

More and Theology

by Peter Ackroyd*

I am a layman, in both a spiritual and legal sense, so you must forgive me if I do not embark upon the technicalities of legal or theological discourse. I come to the subject as a historian and a biographer, and thus as an observer of medieval law itself. It is a world in which (to quote some of the participants today) there was no equality of meaning, no fragmentation of knowledge, no dialogue about absolutes, no religious pluralism, no God persuadable by Moses or anyone else. If aspects of this world seem refractory or meaningless to you, then it may be good to confront an alien culture which lasted for almost a thousand years among our English-speaking ancestors. If some of it provides echoes of our contemporary existence, then we must not ask what is modern about our ancestors but what remains medieval about us.

Sir Thomas More is perhaps the greatest embodiment of law and theology assimilated. He was Lord Chancellor of England, and was the first English layman to be canonized and then beatified as a saint. He is a witness of the tradition which we are addressing here this morning. He was in a literal sense born into the law. His father, John More, was a serjeant-at-law before joining as a judge the Court of Common Pleas and eventually the King's bench. In turn John More had decided that his son would be trained in the law, and never once did More question his father's wishes. Who was it who said that obedience is the largest part of the law? I believe that it was your countryman, Edgar Allan Poe, who once declared that the people need to know nothing about the law except to obey it. In an obituary tribute, More described his father as

* Cambridge University (1971); Mellon Fellow at Yale University (1971-73). Recipient: Whitbread Biography of the Year for biography of T.S. Eliot. Author: *The Life of Thomas More*, London: *The Biography Chatterton, Hawksmoore, The Plato Papers*. Selections from Mr. Ackroyd's journalism, reviews, essays, short stories, and lectures have been gathered in *The Collection*, edited by Thomas Wright.

“misericors,”¹ “aequus,”² and “suavis”³ which are indeed the signal attributes of a good lawyer. But this represents more than filial piety. There is a famous story of More as Lord Chancellor of England. When he presided over the Court of Chancery in Westminster Hall he was in close proximity to his father who was on the King’s Bench in the same hall. When he passed him the young More always knelt down and asked for his father’s blessing—and this when he was the highest legal authority in the land, apart from the king. He knelt down before the father who had from his earliest years always represented for him the law. He was in a literal sense bowing before the law. In his polemical works he continually invokes the writings of the “Fathers” of the Church. And of course the Pope was head of the Church and Supreme Father. He wrote, too, in the context of the Reformation which killed him, that the English Church could no more forsake Rome “than might the child refuse obedience to his natural father.”⁴ Do you see how powerful a combination can be found here, connecting legality and piety in all of its manifestations?

More’s early schooling also invoked the practice of the law. At St. Anthony’s School in Threadneedle Street the pupils engaged in disputations in Latin. These were oratorical contests in which the palm was given to the most eloquent rather than the most erudite. They would organize their discourses into “*exordium*,⁵ *narratio*,⁶ *divisio*,⁷ *confirmatio*,⁸ *refutatio*,⁹ and *peroratio*¹⁰.”¹¹ This was not some antique discipline, but a necessary and practical training for a legal career.

It was in any case a highly litigious age, as we all know. Every activity of life was seen within a network of duties and obligations, which in turn led to the concern for precise formulae and ordinances. It has been estimated that in each law term there were more than one thousand pleas or bills being conveyed through the various courts—which, in a city of some forty thousand people, is quite an achievement. The legality of this culture can be compared to the

1. pitiful, compassionate; D.P. SIMPSON, CASSELL’S LATIN DICTIONARY 375 (6th ed., Macmillan Publ’g 1977) (1954).

2. equal, impartial, fair; *id.* at 26.

3. sweet, pleasant, agreeable, delightful; *id.* at 574.

4. PETER ACKROYD, THE LIFE OF THOMAS MORE 68 (Anchor Books, 1999) (1998).

5. a beginning; SIMPSON, *supra* note 1, at 229.

6. a telling, relating, narrative; *id.* at 386.

7. division; *id.* at 200.

8. a thorough strengthening; *id.* at 131.

9. a refutation; *id.* at 509.

10. the conclusion of a speech; *id.* at 439.

