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ST. THOMAS MORE

SISTER GERTRUDE DONNELLY *

ST. THOMAS MORE was a lawyer and a successful real-estate man. He owned property in the new suburb of Chelsea. He bought and sold London property at a good profit. He might be called one of the earliest English capitalists; a farmer himself, he held extensive farm holdings in Battersea, South Kent, and Glastonbury, and he was what we would call a corporation lawyer to the London Mercers, those wealthy textile merchants who were to become the foundation-stone of English commercial superiority.

Yet, perhaps, St. Thomas More is best remembered as a lawyer. In his first fourteen years of practice he won so many cases against the Crown that Cardinal Wolsey finally carried him off to the King's service so that the Palace would stand a better chance of a favorable verdict in the courts.

Under the redoubtable Tudor, Henry VII, the young More made the bad mistake of winning the Parliament over to reducing the King's request for his daughter's wedding from 90,000 to 40,000 pounds. And that was as a newly-elected burgess to Parliament at the age of 26. His father, Judge John More, had to spend some time in the Tower to satisfy the elder Henry's spite. His father paid the fine—with what remarks to his impetuous son we may imagine!

Thomas More then held successively the offices of Under-Sheriff of London, envoy to the Low Countries, member of the Privy Council of Henry VIII, was knighted in 1521 at the age of 43, and made Speaker of the House two years later. He succeeded Cardinal Wolsey as Chancellor in 1529, and resigned the office in 1532, laying aside the great SS chain and seal, complaining of an ailment in his chest.

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Some say, rather, because of a complaint afflicting Henry's heart. In 1534, he refused to take the Oath of Supremacy which would make Henry head of the Church in England. More was then taken to the Tower of London, and after an infamous trial in Westminster Hall, was beheaded as a traitor on Tower Hill at the age of 57.

Through that long career of public service ran the strong strain of his legal training. He became known as a barrister of such sterling honesty that even his friends complained over his cool impartiality. When he was made judge, it became even more obvious. He told his son-in-law, William Roper, that if the devil himself came into his court with the better case, he would hold for the devil even against his own father. More had to do just about that in the case of John Mulshu v. Village of Thingden where he found the law on Mulshu's side, even though his heart was with the villagers against their irascible neighbor. More returned the verdict for Mulshu—something only a lawyer can understand.

To the end, his professional role clung to him. When he was being hauled up Tower Hill to his execution a woman shouted from the crowd, taunting him with his present lot, reminding him that he had given judgment against her in his court. He answered that he remembered her and the case and his judgment, and that if he had to do it again the verdict would be the same—though he now had an hour to live!

As judge, he may be best remembered in official records of the time for performing what I suppose we'd expect of a judge who was a saint. So great was his dispatch, his organization, and his industry, that one morning when he called for the next case—there wasn't any! The rhyme goes:

When More some time had Chancellor been
No more cases did remain.
The like shall never more be seen
Till More be come again.

None of what we've discussed so far gives quite the depth and breadth of the great personality of this man. That personality was distinguished, above all, by a sense of humor. It was a necessity for his time—and for ours. He lived through and fought out the soul-shattering beginnings of the Protestant Reformation. We are living through the Catholic version, and little balance can be achieved without that saving grace of self-perceptive and humorous appraisal. More preserved that humor throughout his varied and tension-filled career.

Yet, for our consolation, he was often just a man, a fearful man who tells us of the fear that comes to a man in the night. He knew the anxieties of a future full of uncertainty, the dread of what would come to him and his loved ones. He speaks of the struggle he endured when he had to make up his mind about the oath—and how much besides! At last he bursts out with: "Son Roper, I thank Our Lord the field is won!" And after that—silence; not a word out of him about the king's matter or his own conscience. He knew better, Cromwell would need the evidence.

But, in spite of it all, he still jested, he laughed, he constantly played practical
jokes. As a humanist, he enjoyed the sly, literary dig and perpetrated scores of them. His *Utopia* is such an example. The book is an exercise in humanistic ingenuity and tongue in cheek. He tells with a perfectly straight face about the baby chicks hatched from the incubator who don't follow the hen, but the men who built the machine! More went quite far with this humorous bent. When you visit Chelsea Church, you can read his epitaph, miraculously spared from the bombings. This was for the tomb which would hold him and his first wife, Jane and his second wife, Alice. More gets in a good thrust at his neighbors who might have been shocked, when he had inscribed thereon that he had lived happily with dear little Jane, and with Alice, no less dear. Here in the tomb they lie together as they shall live together in heaven. But he must add: “O how joyously we three would have lived united here, if—fate and religion would have permitted it!”

But More was also a man among men. That same epitaph makes sure that the world will know that he hadn't been fired (with foresight he had his epitaph carved before Henry's rage descended), but that he had quit his job—and for his own reasons. Doctor Frank Sullivan of Loyola University, Los Angeles, has concocted a delightful story about More in heaven advising St. Peter on political matters, since he is the only canonized saint up there who ever ran for and won political office. Peter consults More about a man who wants to get into heaven for his political activity. More says to ask him what he ever did along those lines. The fellow says that he wrote many letters advising office-holders as to how to do their job. “Ask him,” says More, “what he ever contributed to the campaign fund.” After long thought, the man remembers two gifts of 25 cents each. More nods gravely to St. Peter and replies: “Please give this gentleman his four-bits and tell him to go to hell.”

