷ Cromwell was a member of Parliament in 1523 when More was its Speaker.¹²⁸ At the beginning of Bolt's narrative, Cromwell was the secretary to Wolsey;¹²⁹ by the end, he was Henry's principal secretary and chief minister.¹³⁰

The fall of [Wolsey] did not in fact affect Cromwell's career; he had unique powers of organization and administration which would have been invaluable to any sovereign or great minister. So, by the end of 1530, he had become an important member of the king's council. Certainly he was actively preparing parliamentary business on an ambitious scale It is not likely that More approved of all [Cromwell's] plans Yet [More] was no longer in a position to help or to hinder; the initiative had passed to Cromwell, who was indeed the man for a new age.¹³¹

Rich's visit with Cromwell meant that the plot against More was now moving ahead. Cromwell had been anticipating this meeting for months.¹³² He instructed Rich about what was needed. "Our job as administrators is to minimize the inconvenience" that carrying out Henry's wishes was going to cause.¹³³ He asked Rich about the gift that More received when he left Wolsey's office.¹³⁴ Rich reluctantly gave up the information.¹³⁵ Cromwell smugly commented, "There. That wasn't too painful, was it? . . . And you'll find it easier, next time."¹³⁶

124. *Id.* at 296-97.

125. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 50:50.

126. ACKROYD, *supra* note 5, at 316-17.

127. *Id.*

128. *Id.* at 316.

129. BOLT, *supra* note 1, at 13.

130. ACKROYD, *supra* note 5, at 316. In Bolt's narrative, Cromwell was also made the prosecutor at More's trial. BOLT, *supra* note 1, at 13; *see also* G.R. ELTON, POLICY AND POLICE: THE ENFORCEMENT OF THE REFORMATION IN THE AGE OF THOMAS CROMWELL 148-63 (1972) (showing Cromwell as the prosecutor during More's trial).

131. ACKROYD, *supra* note 5, at 317.

132. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 50:50.

133. *Id.* beginning at 52:47.

134. *Id.* beginning at 54:00.

135. *Id.* beginning at 54:17.

136. *Id.* beginning at 54:37.

Meanwhile, Henry moved to challenge the Pope, without the support of his Chancellor.¹³⁷ He summoned a special meeting of the clergy and demanded payment of 100,000 pounds and submission of the clergy to the authority of the King in all matters, including ecclesiastical.¹³⁸ This meant that Henry, not the Pope, had become the true head of the church in England. “On the day after the clergy submitted” to this latter demand, “More resigned as Lord Chancellor.”¹³⁹ More, surrounded by his family, gave up the ceremonial necklace signifying the position.¹⁴⁰ He had trouble taking it off and asked for assistance from the Duke of Norfolk, a close family friend and the one charged with retrieving the necklace.¹⁴¹ Norfolk declined, and likewise More’s wife, Alice, who had some sharp words: “No. Sun and moon, Master More, you’re taken for a wise man. Is this wisdom? To betray your ability, abandon your station, and forget your duty to your kith and kin?”¹⁴² Roper volunteered, but it was Margaret who obliged More’s request.¹⁴³ Honor, duty, love, and acceptance of fate were all bound up in this tender scene.

Outside, Norfolk asked More for an explanation, and he obliged:

More: This isn’t reformation. This is war against the Church. Our King has declared war on the Pope because the Pope will not declare that our Queen is not his wife.

Norfolk: And is she? [Silence from More]. Is she?

More: Have I your word that what I say is between us two?

Norfolk: Oh, very well.

More: If the King should command you to repeat what I may say?

Norfolk: I should keep my word to you.

More: Then what has become of your oath of obedience to the King?

Norfolk: You lay traps for me.

More: No, I show you the times.¹⁴⁴

More admitted to being afraid.¹⁴⁵ Norfolk chastised him: “Man, you’re ill. This isn’t Spain, you know. This is England.”¹⁴⁶ But More was not wrong to be afraid, even in England. More’s service as Lord Chancellor lasted from October 1529 to May 1532.¹⁴⁷

137. *Id.* beginning at 54:49.

138. *Id.* beginning at 55:46; ACKROYD, *supra* note 5, at 328.

139. ACKROYD, *supra* note 5, at 328; *see also* A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 56:29 (depicting More’s resignation).

140. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 56:28.

141. *Id.* beginning at 56:46.

142. *Id.* beginning at 57:09.

143. *Id.* beginning at 57:08.

144. *Id.* beginning at 58:06.

145. *Id.* beginning at 59:27.

146. *Id.* beginning at 59:30.

147. ACKROYD, *supra* note 5, at 287-88, 313.

IV. PRIVATE CITIZEN AND DEFENDANT

With his resignation as Lord Chancellor, Thomas More undertook the mundane task of downsizing his household.¹⁴⁸ “I am no longer a great man.”¹⁴⁹ He met with his staff and discharged them, in the most humane way.¹⁵⁰ “Since I am no more a great man, I no longer need a great household. Nor can I afford one No one will be turned away from here until we’ve found another place for him.”¹⁵¹ A sad time.

Alice lamented, “Well, there’s an end of you. What’ll you do now, sit by the fire?”¹⁵² More revealed his strategy to his wife:

More: I’ve made no statement. I’ve resigned, that’s all. The King is made by act of Parliament Supreme Head of the Church in England. This English Church will first divorce him from the Queen, then marry him to Lady Anne. But on any of these matters, have you heard me make a statement?

Alice: No. And if I’m to lose my rank and fall to housekeeping, I want to know the reason. So make a statement now.

More: No. Alice, it’s a point of law. Accept it from me Alice, that in silence is my safety, under the law. And my silence must be absolute, it must extend to you.

Alice: In short, you don’t trust me.

More: Look. I’m the Lord Chief Justice, I’m Cromwell, I’m the keeper of the Tower. I take your hand I clamp it on the Bible, on the blessed Cross, and I say: “Woman, has your husband made a statement on these matters? Now on peril of your soul remember, what is your answer?”

Alice: No.

More: And so it must remain.¹⁵³

It was a dangerous matter. More had not even confided with Margaret, his favorite child.¹⁵⁴ More made another prediction: “No, no. When they find I’m silent, they’ll want nothing better than to leave me silent.”¹⁵⁵ Another wrong prediction.

As Richard Rich approached Cromwell’s office, he overheard a conversation on this very point:

Norfolk: But he’s silent, Master Secretary. Why not leave him silent?

148. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 59:42.

149. *Id.* beginning at 1:00:06.

150. *Id.* beginning at 59:47.

151. *Id.* beginning at 1:00:27.

152. *Id.* beginning at 1:02:17.

153. *Id.* beginning at 1:03:10.

154. ACKROYD, *supra* note 5, at 259.

155. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:04:58.

Cromwell: Your Grace, not being a man of letters, you perhaps don't realize the extent of his reputation, this silence of his is bellowing up and down Europe. In Europe, he is claimed as the King's enemy

Norfolk: I still say, let sleeping dogs lie.

Cromwell: The King does not agree with you.¹⁵⁶

Alright, what would come next? Cromwell said, as Rich entered the room, "I have evidence that Sir Thomas, while he was a judge, accepted bribes."¹⁵⁷ Norfolk was incredulous. "What! God damn it. He was the only judge since Cato [slamming his fist on the table] who didn't accept bribes. When was there last a chancellor whose possessions after three years in office totaled £100 and a gold chain?"¹⁵⁸ But an offense remained an offense, even if common. It was enough to send a man to the Tower.¹⁵⁹ Cromwell called on Rich to bring in the witness, who was willing to talk. Norfolk was not impressed.¹⁶⁰ Rich's corroboration was not much better.¹⁶¹ Norfolk's judgment was that it wouldn't work.¹⁶² Cromwell thought it was at least a start, "We'll find something better."¹⁶³ Norfolk said he wanted no part of that, but Cromwell said he had no choice.¹⁶⁴ The King desired that Norfolk be active in this matter.¹⁶⁵ This could start with convincing More to attend the King's upcoming wedding—an action that would require no affirmative words but would perhaps be sufficient to satisfy Henry's need for affirmation.¹⁶⁶

The next scene opened with church bells sounding all throughout England, announcing the wedding.¹⁶⁷ At the wedding reception, Henry was overjoyed. Crowds were cheering at his window, with a radiant Anne Boleyn at his side.¹⁶⁸ It is good to be the King. And, for a moment, Henry thought he saw More across the room.¹⁶⁹ He was visibly disappointed when the man turned out to be someone else.¹⁷⁰

156. *Id.* beginning at 1:05:30.

157. *Id.* beginning at 1:06:13.

158. *Id.* beginning at 1:06:18.

