

11-1-1997

The Principled Resignation of Thomas More

Edward McGlynn Gaffney Jr.

Recommended Citation

Edward McGlynn Gaffney Jr., *The Principled Resignation of Thomas More*, 31 Loy. L.A. L. Rev. 63 (1997).
Available at: <http://digitalcommons.lmu.edu/llr/vol31/iss1/2>

This Article is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons @ Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

THE PRINCIPLED RESIGNATION OF THOMAS MORE

*Edward McGlynn Gaffney, Jr.**

Europeans are accustomed more to a resignation from high office over a matter of principle than we are. To be sure, there are political scandals in Europe¹ from time-to-time that serve as a functional equivalent to our Teapot Dome² or Watergate.³ However,

* Visiting Scholar, Pepperdine University School of Law; Dean and Professor of Law, Valparaiso University School of Law (1990-97); Associate Professor of Law, Loyola Law School, Los Angeles (1983-90); Associate Professor, Notre Dame School of Law (1977-83).

1. The most spectacular scandal in recent European history is the *Tangentopoli* ("Bribesville" or "Kickback City") scandal in Italy, which began in 1992 with the indictment of local officials in Milan for acceptance of kickbacks in exchange for assignment of government contracts. See, e.g., Rod Nordland & Niccolò Vivarelli, *Throwing the Bums out*, NEWSWEEK, Mar. 15, 1993, at 49; Alexander Stille, *Badfellas*, THE NEW REPUBLIC, Aug. 10, 1992, at 12. The uncovered corruption was so widespread in this long-running criminal investigation that an entire generation of politicians was discredited or indicted, and a new configuration of political parties was brought into power. See Alan Friedman, *A New Generation in Italy Rises to Challenge the Old Guard*, INT'L HERALD TRIB., Nov. 4, 1996; Sarah Walters, *Tangentopoli and the Emergence of a New Political Order in Italy*, 17 W. EUR. POL. 169-82 (1994). The crisis had claimed the careers of two prime ministers, Giulio Andreotti—the leader of the Christian Democrat Party—and Bettino Craxi—the leader of the Socialist Party—and hundreds of officials were in prison awaiting trial as bribery and corruption suspects. After all of this, Prime Minister Silvio Berlusconi triggered a political uproar in July of 1994 when his government approved a decree that stripped investigating magistrates of their ability to hold persons arrested on those charges. Antonio Di Pietro, Gherardo Colombo, and other top Milan magistrates who had led the anti-corruption probe said they would resign in protest against the decree on the ground that it threatens "not just the independence of the judiciary, but the right of the judiciary to be impartial toward all citizens, and to do our work without anyone reshuffling the cards, or throwing impediments in our way." Alan Friedman, *Q & A: Italy Decree a Grave Setback; Investigation Crippled, Judge Fears*, INT'L HERALD TRIB., July 18, 1994. Berlusconi's government eventually fell and most of his inner circle was indicted and put on trial.

2. Teapot Dome was the name given to a scandal in the administration of President Warren G. Harding, who transferred supervision of the naval oil reserve lands from the Navy to the Department of the Interior in 1921. In April 1922 the Secretary of the Interior, Albert Fall, secretly granted to Harry Sinclair of Mammoth Oil Company exclusive rights to the oil reserves at Teapot Dome, Wyoming. He granted similar rights to Edward Doheny of Pan American Petro-

cabinet ministers in Europe more typically leave the government because they can no longer support the position of the government in a dispute over a burning issue of the day, and not because they are hounded from office for their misdeeds.

To return to Watergate, one of the most famous illustrations of principled resignation in our time was that of Elliot Richardson as Attorney General of the United States on October 20, 1974. President Richard Nixon nominated Richardson to serve as his attorney general after the Watergate scandal had caused his two previous attorney generals, John Mitchell and Richard Kleindeinst, to resign under a cloud. During his confirmation hearings, Richardson pledged to the Senate Judiciary Committee that he would not interfere with the investigations of the Watergate Special Prosecutor, Professor Archibald Cox of Harvard Law School. When it later became

leum Company for the reserves in Elk Hills and Buena Vista Hills, California. In return for the leases, Fall received large cash gifts and interest-free "loans." When the affair became known, Congress directed President Harding to cancel the leases. The Supreme Court declared the leases fraudulent and ruled illegal Harding's transfer of authority to the Department of the Interior. Fall was convicted of accepting a bribe in the Elk Hills negotiations and imprisoned. Doheny and Sinclair were acquitted of bribery and criminal conspiracy charges, but Sinclair spent six and one-half months in prison for contempt of court and contempt of the U.S. Senate. "Teapot Dome" entered the American political vocabulary as a synonym for government corruption. See J. LEONARD BATES, *ORIGINS OF THE TEAPOT DOME* (1963); BURL NOGGLE, *TEAPOT DOME: OIL AND POLITICS IN THE 1920S* (1962); M.R. WERNER & JOHN STARR, *TEAPOT DOME* (1959).