11. ACKROYD, *supra* note 4, at 26.

ubiquity of regulations and ordinances of the Catholic Church with which, as I hope to demonstrate, it bears a striking affinity. The boys of St. Anthony's School were being made aware of the presence of external authority and becoming acquainted with the implicit demands of order and stability in human affairs. The law and the Church were the twin pillars of this order. Beyond them was the image of God. The natural order acted as a visible token of an invisible presence. That is why the great legal theorist Fortescue quoted with approval Justinian's remark that judges were "priests of the law."¹² Wycliff compared the "white silk coif of the serjeant to the religious head-dress of the Jewish priests."¹³ The law was religion; religion embodied law.

After attending school More was enlisted as a page in the household of the Lord Chancellor, Archbishop Morton, where once more he literally served the embodiment of law. All his life he was drawn to the company of older men, as if always seeking for this image of the man of law. In Morton's household he took part in the various plays and interludes which were performed in the hall. It was remarked at the time that he had an innate skill as an actor as well as an orator, which is intimately related to his later performance as a lawyer in the courts of London.

At the age of fourteen or fifteen, he went up to Canterbury College, Oxford, where he studied grammar, rhetoric, and logic, and where he became involved in the world of formal oratory and public debate. There were days of disputation—*dies disputabilis*—when he would be required to argue on either side of a proposition. Again this was perfect training for a lawyer. We might reflect, too, upon his studies within the discipline of scholastic philosophy—a body of coherent and formal knowledge designed to elucidate the world. All aspects of the medieval dispensation are of a piece. For More, therefore, scholasticism afforded a practical training in dialectic, in reckoning the truth of propositions or the plausibility of certain arguments. These were skills he used again and again in the courtrooms of London.

There is another matter of some interest. It is known that from an early age Thomas More acquitted himself well as an actor. His son-in-law's biography explicitly mentions the fact that More took his place among the players during the interludes performed at Archbishop Morton's palace. All his life, in fact, he remained something of an actor with all the adaptability and detachment that the word applies. When he was Chancellor of England, he deliberately performed a part. Beneath his robes of state he wore a hair shirt. When he was in court no doubt he also performed. As a boy he had learned to act out either

12. *Id.* at 62.

13. *Id.*

side of the case, and we must admit that in this, as in other matters, he remained a consummate professional. There is another interesting cultural consequence which once more relates law and church. It is often believed that the great dramas of the Tudor period stem directly or indirectly from the mystery plays of the fourteenth and fifteenth centuries. But there is also a persuasive case to be made for sixteenth century drama to have arisen out of the disputations in the Inns of Court. The earliest tragedies and comedies were indeed performed at the Inns, and there is a clear connection between lawyers and the writing and production of plays. You will recall that Shakespeare's *Comedy of Errors* was first performed at Gray's Inn, and *Twelfth Night* in the Middle Temple. So the law, like the Church, encouraged and harbored dramatic representations. It is the mark of its centrality in the culture.

More left Oxford without taking a degree, and at sixteen took up his studies at New Inn, one of the Inns of Chancery where he began an intensive legal training that lasted for at least seven years. Here again it was affirmed that human justice was a reflection of divine law, and thus it became for him the principle and model of conduct upon the earth. But there were also practical reasons for his protracted studies. Erasmus said that in England lawyers were "magni clarique,"¹⁴ important and distinguished. They took up key positions in various royal councils and offices. They were offered the rewards of great prestige and great wealth. Serjeants-at-law were considered to be of equal status with knights. It is impossible to magnify the social and cultural importance of the law in the medieval period. One historian has even gone so far as to state that "the most important events in the thirteenth-century making of an English state were 'Bracton's' compilation of *The Laws and Customs of England* and the continuation of the work of the law-book writers in semi-official registers of writs and collections of statutes."¹⁵ The most important events of an entire century.

At New Inn, More studied English common law, the law of the courts, which had become an elaborately codified system of procedures and precedents. Procedure in the strictest and most formal sense was at the heart of English medieval law: the process was more important than any judgment, and the formal rituals of presentation and challenge took precedence over the desire for any particular result. If a lawyer did not

14. large, great, important; to make bright or clear; Kevin Cawley, *Latin Dictionary and Grammar Aid*, at <http://cawley.archives.nd.edu/cgi-bin/lookit.pl?latin=magni+clarique> (last visited April 19, 2002).

15. ALAN HARDING, *ENGLAND IN THE THIRTEENTH CENTURY* 322 (1993).

choose the right writ, his client's case, whatever its merits, would be rendered inadmissible. When we talk about the theology of law, we must recall that More grew up in a stridently Catholic culture where ritual, spectacle, and display were the abiding realities of life. The law, then, resembled the Church in its outer workings as well as in its inner principles.