159. *Id.* beginning at 1:06:38.

160. *Id.* beginning at 1:07:34.

161. *See id.* beginning at 1:07:47.

162. *Id.* beginning at 1:09:00.

163. *Id.* beginning at 1:09:04. Cromwell's cynicism foreshadowed a cruel prosecutor like Lavrentiy Beria, Joseph Stalin's brutal head of the secret police, who famously said: "Show me the man and I'll show you the crime[.]" meaning he could prove criminal conduct on anyone, even the innocent. *See* Michael Henry, *Show Me the Man and I'll Show You the Crime*, OXFORD EAGLE (May 9, 2018), <https://perma.cc/4LT6-5WP8>.

164. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:09:05.

165. *Id.* beginning at 1:09:11.

166. *Id.* beginning at 1:09:40.

167. *Id.* beginning at 1:10:11.

168. *Id.* beginning at 1:10:40.

169. *Id.* beginning at 1:12:09.

170. *Id.* beginning at 1:12:32.

So, the next scene involved the inevitable “knock at the door.”¹⁷¹ More was summoned to a meeting with Cromwell at Hampton Court to answer charges.¹⁷² Cromwell started with the matter of the Nun of Kent, Elizabeth Barton, who was executed for prophesying against the King.¹⁷³ More admitted that he had met her.¹⁷⁴ “Yet you did not warn his Majesty of her treason?”¹⁷⁵ More responded, “She spoke no treason. Our talk was not political.”¹⁷⁶ In fact, More wrote a letter advising her to abstain from meddling in the affairs of state.¹⁷⁷ “You have been cautious,” noted Cromwell.¹⁷⁸ The next charge concerned the authority of the Pope, the Bishop of Rome.¹⁷⁹ After a clumsy laying of foundation with a book authored by Henry with assistance from More, Cromwell asked More directly: “[C]oncerning the Church of England, what exactly is the Bishop of Rome’s authority?”¹⁸⁰ More responded: “You will find it very ably set out and defended, Master Secretary, in the King’s book.”¹⁸¹ The support for the Pope’s authority in the book could not be used against More because they were the King’s words.¹⁸²

171. *Id.* beginning at 1:13:03.

172. *Id.* beginning at 1:13:50.

173. ELTON, *supra* note 130, at 274-75. The Nun of Kent was not some obscure figure barely known to the Crown. See *Magic, Prophecy, and the Law of Treason in Reformation England*, *supra* note 30, at 9-10:

[S]ome expressed this opposition from the pulpits and universities through traditional means, others used prophecy and magic in an attempt to influence political events.

One of the most widely known instances was the affair of Elizabeth Barton, the Nun of Kent. Arising from humble origins, she became regarded as a holy woman with a gift for prophetic visions. She was known to the spiritual elite of London—Cardinal Wolsey; William Warham, the archbishop of Canterbury; John Fischer, the bishop of Rochester; and Thomas More. Henry VIII himself sent for her and listened as she spoke plainly against his project. She began to prophesy against the second marriage and predicted that Henry would soon die. Her predictions attracted the attention of an uneasy government, especially as she had a loyal following in the already volatile shire of Kent. She was arrested in November of 1533 and examined several times by the Council and in the Star Chamber. The King pressed for a conviction of treason, but the Council and the judges would not make this finding for words alone. Desirous of eliminating opposition to the second marriage, Henry pursued the matter further and, in February of 1534, the Nun of Kent and several associates were attainted in Parliament. On April 21, 1534, they were executed. As far as one can tell from the record, the basis for the treason charges lay in the idea that she was causing a division between the King and his people. This was similar to the old charge of usurping royal power. Although usurpation was no longer part of the law of treason, it was felt that her activities warranted the serious measures taken by the government. As Thomas Cromwell wrote of her in a letter to Bishop Fischer: “For if credence should be given to every lewd person as would affirm himself to have revelations from God, what readier way were there to subvert all commonwealths and good orders of the world?” To a government intent on restraining opposition to the King’s new policies, the Nun of Kent affair indicated that there were some shortcomings in the law of treason.

174. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:15:28.

175. *Id.* beginning at 1:15:37.

176. *Id.* beginning at 1:15:41.

177. *Id.* beginning at 1:15:50.

178. *Id.* beginning at 1:16:01.

179. *Id.* beginning at 1:16:34.

180. *Id.* beginning at 1:16:45.

181. *Id.* beginning at 1:16:50.

182. *Id.* beginning at 1:16:46.

Although himself a lawyer, Cromwell's prepared attack had been easily deflected by the more experienced and skillful lawyer.

Having failed to trap More on this charge, Cromwell moved on to the matter of the King's marriage:

Cromwell: Sir Thomas More, have you anything to say to me regarding the King's marriage with Queen Anne?

More: I understood that I was not to be asked that again.

Cromwell: Then evidently you understood wrongly. These charges . . .

More [interrupting]: They are terrors for children, Master Secretary, not for me!

Cromwell: Then know that the King commands me to charge you, in his name, with great ingratitude. And to tell you that there never was, nor could be, so villainous a servant, nor so traitorous a subject, as yourself.

More: So, I am brought here at last.

Cromwell: Brought? You've brought yourself to where you stand now. You may go, for the present.¹⁸³

After More left, Rich asked Cromwell: "Well, what will you do now?"¹⁸⁴ Cromwell snapped back: "Whatever's necessary."¹⁸⁵

More's growing isolation was accentuated by the refusal of the common boatmen to give him a ride back home.¹⁸⁶ Norfolk followed More and made one final private plea to agree to Cromwell's terms. "We've all given in," he exclaimed.¹⁸⁷ More decided, for the sake of their friendship, that he had to cut loose Norfolk so that he would not be drawn into More's difficulties.¹⁸⁸ He did this by manufacturing an argument that drove Norfolk to strike More.¹⁸⁹ And so, they parted.¹⁹⁰

Cromwell wasted no time in making his next move. He delivered a bill to Parliament concerning the King's title as head of the Church in England and his marriage to Queen Anne.¹⁹¹ Dropping all subtlety, Cromwell declared the legislation was necessary because "there is a brood of discreet traitors to which deceit the King can brook no longer. And we, his loyal huntsman, must now drive the subtle foxes from their covert."¹⁹²

183. *Id.* beginning at 1:17:47.

184. *Id.* beginning at 1:17:49.

185. *Id.* beginning at 1:18:51.

186. *Id.* beginning at 1:19:14.

187. *Id.* beginning at 1:20:46.

188. *See id.* beginning at 1:21:53.

189. *Id.* beginning at 1:22:34.

190. *Id.* beginning at 1:19:32.

191. *Id.* beginning at 1:22:45.

192. *Id.* beginning at 1:23:38.

Meanwhile, Margaret met More as he arrived on his long walk home from Hampton Court.¹⁹³ Through the magic of playwrighting, word of the new act just introduced had beaten More to Chelsea.¹⁹⁴ More and Margaret discussed the new legislation in the privacy of the household grounds during a windstorm:

Margaret: Father, there's a new act going through Parliament.

More: Oh?

Margaret: And by this act, they're going to administer an oath about the marriage.

More: On what compulsion is the oath?

Margaret: High treason.

More: But what is the wording?

Margaret: What do the words matter? We know what it will mean.

More: Tell me what the words say. An oath is made of words. It may be possible to take it.

Margaret: Take it?

More: Yes. And if it can be taken, you must take it, too.

Margaret: No. No!

More: Listen, Meg, God made the angels to show him splendor. As he made animals for innocence and plants for their simplicity. But man he made to serve him wittily, in the tangle of his mind. If he suffers us to come to such a case that there is no escaping, then we may stand to our tackle as best we can. And yes, Meg, then we can clamor like champions, if we have the spittle for it. But it's God's part, not our own, to bring ourselves to such a pass. Our natural business lies in escaping. If I can take this oath, I will.¹⁹⁵

Alas, More could not take the oath, and the next scene was in the Tower, where the keeper sadly intoned: "I would, for my sake, you could take the oath. I never took a man into the Tower less willingly."¹⁹⁶ There was actually much that had taken place between the time of More's meeting with Cromwell and imprisonment in the Tower. Shortly after his return to Chelsea, More wrote a letter to Henry declaring that he remained the King's faithful subject and that he had acted not out of disloyalty but in the King's best interests, especially in dealing with the Nun of Kent.¹⁹⁷ He also wrote a letter to Cromwell, detailing More's own record of their conversation and reiterating that he had been falsely accused of disloyalty.¹⁹⁸ Later, he appeared before a committee of the Star Chamber,¹⁹⁹

193. *Id.* beginning at 1:24:20.