3. On June 17, 1972, the General Counsel and several employees of the Committee for the Reelection of the President—that being President Nixon—broke into the offices of the Democratic National Committee, located in the Watergate Office Building. The term "Watergate" refers not only to this event, but to the entire set of unseemingly or unlawful campaign activities in which high-ranking members of the Nixon Administration actively collaborated or which they conspired to cover up. These activities led to a major investigation of campaign practices by a Senate Select Committee chaired by Senator Sam Erving, to the appointment of a special prosecutor that eventually resulted in the conviction of several officials, including Attorney General John Mitchell, and an impeachment inquiry. On July 24, 1974, the Supreme Court ruled unanimously in *United States v. Nixon*, 418 U.S. 683 (1974), that the President had to surrender all relevant tapes. Within a week the House Judiciary Committee voted in three articles of impeachment of the President. When it became apparent from three of the tapes that the President had participated in a cover up, all support for him in the Senate evaporated. Nixon resigned on August 9, 1974. For an investigative report of the Watergate event see generally CARL BERNSTEIN & BOB WOODWARD, *ALL THE PRESIDENT'S MEN* (1974) and *WATERGATE: CHRONOLOGY OF A CRISIS* (Mercer Cross & Elder Witt, eds., 1975). For reflections on the constitutional crisis see PHILIP B. KURLAND, *WATERGATE AND THE CONSTITUTION* (1978) and RALPH K. WINTER, JR., *WATERGATE AND THE LAW: POLITICAL CAMPAIGNS AND PRESIDENTIAL POWER* (1974).

known that the White House had made tape recordings of the President in the Oval Office, Cox sought a subpoena duces tecum requiring the production of the tapes. Invoking the doctrine of executive privilege and national security, Nixon refused to hand over the tapes and ordered Richardson to fire Cox. Viewing his promise to the Senate as a matter of high moral principle, Richardson submitted his resignation rather than break his word over so important an issue.⁴ His reputation is illuminated by a study of the most famous instances of principled resignation in European politics, the resignation of Thomas More as the Lord Chancellor of Henry VIII on 1534.

My task is something of a difficult one. It is to try to evoke the voice of Thomas More. The task is not so easy because for most of us, the play⁵ and the film,⁶ *A Man for All Seasons*, form the sole basis of our understanding and appreciation of More's life and times. I will try to let him come through to you in his own words, not in the language of the playwright Robert Bolt.

Before turning to More himself, I would like to mention a couple of points of trivia. You may wonder whether or not the church has ever canonized another lawyer. The answer is yes. We are undoubtedly familiar with the nursery rhyme, "As I was going to St. Ives, I met a man with seven wives . . ."⁷ That small town in England, St. Ives, is named after the patron saint of lawyers, a French attorney⁸ who was a champion of what in our society has come to be known as the Legal Services Program in the Office of Economic Opportunity, and then as the Legal Services Corporation.⁹ The church canonized

4. See Elliot Richardson, *Celebration of Charter Day and the 500th Anniversary of the Beginning of Thomas More's Study of Law*, 30 LOY. L.A. L. REV. 1507, 1510-21 (1977).

5. ROBERT BOLT, *A MAN FOR ALL SEASONS* (1962).

6. *A MAN FOR ALL SEASONS* (Columbia Pictures 1966).

7. RAYMOND BRIGGS, *THE MOTHER GOOSE TREASURY* 172 (1966).

8. See DAVID HUGH FARMER, *THE OXFORD DICTIONARY OF SAINTS* 206 (1978); Alice I. Youmans et al., *Questions & Answers*, 84 L. LIBR. J. 215, 224 (1992).

9. See Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 201, 78 Stat. 508, 516 (repealed 1981); Economic Opportunity Amendments of 1965, Pub. L. No. 89-253, § 11, 79 Stat. 973, 974 (omitted); Economic Opportunity Amendments of 1966, Pub. L. No. 89-794, § 215, 80 Stat. 1451, 1462 (repealed 1981); Legal Services Corporation Act of 1974, 42 U.S.C. § 2996b(a) (1994). The 1964 Act created the Office of Economic Opportunity (OEO). The 1965 Amendments clarified the inroad scope of the act, but the first explicit statutory mention of the OEO legal services program came with the passage of the 1966 Amendments. Finally, the Legal Services Corporation Act was passed in 1974. See 42 U.S.C. § 2996b(a).