But of course the connection between law and religion in early Tudor society can be anatomized in a number of respects. Common law was believed to be "grounded upon the lawe of reason and the lawe of God,"¹⁶ and Fortescue paraphrased the words of the Old Testament King Jehoshaphat in declaring that:

[a]ll judicial sentences are the judgements of God. Religion and law were not to be considered separately; they implied one another. That is why law was considered to be perfect in itself . . . it was what was known to be true, withstanding change or decay. It is possible to see how in its theoretical state it became the image and explanatory model for all areas of human activity: it stood upon the ground which we are now accustomed to call politics, for example, and marked out the very nature of society itself. There were laws of custom and the law of nature. "If there were no Law," says one judge quoted in a Year Book, "there would be no King and no inheritance." That is why it is misleading to separate "social" from "political," "legal" or "religious" matters in this period; they represent the same central concern of fallen man, which lay in understanding and organising his temporary sojourn upon the earth.¹⁷

It is of the utmost importance to note that More wrote about the law in precisely the same way as he described the Church.

There is another significant point to be made in this context. Despite the theoretical majesty of the law, its practitioners were not necessarily the best advertisement for its sacredness. In fact most judges and pleaders were, by modern standards, thoroughly corrupted and corrupting. One historian of the period has described "[t]he great difficulty of obtaining impartial justice."¹⁸ Judges routinely purchased their offices and, in turn, expected to make money out of their verdicts. They were retained on pensions by rich and important patrons, who of course expected that justice would go their way. But this will come as

16. ACKROYD, *supra* note 4, at 62-63.

17. *Id.* at 63.

18. GEORGE HOLMES, *THE LATER MIDDLE AGES 1272-1485* 247 (Thomas Nelson & Sons Ltd., 1967) (1962).

no great surprise to those who have studied medieval society. Again we must turn for an explanation to the analogy with the Church. The law was considered to be perfect in itself, undamaged by the corruption or bad judgment of its individual practitioners; the same argument, on the merits of Mass as opposed to the virtue of the priest who offered it, was at the heart of Catholic eucharistic belief. A priest who was also a murderer could still perform the miracle of transubstantiation. A corrupt lawyer does not taint the law which he practices. It is one of the central characteristics of the medieval mind. But it also has a contemporary relevance: if you create a theology out of law, then you may absolve the lawyer of individual culpability. The morality is in the theology, not in the practice.

After his training in New Inn, Thomas More soon went through the ordained degrees of excellence at Lincoln's Inn where he became in succession butler, marshal, and autumn reader. He became a freeman in the guild of Mercers. This is also of importance in any understanding of the connection between law and religion—More was always happiest as a member of a community and of a communal faith based upon hierarchy, order, and degree. He joined the Charterhouse, the monastery of Carthusians, as a secular guest. It is not clear that he would have differentiated this experience from his life in one of the legal Inns. He also became a London lawyer, a member of parliament, and an under-sheriff of London. He had chambers in Lincoln's Inn and became a member of Doctors' Commons—a fraternal association of civil and canon lawyers which emphasizes the close connection once more of legality and theology. Then in 1516, More entered the service of the King as a member of the Council of the Star Chamber and as a diplomat on the King's business. Two years later he became a councillor attendant, in constant proximity to Henry VIII. At this point, in the period immediately before and after the Reformation, we witness the dissolution of More's universe. We have seen that law represents the pillar of order. More's single most bitter accusation against Luther and his followers is that they incited disorder. He is the first English writer to employ the Greek term "anarchos,"¹⁹ and he related the whole great change of European consciousness in the sixteenth century to the "hatred that they beare to all good order" and "the great hungeryt they haue to brynge all out of order."²⁰ They, here, are the Protestants.

His attack upon Luther in *Responsio ad Lutherum* is in fact the speech of a forensic lawyer pleading his case to jurors. "Ecce lector,"²¹

19. ACKROYD, *supra* note 4, at 68.

20. *Id.*

21. to hear, hearken, listen to; reader; SIMPSON, *supra* note 1, at 206, 340.

he interjects, "audisti lector."^{22,23} He could not help but speak and argue as a lawyer in defense of the law itself. All of his polemical writings, striated as they are by bitter accusations, cross examinations, special pleadings, perorations, suborning of witnesses—all of these writings are sustained by his permanent and intuitive belief in the concept of immutable and complex law, manifested in elaborate structures and hierarchies, evinced in unwritten codes of duty and mutual obligation. And that was precisely what was being eroded.