194. *Id.* beginning at 1:24:29.

195. *Id.* beginning at 1:24:28.

196. *Id.* beginning at 1:25:37.

197. ACKROYD, *supra* note 5, at 352-53.

198. *Id.* at 353.

199. *Id.* The Star Chamber had a notorious history, but most of its bad reputation stemmed from abuses occurring well after the events described in this narrative. It originated out of a need to have a

consisting of Cromwell; Thomas Cranmer, the Archbishop of Canterbury; and Thomas Audley, who succeeded More as Lord Chancellor.²⁰⁰ This meeting ended, however, with little change in position and “thus displeasantly departed they.”²⁰¹

Two weeks after the appearance before the Star Chamber committee, the Act of Succession was put before the Parliament.²⁰² It pronounced the marriage between Henry and Catherine to be “void and annulled,” thereby destroying the jurisdiction and authority of the Pope.²⁰³ It established royal succession through the children of Queen Anne.²⁰⁴ It listed offenses of treason or misprision of treason by those who “slandered” the royal family.²⁰⁵ Finally, it required all the King’s subjects to swear an oath to maintain “the whole effects and contents of this present Act.”²⁰⁶ The Act of Succession would become the defining measure of the English Reformation that would permanently break off from Rome the Church of England.²⁰⁷

On April 12, 1534, More was served with a summons directing him to appear at Lambeth Palace on the following morning and there to take the oath of succession.²⁰⁸ On that morning, there were others there to take the oath, but More was the first to be called.²⁰⁹ He was led before Cromwell, Cranmer, Audley, and William Benson, the Abbot of Westminster.²¹⁰ More was asked if he would swear the oath and he responded, after detailed comparison of the oath and the Act:

My purpose is not to put any fault either in the Act or any man that made it, or in the oath or any man that swears it, nor to condemn the conscience of any other man. But as for myself in good faith my conscience so moves me in the matter, that though I will not deny to swear to the succession, yet unto the oath that here is offered to me cannot swear, without jeoparding of my soul to perpetual damnation.²¹¹

Lord Audley replied: “We all are sorry to hear you say thus, and see you refused the oath. On our faith you are the first that has ever refused it, and it will

presence in Westminster, the seat of government, while the King was away. ELTON, *supra* note 21, at 414-15. Its name was derived from the room where the King’s council met. *Id.* at 415. The Star Chamber took on administrative and judicial tasks that allowed for quicker action on petitions and enforcement of the King’s policy of restoring peace and order. *Id.* at 414-17. Nearly one century later, it was used to enforce unpopular ecclesiastical policies and became a symbol of oppression. The Editors of Encyclopedia Britannica, *Star Chamber: English law*, BRITANNICA, <https://perma.cc/85UU-Y3QF> (last visited Sept. 20, 2022). It was abolished by Parliament in 1641. *Id.*

200. ACKROYD, *supra* note 5, at 353.

201. *Id.* at 354.

202. *Id.* at 356.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.* at 356-57.

208. *Id.* at 359.

209. *Id.* at 360.

210. *Id.*

211. *Id.* at 360-61.

cause the King's highness to conceive great suspicion of you and great indignation toward you."²¹² While More remained steadfastly silent on the reasons why he refused to take the oath, it seemed clear enough that his objection was not to the royal succession, but to "the forcible removal of the Pope's jurisdiction and the effective schism of the Church in England."²¹³ Refusing the oath was misprision of treason, not treason itself, and carried the penalty of life in prison. More was never actually tried for this crime.²¹⁴

On April 17, 1534, More was sent from Westminster to the Tower of London.²¹⁵

He was taken to one of those apartments which were reserved for the more influential or privileged 'guests' of the lieutenant [of the Tower]. His was a pentagonal stone chamber, with a vaulted ceiling; it was some nineteen feet in height, with a floor space of approximately eighteen feet by twenty feet. The walls themselves were between nine and thirteen feet thick, the floor flagged with rough and uneven stone, the windows merely arrowslits or 'loops.' More's furnishings were the simplest; they included a table and chair as well as a 'pallet' bed. There was a small brick stove, to heat up this cold rook, and More arranged for mats of straw to be placed upon the floor and against the walls His old servant, John a Wood, was allowed to attend him; board and lodging, for both of them, amounted to fifteen shillings a week, which was more than adequate for food and clothing.

[I]t was appropriate for a prisoner of his rank to be given permission to walk within the 'liberties' of the Tower and to stroll its gardens [H]e was allowed to attend Mass each day to pray for his own salvation and for the spiritual comfort of those close to him.²¹⁶

The apparent strategy was to deprive More of the comforts of daily life, family and friends, and to coerce a capitulation without resorting to outright torture of the rack. More settled in and the waiting game began. More's patience proved to be stronger.

In all outward aspects he remained patient and mild now, not caring even to speak against heretics; he knew that he was likely to die soon enough, but the prospect of death was not an unwelcome one. In the words of Thomas a Kempis, he had grown to love his cell—"In this thy cell though shalt find what abroad thou shalt too often lose . . . thou must always suffer, willingly or

212. *Id.* at 361.

213. *Id.* at 364.

214. THOMAS MORE'S TRIAL BY JURY, *supra* note 18, at xiv.

215. ACKROYD, *supra* note 5, at 364-65.

216. *Id.* at 365-66.

unwillingly, and so shalt thou always find the cross” [H]e fasted on the appointed days, sang hymns and prayed both day and night He had in a sense returned to the time of his early adulthood, when he had participated in the rituals and services of the London Charterhouse. He had become a monk at last.²¹⁷

From time to time, More’s isolation would be broken up with a summons to another hearing. Near the end, he was taken to Richmond Palace, where he was questioned by Cromwell, Norfolk, and Cranmer, with Rich acting as the reporter.

Norfolk: This is the Seventh Commission to inquire into the case of Sir Thomas More, appointed by His Majesty’s Council. Have you anything to say?

More: No.

Cromwell: Seen this document before?

More: Many times.

Cromwell: It is the Act of Succession. These are the names of those who have sworn to it.

More: I have, as you say, seen it before.

Cromwell: Will you swear to it?

More: No.

Norfolk: Thomas, we must know plain— We must know plainly whether you recognize the offspring of Queen Anne as heirs to the throne.

More: The King in Parliament tells me that they are. Of course, I recognize them.

Norfolk: And will you swear that you do?

More: Yes.

Norfolk [pounding the table in exasperation]: Then why won’t he swear to the Act?

Cromwell: Because there is more than that in the Act.

Cranmer: Just so. Sir Thomas, it states in the preamble that the King’s former marriage to the Lady Catherine was unlawful, she being his brother’s widow, and the Pope having no authority to sanction it. Is that what you deny?

More: [Silence].

Cranmer: Is that what you dispute?

More: [Silence].

Cranmer: Is that what you are not sure of?

More: [Silence].

Norfolk: Thomas, you insult His Majesty and Council

More: I insult no one. I will not take the oath. I will not tell you why I will not.

217. *Id.* at 369.

Norfolk: Then your reasons must be treasonable.

More: Not must be, may be.

Norfolk: Oh, it's a fair assumption.

More: The law requires more than an assumption, the law requires a fact.

Cranmer: Ah, well, of course, I cannot judge your legal standing in the case, but until I know the ground of your objections, I can only guess your spiritual standing, too.

More: If you're willing to guess that, Your Grace, it should be a small matter to guess my objections.

Cromwell: Then you do have objections to the Act?

Norfolk: Well, we know that, Cromwell.

More: No, my lord, you don't. You may suppose I have objections. All you know is that I will not swear to it for which you cannot lawfully harm me further.²¹⁸

More's legal defense was sound. And Cromwell knew it. The law of treason required an affirmative act.²¹⁹ More's defense rested on the common law's construction of silence as not constituting an affirmative act.²²⁰ With this, the discussion was effectively ended, although not without further memorable lines from More:

Norfolk: Oh, confound all this! I'm not a scholar. I don't know whether the marriage was lawful or not. But damn it, Thomas, look at these names [pointing to the list]. Why can't you do as I did and come with us, for fellowship?²²¹

More: And when we die, and you are sent to heaven for doing your conscience, and I am sent to hell for not doing mine, will you come with me, for fellowship?²²²

* * * *

Cromwell: Then you have more regard for your own doubt than the King's command?

More: For myself, I have no doubt.

Cromwell: No doubt of what?

More: No doubt that I will not take this oath. But why I will not, you, Master Secretary, you will not trick it out of me.

218. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:29:08.