Ives for his own generosity in serving the poor and for his courage in publicly championing their causes.¹⁰ St. Ives is a good patron for government-funded legal assistance to poor people, and for private initiatives of supporting pro bono assistance.¹¹ I will concede the point that it is something of a stretch when I have to go back to the Middle Ages to find another saint among lawyers. Which reminds me, as a dean, of the occupational hazard of hearing every lawyer joke that has ever entered into the mind of state prisoners and other disgruntled people who make these jokes up. In any event, my favorite lawyer joke asks why lawyers are buried twenty feet down instead of six. The answer is: "Because deep down lawyers are very, very good." I will return to that point about Thomas More later.

My second bit of trivial pursuit is to challenge the usual Harvard wisdom about Oliver Wendell Holmes, Jr. You hear of Holmes as a man of principle. My sense is that the only thing that Holmes was not very skeptical about was his own commitment to skepticism. His father, Oliver Wendell Holmes, Sr., known as the "Autocrat of the Breakfast Table,"¹² is reputed to have said that Holmes junior would trade an epigram for a principle any day.¹³ Think of Holmes as the trivializer of free speech in the First Amendment cases he wrote for the Court in the context of World War I.¹⁴ Holmes could barely dis-

10. See FARMER, *supra* note 8, at 206.

11. Examples of pro bono assistance programs include those sponsored by my own law school, the Valparaiso University School of Law, since 1991, and Loyola Law School, Los Angeles, since 1995.

12. See G. EDWARD WHITE, JUSTICE OLIVER WENDELL HOLMES: LAW AND THE INNER SELF 11 (1993) (stating that mealtime "in the Holmes household was not unlike conversation at the Autocrat's breakfast table").

13. See generally *id.* (discussing the complicated relationship and tensions between father and son).

14. In *Schenck v. United States*, 249 U.S. 47 (1919), the Court affirmed convictions under the Espionage Act of 1917 for the distribution of pamphlets opposing conscription. Holmes wrote: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured as long as men fight and that no Court could regard them as protected by any constitutional right." *Id.* at 52. See also *Frohwerk v. United States*, 249 U.S. 204, 205 (1919) (affirming conviction for preparing and circulating newspaper articles with the intent to cause disloyalty); *Debs v. United States*, 249 U.S. 211, 214 (1919) (affirming conviction for a public speech against the draft in which defendant told workers "you need to know that you are fit for something better than slavery and cannon fodder"). In *Abrams v. United States*, Holmes dissented from a judgment affirming a conviction under a statute that criminalized writing language that encouraged resistance to the government's war effort. See 250 U.S. 616, 624 (1919) (Holmes, J., dissenting). Even in dissent, Holmes could not refrain from belittling the defendants as "poor and puny anonymities" who had surreptitiously published a "silly leaflet." *Id.* at 628-29

guise his contempt for the speech of those who had the courage to resist American participation in the senseless slaughter of what Europeans call their "Great War." It should give us pause that this conflict eliminated a whole generation of young men, French, German, and English.¹⁵ Even the literary products of that generation are frequently full of existential despair. Or think of Holmes as the justice who winked at the systematic and widespread corrupt practices of the United Fruit Company,¹⁶ a firm with which he was well familiar as a Brahmin of Boston.¹⁷ Another distinguished Harvard man from Boston, Circuit Judge John T. Noonan, Jr., included in his Holmes lectures at the Harvard Law School, a careful study of Holmes' callous disregard for integrity in the business dealings of that case.¹⁸ Or think of Holmes as the judge who traded the epigram "[t]hree generations of imbeciles are enough"¹⁹ for the principle that the government should refrain from interfering with the fundamental freedom of the human person to procreate.²⁰ So I would not turn to Oliver Wendell Holmes, Jr., as a model of the kind of courage and conviction that we celebrate with Thomas More.

I am reminded of a story about Pope John XXIII, who did not have a lot of ability in the English language, and who was drilled in the proper protocol for addressing Jacqueline Kennedy, when she was the first lady of the United States.²¹ She could not be addressed as "Madame President" because she was not the president.²² The Pope was instructed that the correct salutation would simply be

(Holmes, J., dissenting). The "only ground" that Holmes could offer for his belated and begrudging protection of free speech was "the power of the thought to get itself accepted in the competition of the market," a thought that would delight the Chicago school of economics, but that would not ground very much freedom for very much speech of unpopular dissenters without resources. *Id.* at 630 (Holmes, J., dissenting).