That is why he took up the post of Lord Chancellor after the downfall of Cardinal Wolsey in the autumn of 1529. He wished to defend and maintain the Catholic Church in an age of anxiety. It was the greatest obligation in a life always filled with obligations. It was his last duty on Earth. It was of course also the fulfillment of his secular life's work. For thirty-one months he embodied the law of England. Here again is another connection between theology and law. As a hunter of heretics, and occasional burner of them, More's closest colleagues were not the King or the council but the clergy of England. His polemical writings from this date also demonstrate very clearly that his whole life and duty lay now in his battle to protect the Church. But when in the spring of 1532 Henry VIII declared himself "supreme head" of the Church in England, and abandoned the thousand years of unity with the See of Rome, More knew that he had lost the battle. He resigned as Lord Chancellor.

Yet he still thought, and acted, instinctively like a lawyer. He was very careful in what he said; he gave no hostages to fortune. But nevertheless he became the principal suspect in all matters pertaining to opposition to the King. The story of his arrest and trial is sufficiently well known, but it is important to recall here how much depended upon the strict legal interpretation of his words and of his deeds. He was interrogated by lawyers and tried by lawyers. His strategy was one of silence and noncompliance while remaining strictly within the boundaries of the law. When he refused to sign the oath agreeing to the Act of Succession, which invalidated the marriage between Henry VIII and Katherine of Aragon, it is clear that he knew the law better than the commissioners who interviewed him. "But yet it thinketh me," he told them, "that if I may not declare the causes without perill, than to leaue them vndeclared is no obstinacy."²⁴ No man is obliged to condemn himself, in other words. He later told his daughter that he had refused

22. *Id.* Behold! Lo! See!; reader; *Id.* at 67, 340.

23. ACKROYD, *supra* note 4, at 228.

24. *Id.* at 362-63.

to sign the oath because "it was not agreeable with the statute."²⁵ The complexities of this are too great to go into here, but I think you will agree that it is the response of a lawyer who knew all about acts and statutes.

One of the last acts of legal nicety occurred in his cell, when he struck up a conversation with one of the King's councillors, Sir Richard Rich, who was also a lawyer. Here they engaged in the kind of discourse which they had learned as students at the Inns of Chancery. "Put the case that" It is a way of asking and answering theoretical matters, with no suspicion of personal belief or involvement. "Ask . . . you this case if it were enacted by Parliament that I should be King" ²⁶ More replied, "[P]utt a nother hyer case whiche was this Sir I put case . . . by Parlyment that God were not God" ²⁷

And so it went on. But Rich trapped him, when More put the case that "although the Kyng were acceptyd in Inghland yet moste Utter partes doo not affirme the same[.]" ²⁸

He had thought it was a legal game, but in fact it was claimed that by implying that the King would not be accepted elsewhere he was denying the King's right to the title of Supreme Head. It was enough to send him to his death. More said at his trial, "And yet, if I had done so indeed, my Lords, as master Rich hath sworne, being it was spoken but in familiar secrete talk, nothing affirminge, and only in puttinge of cases without other displeasaunt circumstances, it cannot justly be taken to be spoken maliciouslye." ²⁹ But the rules of law were changing like the rules of religion. It would be inconceivable to More, from all his legal training, that in putting the case he could be supposed to be expressing his individual convictions. He had abided by the rules of law all his life, and he still could not imagine a world in which they might be distorted or abrogated. It was the anarchy he feared. At his trial he pleaded like a man of law. He made his case skillfully and his penultimate speech "in arrest of judgement" was a masterpiece of legal tact and nicety. ³⁰ Yet nothing could save him now. He asserted the laws of God and of reason, as they had been inherited, and he simply did not believe that the English Parliament could repeal the ordinances of a thousand years. It is significant that he was found to be guilty

25. *Id.* at 364.

26. *Id.* at 389.

27. *Id.*

28. *Id.*

29. *Id.* at 389-90.

30. *Id.* at 399.

because of that conversation with Rich in which he “put the case.”³¹ He was in that sense condemned for acting like a lawyer and, at the trial itself, he was also convicted for maintaining traditional law. He embodied law all his life, and in the end he died for it. This is his tragedy. More embodied the old order of hierarchy and authority at the very moment when it began to collapse all around him. “He died for the sake of the order which he had first learned in his father’s house.”³²

31. *Id.* at 400.

32. *Id.* at 66.

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