219. JOHN BELLAMY, THE TUDOR LAW OF TREASON: AN INTRODUCTION 30-33 (Harold Perkin & Eric J. Evans eds., Univ. of Toronto Press 1979); *Magic, Prophecy, and the Law of Treason in Reformation England*, *supra* note 30, at 10-11.

220. In fairness, it should be noted that the law's assumption of consent was less clear than More made it out to be. The better statement on the significance of silence is, "it depends." See THOMAS MORE'S TRIAL BY JURY, *supra* note 18, at 22-26. If one puts the common law treatment of silence together with the law of treason's requirement of a treasonous act or, later, with treasonous words, More probably has the better of the argument.

221. In other words, just do like the rest of us. Go along to get along.

222. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:31:45.

Cromwell [menacingly]: I might get it out of you in other ways.

More: You threaten like a dockside bully.

Cromwell: How should I threaten?

More: Like a minister of state, with justice.

Cromwell: Oh, justice is what you are threatened with.

More: Then I'm not threatened.²²³

And so, the meeting ended.²²⁴ As he was leaving, More made a simple request: "Oh, may I have one or two more books?"²²⁵ Cromwell jumped on this: "Why? You have books?"²²⁶ "Yes,"²²⁷ Cromwell: "I didn't know. You shouldn't have."²²⁸ More began to walk away and then turned and asked: "May I see my family?"²²⁹ "No," came Cromwell's terse answer.²³⁰ More stared back and said nothing.²³¹ Unlike many lawyers, he did not need to have the last word; his silence said enough. Cromwell gave an order to Rich to retrieve the books.²³²

And yet, there was one more attempt to encourage More's submission. More's family visited him for the express purpose of persuading him to sign the oath.²³³ The visit was both awkward and moving. Margaret tried to use her father's own words against him: "God more regards the thoughts of the heart than the words of the mouth. Or so you always told me."²³⁴ More agreed.²³⁵ Margaret went on: "Then say the words of the oath and in your heart think otherwise."²³⁶ But More disagreed: "What is an oath then, but words we say to God?"²³⁷ In other words, oaths are different. "When a man takes an oath, he's holding his own self in his own hands, like water. And if he opens his fingers then, he needn't hope to find himself again."²³⁸ Margaret despaired: "But, in reason. Haven't you done as much as God can reasonably want?"²³⁹ More tenderly embraced Margaret, "Well, finally, it isn't a matter of reason. Finally, it's a matter of love."²⁴⁰ Love. Of what? Of God, yes. But also love of family. Knowing that death was near, he wanted his family to know his witness to the truth. More's love for his family meant he had to leave them with the right example of how to die. There are worse things than death. He would leave a legacy of love for honor and truth. The

223. *Id.* beginning at 1:32:44.

224. *Id.* beginning at 1:33:37.

225. *Id.* beginning at 1:33:41.

226. *Id.* beginning at 1:33:44.

227. *Id.* beginning at 1:33:46.

228. *Id.* beginning at 1:33:47.

229. *Id.* beginning at 1:33:54.

230. *Id.* beginning at 1:34:00.

231. *Id.* beginning at 1:34:02.

232. *Id.* beginning at 1:34:28.

233. *Id.* beginning at 1:35:30.

234. *Id.* beginning at 1:37:05.

235. *Id.* beginning at 1:37:11.

236. *Id.* beginning at 1:37:12.

237. *Id.* beginning at 1:37:15.

238. *Id.* beginning at 1:37:27.

239. *Id.* beginning at 1:38:33.

240. *Id.* beginning at 1:38:44.

goodbyes continued and became more emotional, as could have been expected. There could be no happy end to this.

At last, we come to the trial. More was prosecuted for his refusal to take the oath as the Act of Succession required.²⁴¹ Note the particular reason for the refusal. More accepted Parliament's right to declare Anne Boleyn the *legitimate* Queen of England, though he refused the *spiritual* validity of the King's second marriage.²⁴² Holding fast to the teaching of papal supremacy, he refused to acknowledge the King to be head of the Church in England.²⁴³

The trial opened with a statement by the Chief Justice that offered a pardon if only More would "repent of obstinate opinion."²⁴⁴ More demurred, saying he feared his present weakness of wit and memory would not serve to make sufficient answer to the charges.²⁴⁵ Cromwell²⁴⁶ proceeded to read the charge: "That you did willfully and maliciously deny and deprive our liege, Lord Henry, of his undoubted certain title, 'Supreme Head of the Church in England.'"²⁴⁷ More responded, "But, I have never denied this title!"²⁴⁸

Cromwell: At Westminster Hall, at Lambeth, and again at Richmond you stubbornly refused the oath. Was this no denial?

More: No, this was silence. And for my silence, I am punished with imprisonment. Why have I been called again?²⁴⁹

Chief Justice: On the charge of high treason, Sir Thomas. For which the punishment is not imprisonment.

More: Death . . . comes for us all, my lords. Yes, even for kings it comes.

Chief Justice: The death of kings is not in question, Sir Thomas.

More: Nor mine, I trust, until I'm proven guilty.

Norfolk [interrupting]: Your life lies in your own hands, Thomas, as it always has!

More: Is that so, my lord? Then I'll keep a good grip on it.

[Laughter in the courtroom].

Cromwell: So, Sir Thomas you stand on your silence?

More: I do.²⁵⁰

241. *Id.* beginning at 1:44:40.

242. *See id.* beginning at 1:45:05 (showing More acknowledging Parliament's right to declare the Royalty in England but that Parliament has no power to make spiritual decisions).

243. *Id.* beginning at 1:45:11.

244. *Id.* beginning at 1:44:55.

245. *Id.* beginning at 1:45:11.

246. In the actual trial, Cromwell was not the prosecutor. *See* THOMAS MORE'S TRIAL BY JURY, *supra* note 18, at 16-17. The prosecutor was Christopher Hales, who, in the terminology of the time, was the king's general attorney. *Id.* at 17.

247. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:45:52.

248. *Id.* beginning at 1:45:54.

249. Meaning, why am I called to court again? I am already being punished for my silence. This may be viewed as a double jeopardy defense.

250. *Id.* beginning at 1:46:10.

Cromwell then began to explore the meaning of that silence, suggesting there were different implications of silence, depending on circumstances:

Cromwell: Let us consider now the circumstances of the prisoner's silence. The oath was put to loyal subject up and down the country and they all declared His Grace's title to be just and good! But when it came to the prisoner, he refused! He calls this "silence." Yet, is there a man in this court, is there a man in this country who does not know Sir Thomas More's opinion of this title? [Murmuring]. Yet, how can this be? Because this silence betokened. Nay, this silence was not silence at all, but most eloquent denial!

More: Not so. Not so, Master Secretary. The maxim is "Qui tacet consentire." The maxim of the law is, "Silence gives consent." If therefore you wish to construe what my silence betokened, you must construe that I consented, not that I denied.

Cromwell: Is that in fact what the world construes from it? Do you pretend that is what you wish the world to construe from it?

More: The world must construe according to its wits. This court must construe according to the law.

[Laughter].²⁵¹

Point made, quite effectively. Again, More showed his skill in navigating through "the thickets of the law."²⁵² Cromwell abruptly changed course and called "Sir Richard Rich" as a witness.²⁵³ More was startled by this and feared the worst.²⁵⁴ Rich entered the court dressed in a fine cloak and took the oath, kissing the Bible first and swearing to tell the truth, knowing full well he was there to lie:

Cromwell: Now Rich, on the 12th of May, you were at the Tower?

Rich: I was.

Cromwell: For what purpose?

Rich: I was sent to carry away the prisoner's books.

Cromwell: Did you talk with the prisoner?

Rich: Yes.

Cromwell: Did you talk of the King's supremacy of the Church?

Rich: Yes.

Cromwell: What did you say?

Rich: I said to him, "Supposing there were an act of Parliament to say that I, Richard Rich, were to be king, would not you, Master More, take me for king? "That I would," he said. "For then you would be king."

251. *Id.* beginning at 1:47:59.

252. *See* Sachs, *supra*, note 121, at 54-58.

253. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:49:27.

254. *See id.* beginning at 1:49:31.

Cromwell [prompting the witness]: Yes?

Rich: “But I will put you a higher case. How if there were an act of Parliament to say that God should not be God?”

More [interrupting]: This is true and then you said”

Chief Justice [to More]: Silence! [to Rich]: Continue.

Rich: But then I said, “I will put you a middle case. Parliament has made our King Head of the Church. Why will you not accept him?”

Cromwell [prompting again]: Well?

Rich [hesitating]: And then he said, “Parliament had not the power to do it.”

Chief Justice: Repeat the prisoner’s words.

Rich: He said, “Parliament had not the competence” Or words to that effect.