15. See Alistair Horne, *War of Peoples, Not of Kings*, TIMES (London), Sept. 8, 1994, at 36.

16. See *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 359 (1909); *Second Annual International Business Law Symposium: Trading with Cuba: The Cuban Democracy Act and Export Rules*, 8 FLA. J. INT'L L. 335, 369 (1993); Jonathan Turley, "When in Rome": *Multinational Misconduct and the Presumption Against Extraterritoriality*, 84 NW. U. L. REV. 598, 603-04 (1990).

17. See WHITE, *supra* note 12, at 20-22.

18. See JOHN T. NOONAN, JR., PERSONS AND MASKS OF THE LAW: CARDOZO, HOLMES, JEFFERSON, AND WYTHE AS MAKERS OF THE MASKS 66-110 (1976).

19. *Buck v. Bell*, 274 U.S. 200, 207 (1927).

20. See LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1339 (2d ed. 1988).

21. See LAWRENCE ELLIOTT, *I WILL BE CALLED JOHN* 274 (1973).

22. See *id.*

"Madame" or "Mrs. Kennedy."²³ To make matters worse, the Pope was being coached by an Irish monsignor.²⁴ The Pope had an index card with the permissible and impermissible ways of addressing the first lady. However, when she came into the papal apartment for her private audience with the Pope, John XXIII simply put out his big arms and exclaimed "Jacqueline!"²⁵ I will return in my conclusion to this point about the intimacy and friendship implied in addressing a person neither by title nor by family name, but simply by using the person's first name.

As I mentioned above, I refer in this Essay to what More himself did and said. I have flipped through an 1808 volume of *The Memoirs of Sir Thomas More*,²⁶ which I have treasured for many years now. Let me start with an excerpt from a speech by the Duke of Norfolk, who praised More on the occasion of his being named chancellor in these terms:

His understanding, his integrity, the innocence of his life, and his happy genius, have not only been celebrated among his countrymen from his early youth, but known for many years past to the king himself also He [the king] hath thought his wisdom in deliberation, his truth in uttering his real sentiments, and his eloquence in adorning what he uttered, surpassed by none. From such a man every thing is to be expected; and since his majesty wisheth his people to be governed with equity and justice, integrity and wisdom, he hath appointed him chancellor; that his people may enjoy peace and justice, and the kingdom honour and fame.²⁷

I often refer to the humor of Thomas More. One of the hallmarks of the genius of his humor is its self-deprecating character. He often made himself the subject of his mirth, rather than making others the object of deprecating, mean-spirited humor.²⁸ For example, Thomas Wolsey once said to More, "by the mass thou art the veriest fool of all the [king's] council!"²⁹ More replied: "God be thanked

23. *Id.*

24. *See id.* at 278-79.

25. *Id.* at 274.

26. 1 ARTHUR CAYLEY, MEMOIRS OF SIR THOMAS MORE WITH A NEW TRANSLATION OF HIS UTOPIA, HIS HISTORY OF KING RICHARD III, AND HIS LATIN POEMS (1808).

27. *Id.* at 106.

28. *See* THOMAS STAPLETON, THE LIFE AND ILLUSTRIOUS MARTYRDOM OF SIR THOMAS MORE 121-31 (Philip E. Hallett trans., E.E. Reynolds ed., 1966).

29. CAYLEY, *supra* note 26, at 100 (emphasis omitted).

that the king our master hath but one fool in all his council.”³⁰ After the guilty verdict had been pronounced at More’s trial, to which I will turn shortly, his successor as chancellor announced that the usual sentence for treason—hanging, drawing, and quartering—would be mitigated in this case to beheading “[i]n consideration, however, of the high offices which More had filled.”³¹ More said: “God forbid, ... that the king should use any more such mercy unto any of my friends, and God bless all my posterity from such pardons.”³² When the day arrived for More to be beheaded, he turned to his executioner and asked him to spare his beard since that at least had committed no treason against his liege lord, the king.³³

More often referred to himself in a humble way that did not accurately reflect the incredible impact of his achievements both as a great common lawyer and as the greatest chancellor in the history of England.³⁴ His contribution to the Equity Accord was quite remarkable for its devotion to principle and for its devotion to fairness and to the human beings, the live human beings who needed relief from the common law.³⁵ The people could find in More a devotion to fairness that they could not find it in his predecessor, Thomas Wolsey.³⁶

There is a kind of irony that the four Thomases who are central to the English Reformation in the early to mid-sixteenth century—Thomas Wolsey,³⁷ Thomas Cromwell,³⁸ Thomas Cranmer,³⁹ and the person I honor, Thomas More—were all baptized or christened with the name of Thomas to honor the archbishop of Canterbury, St. Thomas Becket, who became a hero and the object of pilgrimage for his courage in resisting Henry II.⁴⁰ As you may recall, Henry II had the idea of expanding the power of the Crown through such instruments as the King’s Bench, which is the forerunner of our court system.⁴¹ In his attempt to assert jurisdiction over the church, Henry’s effort seemed to Becket a kind of totalitarian concentration of power,

30. *Id.* (emphasis omitted).