When the chips were down how did his background stand up? As a man who read the signs of the times More knew well that he had to get out of the Court, so he retired. But his legal acumen led him to some interesting judgments—and to some weighty decisions and acts. More knew well that law is an external regulating agency which can't possibly cover all contingencies, but it serves for a norm; it is an abstraction; it can often fail to touch reality; it is a general direction to be made particular in each concrete action. But, because law offers security that what we are doing is right just because it is law, we prefer not to incur the risk which a flexible interpretation of the law entails; as John McKenzie tells us: “Law offers a set of prefabricated decisions for every situation up to a point. One need feel no personal responsibility for one has transferred all personal responsibility to the law—just consult the mental card file and the answer pops out—up to a point!”

But that's where the crises occur; they make us or break us. And here comes the Christian revolution of the Gospel message: no specific directions for each situation, oh no! Not in the Gospel. Yet, redeemed man, as we find him in the Gospels, has moral powers which he does
not possess by natural endowment. His moral ideal can be attained through the gift of grace known through revelation. And Thomas More had a problem: that Parliament had made a law, but somehow the King felt that all citizens of the realm should somehow confirm it (was he insecure?). So all of them had to sign an oath. All the bishops save one, John Fisher, and all the public figures save one, Thomas More, along with some Carthusians—a stubborn lot whom More had known well in his youth—all but these few signed that oath, made that decision. So the official Church in England backed the King.

Here the Law and the Spirit would seem to take different roads. For the Spirit is Power—He is neither a flame nor a bird; he is a greater reality than the hierarchical structure of the Church. The Church is the work of the Spirit, not of men. So when the bishops signed the oath, the Spirit had not left the Church, nor has He today. The Spirit asserted itself—and as it does so often—not in the way the members or officers of the Church expect or would like. So, in England in 1535, the Spirit asserted itself, says McKenzie, in Thomas More and John Fisher.

And the Spirit was Power. More, like the good lawyer he was, knew so well that he would be harassed; they would try to trap him in his speech—so he used none. After months in the Tower during which he suffered from ill-health and grew a beard he emerged for trial on July 1 of 1535, in Westminster Hall. It is so strange that there are brass markers in the floor of that hall showing where Warren Hastings stood, where Charles stood, but none for Thomas More.

After the indictment had been read, he was told that the King would still pardon him if he would forget his obstinacy. He replied that he thanked them, but asked God that it might please him “to keep me in this my honest mind to the last hour I live.” More was then charged with maliciously refusing to answer when asked the question of the King's Supremacy. He replied that he had learned that treason lay in word and deed, not in silence.

The Prosecution then said that his silence was a demonstration of malice against the statute. More countered that the maxim of the Civil Law “Silence gives consent,” would make his silence a ratification, not a condemnation of the law. More went on:

Ye gentle men must understand that in things touching the conscience every true subject is more bound to have respect to that conscience than to any other thing in all the world; namely, when his conscience is such as mine: giving no occasion of slander, of sedition against his prince, for I assure you that I have not hitherto to this hour disclosed my conscience to any person living in all the world.

How well he had foreseen this very charge, this very situation, and prepared for it, yet, fighting every step of the way. And here I must object to those who accuse More of dreaming of martyrdom. He did not see himself as martyr material. He was too busy living and enjoying living—though he wore a hair-shirt! Some say that his desire for
martyrdom came from a deep-seated spiritual vanity, that nobody wanted his life. Poor Henry regretted the political necessity!

This vein of attack has plagued More's name for 433 years. In one of his early works he himself answered it long before. He said:

Let us with our whole soul, trust in His helpe, without any trust in our own strength, let us thinke on death and prepare in our minds much before, conforming our will to His, not desiring to be brought to the test, for it seemeth a proud, high mind to desire martyrdom, but desiring help and strength from God, if He suffer us to come to the stress, either being sought, found, or brought out against our wills, let us then fall to fasting, to prayer, in time now that we may not be brought to the test. (A Dialogue of Comfort Against Tribulation).

Hardly a fanatical desire for death. So now he was ready for them. There were two more articles to the indictment; he disposed of them promptly and firmly. Things were going badly; there was no evidence now that he had ever broken his silence. So Richard Rich stepped forward and perjured himself: More had declared to him that Parliament could not make the King head of the Church—which More denied, for, obviously, he said, were a man to pay no attention to oaths, he would not be in the fix he now found himself in, but that, if Rich's oath were true, then he prayed God "that I may never see Him in the face, which I would not say were it otherwise to win the whole world."

He then asked if they believed he would reveal his opinion, so long sought for by so many, to a man like Rich. Furthermore, if he had denied the king's title, he had not denied it "maliciously," and where there is no malice there is no offence, just as in forcible entry, where there is no force, there is no offence.