Cromwell: He denied the title?

Rich: He did.

[More bowed his head in disgust].

More: In good faith, Rich, I am sorrier for your perjury than my peril.

Chief Justice [to More]: Do you deny this?

More: Yes! My lords, you know if I were a man who heeded not the taking of an oath, I need not be here. Now I will take an oath. If what Master Rich has said is true, I pray I may never see God in the face. Which I would not say, were it otherwise, for anything on earth!

Cromwell [interrupting]: That is not evidence!

More: Is it probable . . . is it probable that after so long a silence on this, the very point so urgently sought of me, I should open my mind to such a man as that? [gesturing at Rich with disgust].²⁵⁵

Chief Justice: Sir Richard, do you wish to modify your testimony?

Rich: No, my lord.

Chief Justice: Is there anything you wish to take away from it?

Rich: No, my lord.

Chief Justice: Have you anything to add?

Rich: No, my lord.

Chief Justice: Have you, Sir Thomas?

More: To what purpose? I am a dead man. You have your will of me.

255. When More commented on the likelihood that he would have confided his true thoughts to a man like Richard Rich, recall the exquisite caution More used in dealing with Cardinal Wolsey as well as his intense interrogations by Cromwell on this very point.

Chief Justice: Then the witness may withdraw.²⁵⁶

As Rich was leaving, More stopped him with a question.²⁵⁷ Looking at Rich, he remarked, “That’s a chain of office you’re wearing. May I see it?”²⁵⁸ Taking it in his hand, More commented, “The Red Dragon. What’s this?”²⁵⁹ Cromwell explained: “Sir Richard is appointed Attorney General for Wales.”²⁶⁰ More said softly, “For Wales.”²⁶¹ Then addressing Rich who refused to look at him, “Why Richard, it profits a man nothing to give his soul for the whole world . . . But for Wales . . .”²⁶²

Cromwell rested his case.²⁶³ The Chief Justice gave the case to the jury to consider the evidence.²⁶⁴ But the jury, with Cromwell’s prompting, decided it did not need to retire and deliberate.²⁶⁵ “Then is the prisoner guilty or not guilty?”²⁶⁶ The foreman rose and announced, “Guilty, my lord!”²⁶⁷ And everyone rose for the pronouncement of the sentence.²⁶⁸

Chief Justice: Sir Thomas More, you have been found guilty of high treason. The sentence of the court . . .

More [interrupting]: My lords. When I was practicing the law, the manner was to ask the prisoner before pronouncing sentence, if he had anything to say.

Chief Justice: Have you anything to say?

More: Yes.

[Everyone then sat down].

More: Since the court has determined to condemn me, God knoweth how, I will now discharge my mind concerning the indictment and the King’s title. The indictment is grounded in an act of Parliament, which is directly repugnant to the law of God and His Holy Church. The supreme government of which no temporal person may by any law presume to take upon him. This

256. *Id.* beginning at 1:50:12. At the actual trial, Rich called two witnesses to corroborate his account of the conversation with More. See ACKROYD, *supra* note 5, at 396. But both witnesses failed to back him up. See *id.* Master Palmer said he was so busy trussing up More’s books that he “took no heed of their talk.” *Id.* Sir Richard Southwell likewise testified that he was there solely to gather the books that he “gave no ear unto them.” *Id.*

257. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:53:19.

258. *Id.* beginning at 1:53:24.

259. *Id.* beginning at 1:53:37.

260. *Id.* beginning at 1:53:39.

261. *Id.* beginning at 1:53:44.

262. *Id.* beginning at 1:53:48. A great line, delivered by a great actor.

263. *Id.* beginning at 1:54:03.

264. *Id.* beginning at 1:54:06.

265. *Id.* beginning at 1:54:11. In the actual trial, the jury deliberated for approximately fifteen minutes. ACKROYD, *supra* note 5, at 396. There was a strong likelihood that the jury consisted of persons who were predisposed to find against More. Just prior to the trial, Henry issued a proclamation ordering his subjects to consider More a traitor. THOMAS MORE’S TRIAL BY JURY, *supra* note 18, at 82-83.

266. See A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:54:26 (showing the Chief Justice speaking the quoted line).

267. *Id.* beginning at 1:54:35.

268. *Id.* beginning at 1:54:40.

was granted by the mouth of our Savior, Christ Himself to Saint Peter and the Bishops of Rome whilst He lived and was personally present here on earth. It is therefore insufficient in law to charge any Christian to obey it. And more than this, the immunity of the Church is promised both in Magna Carta and in the King's own coronation oath.

Cromwell: Now we plainly see you are malicious!

More: Not so. I am the King's true subject, and I pray for him and all the realm. I do none harm. I say none harm. I think none harm. And if this be not enough to keep a man alive, then in good faith, I long not to live.²⁶⁹ Nevertheless, it is not for the supremacy that you have sought my blood but because I would not bend to the marriage!

Chief Justice [standing again]: You have been found guilty of high treason. The sentence of the court is that you be taken from the court to the Tower of London. Until time and place be appointed for your execution.²⁷⁰

And thus ended, on July 1, 1535, one of the most famous trial scenes in history.²⁷¹ But it would become famous for its faults, not for any successes. So often, it seems, that progress advances through failure. With notable exceptions, of course.²⁷² Still, it is ironic that the recognition of important rights can emerge from catastrophic failures.

V. DEATH AND LEGACY

Thomas More's execution took place on July 6, 1535.²⁷³ He spent his last days praying and fasting while awaiting execution.²⁷⁴ He left the Tower and was

269. *Id.* beginning at 1:54:47. This memorable short statement, beginning with "I do none harm" actually was uttered during one of the interrogations prior to trial. ELTON, *supra* note 130, at 404-05. I applaud Bolt's use of artistic license in inserting it here. More actually said it, and it belongs here as part of More's ultimate defense.

270. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:54:47. The sentence actually imposed was the one usually given to traitors, that is, the prisoner was to be hanged until half dead, disemboweled, and burned. ACKROYD, *supra* note 5, at 398. In an act of mercy, Henry commuted the sentence to beheading. *Id.* at 403.

271. *Id.* at 399 ("It is one of the most celebrated trials in English history."); see also ELTON, *supra* note 21, at 139 ("More, in particular, defended himself brilliantly in a trial scene as famous almost as that of Socrates. . .").

272. See, e.g., *The Boston Massacre: John Adams Saves a Soldier's Life*, NEW ENG. HIST. SOC'Y, <https://perma.cc/59HM-U64F> (last visited Sept. 28, 2022) (discussing John Adams's defense of the British soldiers who participated in the Boston Massacre); Jonathan K. Van Patten, *The Trial of Cinqué—Steven Spielberg's Amistad*, 67 S.D. L. REV. 59 (2022) (speaking about the trial of the Africans rescued from the Amistad); Jonathan K. Van Patten, *The Trial of John Scopes*, 66 S.D. L. REV. 273 (2021) (talking about the prosecution of John Scopes).

273. Marilee Hanson, *The Execution of John Fisher & Sir Thomas More*, ENG. HIST. (Feb. 22, 2015), <https://perma.cc/Q8ZT-DDD4> (quoting an account written by the Tudor, Edward Hall).

274. ACKROYD, *supra* note 5, at 402.

escorted to the steps of the scaffold by a local sheriff.²⁷⁵ The steps of the scaffold were not firm, and he had assistance as he climbed to the top.²⁷⁶ With characteristic humor to the end, he is reported to have said, “When I come down again, . . . let me shift for myself as well as I can.”²⁷⁷ As he stood by the block, he said: “I am commanded by the King to be brief, and since I am the King’s obedient subject, brief I will be. I die His Majesty’s good servant, but God’s first.”²⁷⁸ He forgave the executioner and told him: “Be not afraid of your office. You send me to God.”²⁷⁹ With that the axe came down on his neck.²⁸⁰ More showed us how to die, with dignity and honor. His body was taken to the church of St. Peter ad Vincula within the Tower where it was interred.²⁸¹ According to the King’s instructions, More’s head was impaled upon a pole and raised above London Bridge.²⁸² After thirty days, daughter Margaret was allowed to take down More’s head, and it was taken to the family tomb and interred.²⁸³

As might be expected, the death of More did not solve the problems of succession, legitimacy, and political strife. Thomas Howard, the Duke of Norfolk, was involved in maneuvering within the shifting political winds. His niece, Anne Boleyn, became Henry’s second wife in 1533,²⁸⁴ but she was charged with treason and beheaded in 1536.²⁸⁵ Another niece, Katherine Howard, became Henry’s fifth wife in 1540.²⁸⁶ She was condemned by bill of attainder and executed in 1542.²⁸⁷ In 1546, Norfolk was arrested and sent to the Tower.²⁸⁸ His execution was stayed by Henry’s death in 1547, only one day before it was to be carried out.²⁸⁹ Norfolk died in 1554, without drama.²⁹⁰

Archbishop Thomas Cranmer, who facilitated the annulment of the marriage of Henry and Catherine of Aragon and personally crowned Queen Anne, and who participated in the pre-trial inquests, was tried for treason in 1553.²⁹¹ He was

275. *Id.* at 405.