31. *Id.* at 226.

32. *Id.* (emphasis omitted).

33. *See id.* at 235.

34. *See* JASPER RIDLEY, *STATESMAN AND SAINT* 285-93 (1982).

35. *See id.*

36. *See* R.W. CHAMBERS, *THOMAS MORE* 336-37 (1935).

37. *See* JOHN T. NOONAN, JR., *THE BELIEVER AND THE POWERS THAT ARE* 52 (1987).

38. *See id.* at 53.

39. *See id.*

40. *See id.* at 22-27.

41. *See id.*

and Becket was willing to go to his grave in resistance to this assault upon the freedom of the church.⁴² So, four central figures of the English Reformation all have the name Thomas.

As a lawyer, More had a rapier ability for questioning deftly, for answering with succinct brevity, and for stopping when no more need be said. Let me offer one extended example of More's ability as a lawyer taken from his trial for treason. The trial scene is not well reported either in Bolt's play, *A Man for All Seasons*,⁴³ or in the Academy-Award winning film.⁴⁴ The most critical witness at the trial was Richard Rich. Shortly after being named the king's solicitor, he was sent to the Tower of London to take More's books from him. Pretending respect for More's reputation as one learned in the law, Rich asked More to "[a]dmit there were, sir, an act of Parliament that all the realm should take me for King. Would not you, Master More, take me for King?"⁴⁵ "Yes sir," replied More, "that would I."⁴⁶ Rich went on to suppose that, "there was an act of Parliament that all the realm should take [Rich] to be pope. What would More say then?"⁴⁷ More replied that the Parliament might well meddle with the state of temporal princes, but answered Rich's with a higher question of his own, "[s]uppose Parliament made an act that God was not God. What would [Rich] say then?"⁴⁸ According to More's son-in-law, William Roper, More stopped his questions right there.⁴⁹ More did not flatly reject the Act of Supremacy, but he said that "the Parliament could not make such a law."⁵⁰

Rich, when called upon at More's trial, falsely reported that More rejoined to this answer, "though a King could be made by Parliament, and by Parliament deposed, it was not so with the Head of the Church."⁵¹ That perjured testimony is what led to the determination of the jurors that More should be beheaded on the bill of attainder that Parliament had passed against the property and life of Thomas More.⁵² Perhaps this colloquy is enough to illustrate why we

42. See FARMER, *supra* note 8, at 377; NOONAN, *supra* note 37, at 22-27.

43. BOLT, *supra* note 1.

44. A MAN FOR ALL SEASONS (Columbia Pictures 1966).

45. RICHARD MARIUS, THOMAS MORE 501 (1984).

46. *Id.*

47. *Id.*

48. *Id.*

49. See CAYLEY, *supra* note 26, at 212.

50. MARIUS, *supra* note 45, at 502.

51. See CHAMBERS, *supra* note 36, at 338.

52. In November 1534, under Thomas Cromwell's management, Parliament passed a special bill of attainder condemning More to death for his failure to sub-

have a provision in our Constitution prohibiting the national Congress and the state legislatures from enacting a bill of attainder.⁵³ Note that More was convicted on hearsay evidence.⁵⁴ The conversation between More and Rich actually occurred in the Tower of London.⁵⁵

There were four charges in the indictment against More.⁵⁶ One of the charges was that More had violated an act of Parliament, through "maliciously, perfidiously and treasonably"⁵⁷ seeking to detract from the honor due to Henry VIII in failing to acknowledge his new title, "Supreme Head on earth of the Church of England."⁵⁸ More rested his defense on his silence, which under the civil law was construed as consent.⁵⁹ He asked:

What opinion did I utter regarding this act, when twice questioned in prison . . . that I should be said to have detracted from, or to have denied, this new authority? I would give no other answer than, that the act, just or unjust, pertained not to me, who was dead in law, and was no longer bound to answer to statutes which I should never more use; yet that neither by word or deed had I ever done anything derogatory to the act, and therefore I could not with justice be condemned for a law against which it could not be objected to me that I had either acted or spoken; . . .

Neither your laws, nor those of the whole world, can criminate mere silence. They are made for words and actions; God alone can judge of secret thoughts.⁶⁰

Have you heard a more eloquent defense of the constitutional right against self-incrimination, frequently confused in our society with an

scribe to the oath of supremacy. See G.R. ELTON, *REFORM AND REFORMATION* 188 (A.G. Dickens & Norman Gash eds., 1977); MARIUS, *supra* note 45, at 481.