The jury retired—for fifteen minutes, and returned with a verdict of "Guilty." The Chancellor, Lord Audeley began to read the sentence, when More interrupted him. This was the sign More had waited for. Now he could discharge his conscience; now help would not fail him; he had fled from this moment with all his wit and wisdom. Now he knew this was not his doing: "My Lord, when I was practicing the law, the manner in such case was to ask the prisoner before judgment why judgment should not be given against him." Audeley paused. More continued that now that they were determined to condemn him, he would be sure that they knew that the indictment was grounded upon an Act of Parliament directly repugnant to the laws of God, since no man but the successors of St. Peter could be head of the Church; therefore, the indictment was in law insufficient to charge any Christian man. England could not make a law for the universal Catholic Church. More then appealed to the immunity promised the Church in Magna Carta, to the King's coronation oath, and to the continuity of English Christendom.

The Chancellor, disturbed, then appealed to the bishops, the universities, who had signed the oath. More replied that for every bishop, for every man who took the oath in England, he could appeal to all the bishops, to the General
Council of all Christendom, living and dead, who had lived and died with the belief he held.

Audeley: We are now plainly perceiving that ye are maliciously bent.

More: Nay, I must discharge my conscience. I appeal to God whose sight pierceth into the depth of man's heart to be my witness. But it is not for the supremacy of the King that ye seek my blood, as for that I would not consent to the marriage!

Poor Audeley! Visibly shaken, he turned to Fitzjames, the Lord Chief Justice, and asked whether the indictment was truly sufficient. Fitzjames, that wise man, said, in fashion doubly-negatived: "If the Act of Parliament was not unlawful, surely the indictment is not insufficient." The deed was done. Audeley gave judgment. More was led back to the Tower with the axe preceding him, this time with the edge turned toward him, but not before he wished his judges godspeed and prayed that though they had condemned him, they might meet right merrily all together in heaven!

He was himself still, for when Sir William Kingston, Constable of the Tower, brought him back down the Thames, More had to comfort his tears, and not the opposite. When they brought him the news that Henry, mercifully, had commuted his sentence from disemboweling to beheading, he prayed God to forbid that the King should use any more such mercy unto any of his friends!

Cromwell made one last attempt to make More change his mind. Henry was angry. More said mildly that he had changed his mind: whereas he had meant to be clean-shaven for the execution, he had now decided to let his beard share the fate of his head. But Henry was still afraid, for More received a messenger from the King asking More not to use many words at his execution. More consented, but asked that Margaret, his daughter, be at his burial. The messenger replied that the King had most indulgently said that his wife, his children and friends should all be present. More sent Henry his thanks that his poor burial should be given gracious consideration—and the messenger left in tears.

Through tears he went to the scaffold—not his own, but those of countless Londoners who knew him for what he was. Painfully he climbed the scaffold and knelt to repeat the 51st psalm. He got up; the executioner knelt and asked his pardon. More embraced him, bound his own eyes, and after making a brief speech from the scaffold, he asked him to pray for him as he would pray for them elsewhere. He prayed for the King to give him good counsel, and that he died the King's good servant but God's first—contrary to the English custom where the condemned acknowledged the supremacy of the State demanding his head. Thomas Cromwell, on that scaffold, said later: "I am by the Law condemned to die; I have offended my Prince, for which I ask him heartily forgiveness." More's words were the most weighty and most haughty, says Chambers, ever spoken on that spot.

So died your patron, gentlemen, professional to the last, never forgetting his training, using it every step of the way,

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that other federal courts will soon emulate the actions taken by the Second Circuit in the *Sniffen* and *Levy* decisions and will further erode the exhaustion requirement whenever it threatens to unnecessarily interfere with the prompt disposition of state prisoners' federal claims. And the ultimate goal of restoring state criminal process to a primary role in the vindication of constitutional rights will remain unattainable \(^{112}\) until the state court systems expand their own conceptions of due process to coincide with those of the United States Supreme Court.

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\(^{112}\) The recent amendments to the Judicial Code which have restored a modified res judicata requirement to federal habeas corpus [28 U.S.C. § 2244(b), (c) (Supp. II, 1965-66)] and bestowed a presumption of correctness upon the state court records used in federal habeas proceedings [28 U.S.C. § 2254 (d) (Supp. II, 1965-66)] indicate that the restoration of state process to a primary role in the vindication of state prisoners' constitutional rights is a continuing and compelling consideration.

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**ST. THOMAS MORE**

(Continued)

always ahead of the pack intellectually, foreseeing each move, and serving his King to the last! Statesman, lawyer, judge, humanist, capitalist, saint—this 16th century Socrates is a man for our times when old questions arise: Is the State supreme? Is there a moral law above the laws of the State? Like Antigone, like Christ, More appealed to a power above the judge, upheld as he was by that power, the power of the Spirit. I give him to you as a model. An impossible one? Never. For the Spirit is with us still, and the Spirit is still, and eternally, power. Let us follow the loving, kindly, humorous lawyer, this Thomas More, who, buoyed up by that Spirit, comforted his friends, as they mourned over his coming beheading: "After all," he said, "a man may lose his head—and still come to no harm!"

*References*

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