276. *Id.*

277. *Id.*

278. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:58:08.

279. *Id.* beginning at 1:58:40.

280. *Id.* beginning at 1:59:09.

281. ACKROYD, *supra* note 5, at 406.

282. *Id.* This was the usual treatment for those convicted of treason. THOMAS MORE’S TRIAL BY JURY, *supra* note 18, at 177.

283. Jaime Goodrich, *Thomas More and Margaret More Roper: A Case for Rethinking Women’s Participation in the Early Modern Public Sphere*, 39 SIXTEENTH CENTURY J. 1021 (2008).

284. The Editors of Encyclopedia Britannica, *Thomas Howard, 3rd Duke of Norfolk*, BRITANNICA, <https://perma.cc/SUC9-Y2QK> (last visited Nov. 9, 2022).

285. ELTON, *supra* note 21, at 152-53.

286. *Id.* at 194.

287. *Id.* at 195.

288. *Id.* at 201.

289. *Id.*

290. See *Thomas Howard, 3rd Duke of Norfolk*, *supra* note 284.

291. Geoffrey R. Elton, *Thomas Cranmer: Archbishop of Canterbury*, BRITANNICA, <https://perma.cc/5DRE-GYUL> (last visited Nov. 9, 2022).

found guilty and condemned to death.²⁹² After several recantations and further negotiation, he was executed by burning at the stake.²⁹³

Richard Rich continued to rise in power and influence, beyond Wales, eventually climbing to the post of Lord Chancellor in 1547.²⁹⁴ He became very wealthy as a result of the dissolution of the monasteries.²⁹⁵ Unlike many of his contemporaries, he died in his bed in 1567.²⁹⁶ Crime never pays? Well, Rich may have succeeded in terms of material wealth but certainly not in reputation.²⁹⁷

Thomas Cromwell was a more enigmatic figure than the villain portrayed in *A Man for All Seasons*. Historian G.R. Elton's assessment is more measured: "Cromwell did what he thought he had to do; the hatred and vindictiveness belonged to the King."²⁹⁸ "In April 1534, Henry confirmed Cromwell as his principal secretary and chief minister. . . ."²⁹⁹ He led the campaign against the monasteries and other pockets of the old church.³⁰⁰ His star burned bright, until further difficulties with the King's marital situation led to his downfall. Henry's third wife, Jane Seymour, had died in 1537, less than two weeks after the birth of a male heir, the future Edward VI.³⁰¹ In 1539, Henry accepted Cromwell's suggestion that he should marry Anne of Cleves.³⁰² But on New Year's Day, 1540, Henry first met Anne face-to-face and that did not go well.³⁰³ Nevertheless, the wedding ceremony took place on January 6.³⁰⁴ Henry said that he found it impossible to enjoy conjugal relations with a woman he found so unattractive.³⁰⁵ Henry blamed Cromwell for this fiasco and Cromwell's opponents used this to work against him.³⁰⁶ Cromwell was arrested in June 1540 and convicted of

292. *See id.*

293. ELTON, *supra* note 21, at 220.

294. *Richard Rich*, SPARTACUS EDUC., <https://perma.cc/RQ3X-YPXB> (last visited Nov. 1, 2022).

295. ELTON, *supra* note 21, at 220.

296. *Id.*

297. G.R. Elton's restrained assessment is noteworthy:

With Sir Thomas More (1529-32) there began the modern line of great lawyer-chancellors—chancellors bred to the common law who were to bring to the gradually crystallising principles of equity enough of the air of the inns of court to make a partnership possible. Thomas Audley (1532-44) and Richard Rich (1547-51) were of the same stamp, though neither such eminent lawyers nor such admirable men.

Id. at 412-13.

298. ELTON, *supra* note 130, at 420. For other discussion of Cromwell as an important reformer in the English church, *see* ELTON, *supra* note 21, at 153-56; SLAVIN, *supra* note 16, at 143-52; ARTHUR J. SLAVIN, ED., THOMAS CROMWELL ON CHURCH AND COMMONWEALTH—SELECTED LETTERS, 1523-1540 xvii-xl (1969).

299. *Thomas Cromwell*, WIKIPEDIA, <https://perma.cc/72KW-775B> (last visited Nov. 9, 2022).

300. ELTON, *supra* note 21, at 142-150.

301. *Id.* at 153-54.

302. *Id.* at 157.

303. *See* Claire Ridgway, *1 January – Catherine of Aragon Has a Son, and Henry VIII Meets Anne of Cleves*, TUDOR SOC'Y, <https://perma.cc/S5S7-BYQS> (last visited Nov. 9, 2022).

304. ELTON, *supra* note 21, at 157.

305. *Id.*

306. *See id.* at 157.

various offenses by bill of attainder.³⁰⁷ He received no trial and was executed, by beheading, on July 23, 1540.³⁰⁸

For Henry, the “if only . . .” strategy did not work. If only he could obtain a divorce from Catherine, he would marry Anne and produce a legitimate male heir. Anne gave birth to a daughter, Elizabeth, in 1533.³⁰⁹ But married life with Anne did not go as well as the pre-marital affair.³¹⁰ She acquired many enemies, even her uncle, Norfolk, and the miscarriage of a male heir at about fifteen weeks gestation seemed to mark the beginning of the end for this marriage.³¹¹ Anne’s downfall became apparent when Henry’s new girlfriend, Jane Seymour, moved into royal quarters.³¹² Anne was charged with treasonous adultery and incest.³¹³ She was convicted and condemned to death.³¹⁴ Archbishop Cranmer, again doing Henry’s bidding, ruled there were grounds for annulment.³¹⁵ Anne was executed by beheading on May 19, 1536.³¹⁶ Henry and Jane Seymour married eleven days later.³¹⁷ If only Henry could have a male heir, then all would be well. On October 12, 1537, Jane gave birth to a son, Prince Edward, the future Edward VI.³¹⁸ But the birth was difficult, and Jane died from infection twelve days later.³¹⁹ Henry married Anne of Cleves in 1540, but that marriage lasted only a few days.³²⁰ Henry turned his eye to Katherine Howard, Norfolk’s niece, which caused Cromwell concern because he and Norfolk were rivals.³²¹ Henry married

307. *Id.* at 157-58.

308. *Id.*

Cromwell’s fall and manner of death have provided much material for moralizing. He had more enemies than friends: the nobles hated the upstart, the clergy the man who had disciplined them, the bishops the viceregent, the conservatives the radical. Many had suffered in his eight years of power, and the hatred engendered rested on him; indeed, though the cruelty and vengefulness which there were must be laid at the king’s door, Cromwell must bear his share of the heavy burden. A man of great mind and enormous ability, he had little gentleness and no mercy once his purpose was fixed. He was well fitted to carry out a revolution, and if—like most revolutionaries—he did not die in his bed, that is a matter neither for wonder nor for rejoicing.

Id. at 158.

309. *Id.* at 152.

310. *Id.* at 152-53.

311. Claire Ridgway, *Anne Boleyn’s Miscarriage of 1536 by Sarah Bryson*, TUDOR SOC’Y (2015), <https://perma.cc/FG7Y-SS69>.

312. The Editors of Encyclopedia Britannica, *Jane Seymour*, BRITANNICA (2021), <https://perma.cc/8GMM-GMPS> [hereinafter *Jane Seymour*].

313. ELTON, *supra* note 21, at 152-53.

314. *Id.* at 153.

315. *Id.*

316. *Id.* at 152-53.

317. *Id.* at 153.

318. *Jane Seymour*, *supra* note 312.

319. *Id.*; ELTON, *supra* note 21, at 154.

320. *Id.* at 157.

321. *Id.* at 157-58.

Catherine on July 28, 1540,³²² the same day that Cromwell was executed.³²³ If only Henry could find the right wife, then he could be happy. He was happy with Catherine for a short time,³²⁴ until it was discovered that she had been having affairs with two different men.³²⁵ These men were executed, and Catherine was beheaded on February 13, 1542.³²⁶ Henry married his sixth and last wife, Katharine Parr, a wealthy widow, in June 1543.³²⁷ During his last years, Henry suffered from physical decay and died on January 27, 1547, at the age of fifty-seven.³²⁸ Ultimately, it was not good for him to be the king.