53. See U.S. CONST. art. I, § 9, cl. 3, § 10, cl. 1.

54. See *id.*

55. See CHAMBERS, *supra* note 36, at 337.

56. In 1534 Parliament passed the Act of Supremacy, declaring the King to be the "Supreme Head on earth of the Church of England." STAPLETON, *supra* note 28, at 173. The Act made no qualifying reference to the law of Christ. See Act of Supremacy, 1534, 26 Hen. 8, ch. 1 in 3 STATUTES OF THE REALM 508 (London 1817). Nor did the Act make reference to the Treason Act, which made it treason to maliciously say in writing or by mouth that the king was a schismatic or heretic or to deny him any of his titles. See Treason Act, 1534, 26 Hen. 8, ch. 13 in 3 STATUTES OF THE REALM 508 (London 1817).

57. STAPLETON, *supra* note 28, at 173.

58. *Id.*

59. See CHAMBERS, *supra* note 36, at 336.

60. CAYLEY, *supra* note 26, at 216-17.

evidentiary privilege that the courts and the police can make light of?⁶¹

More's resignation was not precisely over the marriage of Henry VIII to Catherine of Aragon.⁶² Some canonists both in England and on the continent thought that Henry's marriage could be annulled on the ground that the Bible forbids marriage with a brother's widow.⁶³ More declined to give the king much comfort in this theory.⁶⁴ He said he declined because he had not formally studied or "professed divinity."⁶⁵ It seems plausible that More did not give the answer Henry wanted because More doubted that there was much likelihood of getting the pope to grant a decree of nullity.⁶⁶ More said he was not professed in divinity, but he was able to have assisted Henry at an earlier point with a tract on the seven sacraments that gained for Henry and his successors the papal honor still found on British coinage: F.D., which stands for "Fidei Defensor" or "Defender of the Faith."⁶⁷ More was not ignorant of canon law and he was a shrewd political observer. The geopolitical realities at the time were that the pope was beholden to the king of Spain, who was related to Catherine.⁶⁸ For whatever reason—canonical or political—the annulment of Henry's marriage seemed impossible to More, but that was not what led to his principled resignation.

There is an important piece of evidence which suggests that although More did not think that the pope would grant the annulment Henry sought, More was willing to swear an oath to the part of the Reformation statutes that ensured the legitimacy of royal succession through Anne Boleyn, Henry's second wife. The problem of conscience was on a different level, the claim of the Crown to absolute authority over the church. That was for More a principle worth re-

61. See generally LEONARD W. LEVY, *ORIGINS OF THE FIFTH AMENDMENT: THE RIGHT AGAINST SELF-INCRIMINATION* (1968) (discussing the lack of regard for the constitutional right against self-incrimination).

62. See CHAMBERS, *supra* note 36, at 251-52.

63. See HENRY ANSGAR KELLY, *THE MATRIMONIAL TRIALS OF HENRY VIII* 15 (1976).

64. See STAPLETON, *supra* note 28, at 134-37.

65. CAYLEY, *supra* note 26, at 102.

66. See STAPLETON, *supra* note 28, at 134-37.

67. See *RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE* 714 (2d ed. 1987); see also RIDLEY, *supra* note 34, at 263 (discussing Henry's honorary title).

68. See generally JOHN E. PAUL, *CATHERINE OF ARAGON AND HER FRIENDS* 75-91 (1966) (discussing Catherine's relationship with the king of Spain).

signing over and even worth dying for.⁶⁹ In a letter to his daughter Margaret, written from the Tower of London in April of 1534, More wrote:

Surely as to swear to the succession I see no peril, but I thought and think it reason, that to my own oath I myself look well and be of counsel in the fashion, and never intend to swear for a piece and set my hand to the whole oath. How be it (as help me God) as touching the whole oath, I never withdrew any man from it nor never advised any to refuse it nor never put, nor will, any scruple in any man's head, but leave every man to his own conscience. And me thinks in good faith that so were it good reason that every man should leave me to mine.⁷⁰

Let me offer a brief sketch of English history to help situate the context of the times in which More and Henry VIII lived. Henry's father, happily enough known as Henry VII, came to power as the first of the Tudor dynasty as a result of the Battle of Bosworth, which put an end to the long and bloody civil war known as the Wars of the Roses.⁷¹ His predecessor, Richard III, lay slain on the field.⁷² When he was discovered by the victors, his crown was torn from his head and his corpse was stripped and left to the elements of nature.⁷³ The last thing that a Tudor king wanted was the eruption of another civil war with all the bloodshed which that would entail.⁷⁴ That is why Henry obsessed about having a male heir.⁷⁵