Henry did have a male heir.³²⁹ His son, Edward VI, succeeded him at the age of nine.³³⁰ During his reign, a regency council governed.³³¹ Economic problems and social unrest marked the regency period.³³² In spring 1553, Edward became ill, and, by July, it was apparent that his condition was terminal.³³³ This set off another succession crisis. Edward's chosen successor, Lady Jane Grey, lasted only a few days, when she was overthrown and beheaded.³³⁴ She was succeeded by Edward's older half-sister, Mary, who was the only surviving child from Henry's first marriage.³³⁵ This brought greater complication to the church situation because she was, like her mother, staunchly Catholic.³³⁶ In fact, her short reign of five years was marked with religious persecution, and she became known as "Bloody Mary."³³⁷

Upon Mary's death in 1558, Elizabeth I, the daughter of Anne Boleyn, and Edward's other half-sister, succeeded to the throne.³³⁸ She was the last of the Tudor royalty, but her reign brought stability and glory (think William Shakespeare, Christopher Marlowe, and the great English composers of the

322. The Editors of Encyclopedia Britannica, *Catherine Howard: Queen of England*, BRITANNICA, <https://perma.cc/E4QS-ZRXX> (last visited Oct. 4, 2022).

323. The Editors of Encyclopedia Britannica, *Thomas Cromwell, Earl of Essex Summary*, BRITANNICA, <https://perma.cc/V8L8-4R7A> (last visited Oct. 4, 2022).

324. SUZANNAH LIPSCOMB, *THE KING IS DEAD: THE LAST WILL AND TESTAMENT OF HENRY VIII 16* (Pegasus Books Ltd. 2016).

325. Richard Bevan, *The Cuckold King: Did Catherine Howard Cheat on Henry VIII?*, SKY HIST., <https://perma.cc/SET8-YXZK> (last visited Oct. 5, 2022).

326. *Id.*

327. ELTON, *supra* note 21, at 195; Marilee Hanson, *Katherine Parr – Facts, Information, Biography & Portraits*, ENG. HIST., <https://perma.cc/P24R-U55T> (last visited Dec. 12, 2022).

328. ELTON, *supra* note 21, at 201-02; Emily Sohn, *King Henry VIII's Health Problems Explained*, NBC NEWS (2011), <https://perma.cc/W56N-EQAB>.

329. ELTON, *supra* note 21, at 154, 202.

330. *Id.* at 202.

331. *Id.* at 203.

332. *Id.* at 202-04.

333. *Id.* at 213.

334. *Id.* at 213-14; John Edwards, 'Jane the Quene': A New Consideration of Lady Jane Grey, England's Nine-Days Queen 5-6 (2007) (Ph.D. thesis, University of Colorado) (ProQuest).

335. ELTON, *supra* note 21, at 98, 153-54, 213-14.

336. *Id.* at 213-16.

337. *Id.* at 214-22; see also *Quick Answer: Where Did Bloody Mary Come From*, BIKEHIKE, <https://perma.cc/LP97-9W9P> (last visited Oct. 18, 2022) (stating Mary received her nickname of "Bloody Mary" for putting many protestants to death and that this nickname is the origin of the name for the popular drink).

338. *Id.* at 262-64.

Elizabethan period).³³⁹ One might also consider the other great royal crisis over an affair of the heart, arising in the 20th century.³⁴⁰ Wallis Simpson was an American citizen who had captured the attention of King Edward VIII.³⁴¹ Their intention to marry and her status as a divorcée caused a constitutional crisis that led to Edward's abdication.³⁴² Both times, the crisis of the King's marriage was eventually resolved, though not without a national time for a wrenching distress.³⁴³ On both occasions, the crisis of succession was eventually resolved through the emergence of an unexpected Queen, both named Elizabeth.³⁴⁴ The Lord indeed works in strange and mysterious ways.³⁴⁵

As for Thomas More, his legacy is not only secure; it continues to grow. Gilbert Keith ("G.K.") Chesterton wrote, in 1929:

Blessed Thomas Moore is more important at this moment since his death, even perhaps the great moment of his dying; but he is not quite so important as he will be in about a hundred years' time. He may come to be counted the greatest Englishman, or at least the greatest historical character in English history. For he was above all things historic; he represented at once a type, a turning point and an ultimate destiny. If there had not happened to be that particular man at that particular moment, the whole of history would have been different.³⁴⁶

Winston Churchill, of whom Chesterton's last line would also have been most apt, had this to say about Thomas More:

The resistance of More and [Bishop John] Fisher to the royal supremacy in Church government was a noble and heroic stand. They realized the defects of the existing Catholic system, but they hated and feared the aggressive nationalism which was destroying the unity of Christendom. They saw that the break with Rome carried with it the threat of a despotism freed from every fetter. More stood forth as the defender of all that was finest in the medieval outlook. He represents to history its universality, its belief in spiritual values, and its instinctive sense of otherworldliness. Henry VIII with cruel axe decapitated not only a wise and gifted counselor, but a system which, though it had

339. *Id.* at 474-75.

340. *King Edward VIII and Mrs. Simpson*, HIST. PRESS, <https://perma.cc/JER4-TSED> (last visited Oct. 19, 2022).

341. *Id.*

342. *Id.*

343. *Id.*; ELTON, *supra* note 21, at 99-102.

344. Alan Cowell, *Queen Elizabeth II Dies at 96; Was Britain's Longest-Reigning Monarch*, N.Y. TIMES (Sept. 8, 2022), <https://perma.cc/59H7-8G92>; ELTON, *supra* note 21, at 262.

345. *Cf.* *Isaiah* 55:8-9 (stating, "For my thoughts are not your thoughts, neither are your ways my ways, saith the LORD. For as the heavens are higher than the earth, so are my ways higher than your ways, and my thoughts than your thoughts"); *Romans* 11:33 (stating, "Oh, the depth of the riches and wisdom and knowledge of God! How unsearchable are his judgments and how inscrutable his ways!").

346. Douglas O. Linder, *The Trial of Sir Thomas More: An Account*, FAMOUS TRIALS, <https://perma.cc/GKL9-6LTN> (quoting G.K. Chesterton, *A Turning Point in History*).

failed to live up to its ideals in practice, had for long furnished mankind with its brightest dreams.³⁴⁷

Indeed. The axe decapitated the man; it also damaged the system, although not fatally. But it was not time alone that provided the healing. Only through learning lessons from that catastrophe of a trial could the legal system recover. We must regard this trial as an indispensable cautionary landmark. From the vantage point of the 19th century, Lord Campbell said of Thomas More: “After three centuries . . . we must still regard his murder as the blackest crime that ever has been perpetrated in England under the form of law.”³⁴⁸

VI. WHAT DO WE LEARN FROM THIS STORY?

There is much to be learned from Thomas More’s ordeal. The pre-trial process and the trial point the way for what not to do. More’s biographer, Peter Ackroyd, gave this summation:

It is one of the most celebrated trials in English history. At first he had stood before his accusers, like Jesus, but weariness and debility mastered him before the end of the proceedings He had not been given any advance warning of the case against him, although he must have anticipated its main thrust; in treason trials the accused man had no “rights” in the contemporary sense. There was no presumption of innocence, and the prisoner was given no opportunity to call witnesses in his defence [sic]; as the testimony of Rich suggests, the rules of evidence were by no means strict. There is no reason to believe that the jury of twelve men, listening to his testimony in Westminster Hall, were overtly persuaded to find the case against More proven; but if they had declared him innocent, they might themselves have been imprisoned or even attainted. It was not a trial which More could have won.³⁴⁹

One explanation might be the power of the charge of treason to cloud men’s minds. There was no presumption of innocence. The jury could not be impartial because there was the real possibility of recriminations against them if they sided with a traitor.³⁵⁰ The gravity of the offense seemed to justify “whatever was necessary” to obtain a conviction. Thus, the law of treason itself can provide an important measure of the character of the regime and its willingness to respect the rule of law.³⁵¹

347. WINSTON S. CHURCHILL, *A HISTORY OF THE ENGLISH-SPEAKING PEOPLES: THE NEW WORLD* 64-65 (1958).

348. Richard O’Sullivan, *The Survival of Blessed Thomas More*, 15 *NEW BLACKFRIARS* 695, 699 (1934).

349. ACKROYD, *supra* note 5, at 399.

350. *Id.*

351. Van Patten, *supra* note 30, at 3.

We see the influence of the Thomas More trial on our own foundational structure. Article One, Section Nine of the United States Constitution lists the powers that are denied to Congress.³⁵² Among them is the prohibition against a bill of attainder,³⁵³ a potent legal weapon to destroy the losing side in battle or in a power struggle.³⁵⁴ The law of treason received special attention in Article III, Section 3:

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. *No person shall be convicted of Treason unless on the testimony of two Witnesses to the same overt Act, or on Confession in open Court.*

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.³⁵⁵

There is also “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”³⁵⁶ This is a key provision for the modern state because it denies religious affiliation or religious belief as a basis for political right.