I hope that I do not digress too far by suggesting that, if there is any period of the British monarchy that requires the gentle touch of a good feminist historian, it is the monarchy of Henry VIII. Think of it for just a second: that women should be abandoned or beheaded for failing to produce a male heir, a child with a little something between his legs that would mark the difference between that child and another child. Pass over the genetic point that the father, not the mother, contributes the chromosomes that make this determination. Then think of the irony that in fact, Tudor England went on to have its most glorious moment, not in the person of Edward VI, the sickly

69. See CHAMBERS, *supra* note 36, at 312-13.

70. NOONAN, *supra* note 37, at 56.

71. See DESMOND SEWARD, *THE WARS OF THE ROSES: THROUGH THE LIVES OF FIVE MEN AND WOMEN OF THE FIFTEENTH CENTURY* 2 (1995).

72. See *id.* at 1-2.

73. See *id.*

74. See *id.*

75. See CHAMBERS, *supra* note 36, at 224.

child king so easily manipulated by powers behind the throne, but rather in Elizabeth I, the Virgin Queen.⁷⁶ Now that is a remarkable concession from an Irish Catholic like myself, who is familiar with the brutality of law as an instrument of the suppression of my people's faith during the Elizabethan period.

To repeat, there was a pressing urgency behind Henry's desire to have an heir through whom the unifying power of the Crown might have stability. In short, Henry VIII was not all bad, any more than Henry II was. But just as Becket saw that the Crown should not encroach upon the freedom of the church in the twelfth century, so also More recognized that the monarchy should not overstep its bounds in the sixteenth century.⁷⁷

Let us return now to the trial, recalling that one of More's defenses was that he had never uttered a word against the oath of supremacy. This defense was penetrated by a palpable perjury. Richard Rich, one of More's former students, lied under oath that More had in fact denounced the oath of supremacy in a conversation with him while More was a prisoner in the Tower of London.⁷⁸ In Fred Zinnemann's film version of *A Man for All Seasons*, More contemptuously refers to Rich's appointment as chancellor of Wales as a very bad bargain in exchange for his perjury.⁷⁹ It is true that More reminded Rich of the duty of truthfulness, and he recalled for Rich the teaching of Jesus that one should not give up the integrity of one's soul, even to gain the whole world.⁸⁰ Bolt tries to improve on the Gospel and on the way More lived it. More says in the play: "it profit a man nothing to give his soul for the whole world . . . But for Whales?"⁸¹ a line that Paul Scofield delivers with magnificent scorn.⁸² However, these words and that extra bit of scorn were not More's style. It never would have occurred to the mind of Thomas More to be belittling about Wales, which he loved. More certainly would never be contemptuous of a person for being the king's servant in

76. See generally *id.* at 382-83 (discussing how Elizabeth ruled differently from her father Henry VIII).

77. See STAPLETON, *supra* note 28, at 160 ("[B]y no decree of the kingdom can the King be lawfully declared Head of the Church."). See generally CHAMBERS, *supra* note 36, at 338 (discussing More's loyalty to the throne and his belief in the supremacy of the church).

78. See CHAMBERS, *supra* note 36, at 337-38.

79. See *A MAN FOR ALL SEASONS* (Columbia Pictures 1966).

80. "What profit is there for one to gain the whole world yet lose or forfeit himself?" *Luke 9:25*.

81. BOLT, *supra* note 5, at 158.

82. See *A MAN FOR ALL SEASONS* (Columbia Pictures 1966).

Wales.

What More said to the bench at that moment, according to Roper's account, was: "If I was a man my lords, . . . who did not regard an oath, I needed not, as it is well known, stand in this place, and at this time, nor in this case, as an accused person."⁸³ More then turned to Rich and confronted him for his perjured testimony in violation of the oath to tell the truth:

And if this oath of yours Mr. Rich be true then I pray *that I never see God in the face*, which I would not say were it otherwise, to win the whole world.

....

In good faith, Mr. Rich, I am sorrier for your perjury, than for mine own peril. And you shall understand, that neither I, nor no man else to my knowledge, ever took you to be a man of such credit, as, in any matter of importance, I, or any other, would at any time vouchsafe to communicate with you. And I, as you know, of no small while have been acquainted with you and your conversation, who have known you from your youth hitherto, for we long dwelt together in one parish. Where, as yourself can tell (I am sorry you compel me so to say) you were esteemed very light of your tongue, a great dicer, and of no commendable fame. And so, in your house at the Temple [one of the Inns of Court], where hath been your chief bringing-up, were you likewise accounted.⁸⁴