In the Bill of Rights, we see numerous provisions that have their roots in the shortcomings of the More trial. The Fifth Amendment provides, in part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury . . . ; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . .³⁵⁷

With the More prosecution, there was no grand jury to act as a potential check on prosecutorial abuse.³⁵⁸ There are hints of double jeopardy because More was incarcerated for over a year, effectively serving time for his refusal to take the oath, and then was charged with treason on the same facts except for Rich’s perjured testimony.³⁵⁹ More’s silence was argued as a basis for his guilt,³⁶⁰ and he was deprived of his liberty and, eventually, his life without due process of law.

352. U.S. CONST. art. I, § 9.

353. *Id.* A bill of attainder is a legislative determination of guilt and means “the act of extinguishing someone’s civil rights by sentencing the person to death or declaring the person to be an outlaw, usu[ally] in punishment for treason or a felony.” BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 89 (2d ed. 1995).

354. BELLAMY, *supra* note 219, at 9-46.

355. U.S. CONST. art. III, § 3, cl. 1 & 2 (emphasis added).

356. U.S. CONST. art. VI, § 3.

357. U.S. CONST. amend. V.

358. ACKROYD, *supra* note 5, at 390-92.

359. *Id.* at 358-93.

360. *See Griffin v. California*, 380 U.S. 609, 613-14 (1965) (stating the rule of evidence which permitted comment on failure of the defendant to testify violated the Fifth Amendment prohibition against compulsory testimony).

The Sixth Amendment provides, in part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence [sic].³⁶¹

All of these rights touch upon the trial. Perhaps the most important for this story are the right to a speedy trial, the right to an impartial jury, the right to prepare a defense through timely notice of the charges, the right to confront the witnesses against him, and the right to compel other witnesses to testify in his favor. More, in this particular case, did not need the assistance of counsel. He had time to think through his defense and he was, by far, the best lawyer in the courtroom.³⁶²

Even with fairest and finest rules of procedure, however, the final result may yet be unjust if the substantive law is unjust. And that was the case here. The *fundamental* problem with the More trial was not the absence of procedural protections for the accused, although that certainly did not help. The fundamental problem was the assertion of jurisdiction over individual conscience.³⁶³ Today, we would say that the government does not have the power to require allegiance to any assertion of religious supremacy.³⁶⁴ That is something a government of limited powers is not permitted to demand.³⁶⁵ There must be space to think outside of the power of the State.

The most important consequence of the More trial lies in the First Amendment, not in the Fifth or Sixth Amendments. The separation of church and state is an indispensable characteristic of modern government.³⁶⁶ This is also

361. U.S. CONST. amend. VI.

362. ACKROYD, *supra* note 5, at 359-406.

363. This was expressed beautifully by Andy Dufresne in *The Shawshank Redemption*. THE SHAWSHANK REDEMPTION (Castle Rock Entertainment 1994). Andy had just come back from two weeks in solitary confinement as punishment for playing music over the prison system's intercom:

"It was the easiest time I ever did. . . . I had Mr. Mozart to keep me company. . . . It was in here [tapping his head] and in here [tapping his heart]. *That's the beauty of music . . . they can't get that from you.* Haven't you ever felt that way about music?"

Red admitted that he played a "mean" harmonica as a younger man. No longer, however: "Lost interest in it, though. Didn't make much sense in here." Andy responded, "Here [at Shawshank] is where it makes most sense. We need it so we don't forget. . . . [t]hat there are places in the world that aren't made out of stone. . . . *There's something inside that they can't get to, that they can't touch. It's yours.*"

Jonathan K. Van Patten, *The Trial and Incarceration of Andy Dufresne*, 62 S.D. L. REV. 49, 63 (2017) (emphasis added).

364. U.S. CONST. amend. I.

365. *Id.*

366. U.S. CONST. art. VI, cl. 3; U.S. CONST. amend. I. See also Jonathan K. Van Patten, *In the End Is the Beginning: An Inquiry into the Meaning of the Religion Clauses*, 27 ST. LOUIS U. L.J. 1 (1983) (discussing religious liberties in America).

implicit in the structure of the Constitution.³⁶⁷ We have a government of enumerated powers. That is, unless an expansive reading of the Necessary and Proper Clause overwhelms the limitations of the Article I, Section 8 enumerated powers, government does not have the power to invade the realm of conscience.³⁶⁸ Whether government may require certain actions, despite conscience, is a closer and, more complicated, question.³⁶⁹ This does not mean that separation of the two realms requires a purely secular public square. While the First Amendment restricts what government can do, the Fourteenth Amendment permits citizens to enact values expressing a community conscience.³⁷⁰ As Thurgood Marshall stated: “The Fourteenth Amendment was no more or less than a codification of the Judeo-Christian ethic.”³⁷¹ The Civil Rights Act of 1964 is one such enactment.³⁷²

Coming back to the case of Thomas More, why did Henry and Cromwell demand the extreme measures? They had denounced More because they respected him. They clearly wanted affirmation from him. Perhaps an appearance at the King’s wedding reception would have turned them from the more dangerous path (for everyone). Remember, one may presume consent from silence. But no. No one would back down. If hypocrisy is the tribute that vice pays to virtue, then the demand for submission to a false narrative is the tribute that tyrants pay to the rule of law. There was still grudging respect for the process, even by those who ultimately subverted it. They tried to secure a result at least facially consistent with the rule of law. They had to change the law and, even then, they had to obtain the desired result through perjured testimony.

Robert Bolt’s narrative does some “airbrushing” to the picture of the saint. “Sir Thomas More died for conscience’ sake, but not for freedom of conscience, freedom of thought, or tolerance in religion.”³⁷³ As Lord Chancellor, he persecuted heretics and fiercely wrote against Luther.³⁷⁴ But this story becomes a memorable testament to conscience and courage. There is much for us to admire in this great dramatization.

While More’s legal acumen was first-rate, his political acumen was less so. His predictions about what would happen legally fell short because he underestimated the capacity of his foes for evil. He believed naively that the rule

367. U.S. CONST. amend. I.

368. U.S. CONST. art. I, § 8. The compartmentalization of constitutional law into powers of government and individual rights has limitations. Studying the trial of Thomas More as a whole is a beneficial antidote.

369. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding the free exercise clause protected the decision of Amish parents to withhold their children from compulsory education past the eighth grade); *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (discussing refusal to salute the flag protected on free speech grounds).

370. U.S. CONST. amend. I; U.S. CONST. amend. XIV. “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

371. RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* 222 (1975).

372. 42 U.S.C. §§ 2000a to -200h-6.

373. ELTON, *supra* note 130, at 417.

374. ACKROYD, *supra* note 5, at 227-31; 276-86.

of law would prevail. He instructed his family where his safe haven lay: “But in the thickets of the law, oh, there I’m a forester. I doubt if there’s a man alive who could follow me there, thank God. . . .”³⁷⁵ His faith in the law, even in the thickets of the law, was inspiring, but the law failed him, as it does sometimes fail others. A sober reminder that the law is not perfect.

VII. CONCLUSION

The path from Magna Carta to the United States Constitution and the Bill of Rights runs through the trial of Thomas More. Individual rights, such as freedom of speech and due process of law do not just simply appear out of thin air. They are grounded in experience. The experience may come at a terrible price. But if that price assures recognition of an important understanding, it will have not been futile.

“I do none harm, I say none harm, I think none harm.”³⁷⁶ Surely, there must be space for men like this. We agree to disagree for the greater good of civil peace. One should not insist on having the last word. Silence, with respect, can be a great balm in taking the edge off serious disputes.

“Death . . . comes for us all, Lords. Yes, even for kings he comes.”³⁷⁷ While it may be good to be the king, for a while, More’s perspective is a bracing reminder of the temporal nature of fame and fortune. The injustice of Thomas More’s sentence and execution was manifest. His case became a prominent witness to the principles of the rule of law and a critical statement on the shortcomings of English law in 1535. There are indeed worse things than death.

375. BOLT, *supra* note 1, at 66.

376. A MAN FOR ALL SEASONS I, *supra* note 1, beginning at 1:56:56.

377. *Id.* beginning at 1:46:35.