In other words, More confronted Rich, because of his lack of integrity, not because he had become the chancellor of Wales. More was willing to press hard against Rich for being a liar, but not for serving the king in Wales. More pressed further the improbability of Rich's testimony by focusing not only on Rich's utter unreliability, but also on the whole point of his own extended silence about the oath he declined to take:

Can it therefore seem likely to your honourable lordships, that I would in so weighty a cause so unadvisedly overshoot myself, as to trust Mr. Rich, a man of me alway reputed of little truth as your lordships have heard, so far above my sovereign lord the king or any of his noble counsellors, that I would unto him utter the secrets of my con-

83. CAYLEY, *supra* note 26, at 220.

84. *Id.* at 220-21.

science touching the king's supremacy, the special point and only mark at my hands so long sought-for, a thing which I never did nor never would, after the statute thereof made, reveal unto the king's highness himself, or to any of his honourable counsellors, as it is not unknown unto your honours, at sundry several times sent from his own person to the Tower to me, for none other purpose? Can this, in your judgment my lords, seem likely to be true?⁸⁵

Some have criticized the jurors in the criminal case against O.J. Simpson for returning a verdict of acquittal without much time for deliberation.⁸⁶ Whatever the merits of that case, it is shocking to realize that the jury in More's trial—a case that carried the death penalty—pronounced his guilt with almost no deliberation at all.⁸⁷ Only after his fate was sealed did More break his silence about the oath he had refused either to take or to comment upon.⁸⁸ Once again, Bolt takes considerable license in portraying More as one full of wrath at that moment, putting on his lips things not mentioned in Roper's account.⁸⁹ Here is the way that Roper records More's statement about the charge of treason under the statute that made Henry VIII the Supreme Head of the Church in England:

Forasmuch, my lord, as this indictment is grounded upon an act of parliament directly repugnant to the laws of God and his holy church,—the supreme government whereof, or any part thereof, may no temporal prince presume by any law to take upon him, as rightfully belonging to the see of Rome, a spiritual pre-eminence, by the mouth of our Savior himself, personally present upon the earth, only to St. Peter and his successors, bishops of the same see, by special prerogative granted—it is therefore, in law, amongst christian men, insufficient to charge any christian man.⁹⁰

Finally, More knew about the reality of resignation at a spiritual depth far richer than the political sense with which we have been concerned thus far. He addressed the bench with words omitted from Bolt's play and from the movie. Listen carefully to what Roper

85. *Id.* at 221.

86. See George Fisher, *The O.J. Simpson Corpus*, 49 STAN. L. REV. 971, 972 (1997).

87. See STAPLETON, *supra* note 28, at 175-76.

88. See *id.* at 177-78.

89. See BOLT, *supra* note 1, at 159-62.

90. CAYLEY, *supra* note 26, at 223-24.

reports More to have said on that occasion. It, of course, never entered into the head of his judicial executioners that they should have resigned in principle rather than play such an ignoble role in the perversion of justice. More was not full of self-righteous indignation. Instead, he simply turned to the bench and addressed them tenderly as follows:

More have I not to say my lords, . . . but that, like as the blessed apostle St. Paul, as we read in the Acts of the Apostles, was present and consented to the death of St. Stephen, and kept their clothes who stoned him to death,—and yet be they now both twain holy saints in heaven, and shall continue there friends together for ever—so I verily trust, and shall therefore right heartily pray, that though your lordships have now here in earth been judges to my condemnation, we may yet hereafter in heaven all meet together, to everlasting salvation.⁹¹

What a prayer to pray! More did not make it up. He learned to pray in this way by his reflection on the Scriptures. He had read in the seventh chapter of Acts of the Apostles what the dying Stephen says of those who stoned him: “Lord, do not hold this sin against them.”⁹² The author of Acts, Luke, deliberately placed on the lips of a dying Christian martyr words similar to those of the dying, suffering servant Jesus. In the Passion narrative of Luke’s gospel, Jesus prays from the cross: “Father, forgive them, they know not what they do.”⁹³ As I suggested at the outset in my lame lawyer joke, deep down lawyers are good. More, the great common lawyer, was really good because he was really deep. He understood better than all of us that resignation is truly the order of the day, whenever that means acceptance of God’s will in our lives.

So I will conclude on that note, trusting that all of you will understand why Catholics revere Thomas More not simply as Sir Thomas More—wondering about which of his many periods of public service to exult in—but also acknowledge him as St. Thomas More.

91. *Id.* at 227.

92. *The Acts of the Apostles* 7:60.

93. *Luke* 23:34.

Perhaps now you can even hear the way that Sir Thomas More, the great common lawyer, the greatest chancellor of England, the king's good servant but God's first, St. Thomas More, is now addressed in heaven simply as "Thomas."