

**MORE AND ST GERMAN :  
EX OFFICIO AND LAY-CLERICAL  
DIVISION**

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In his dispute with Christopher St German, Thomas More sought to defend practices used in the canon law courts, particularly in heresy trials. The unusual importance More attached to the use of suits *ex officio*, separating this matter from other issues raised by St German and in some instances seeming to misrepresent St German's position, indicates he felt the reform movement in parliament portended fundamental and disabling changes in the procedural methods used in the prosecution of heresy.

**Key words :** Tudor controversy, heresy trials, More's *Apology*, *Salem and Bizance*, *The Debellation of Salem and Bizance*.

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*Dans sa dispute avec Christopher St German, More prit la défense de pratiques employées par les tribunaux d'Eglise, notamment dans les procès pour hérésie. L'importance exceptionnelle que More attachait à l'emploi de poursuites engagées par les magistrats ex officio -- en vertu de leur office -- lui fit séparer cette matière des autres sujets soulevés par St German, et dans certains cas il paraît déformer la position de St. German. Cette attitude indique qu'à ses yeux le mouvement de réforme proposé au parlement présageait des changements fondamentaux qui mutileraient les méthodes procédurales utilisées dans la poursuite judiciaire de l'hérésie.*

**Mots-clés :** Débats entre juristes anglais, procès pour hérésie, l'*Apology de More*, *Salem and Bizance*, *The Debellation of Salem and Bizance*.

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En su disputa con Christopher St German, More salió en defensa de prácticas empleadas por los tribunales de Iglesia, particularmente en los procesos por herejía. La importancia excepcional que Moro atribuía al empleo de prosecutions entabladas por los magistrados *ex officio* -- en virtud de su oficio -- le hizo separar esta materia de los demás asuntos planteados por St German, y en ciertos casos parece desformar la posición de St German. Esta actitud indica que ante sus ojos el movimiento de

reforma propuesto al parlamento presagiaba cambios fundamentales que mutilarían los métodos procesales utilizados en la prosecución judicial de la herejía.

**Palabras claves :** debates entre juristas ingleses, proceso por herejía, *Apología de More, Salem and Bizance, Debellation of Salem and Bizance.*

### I. The Spiritual Versus the Temporal as Seen by St German

Christopher St German presented the opening chapter of his *A Treatise concernynge the Diuision betwene the Spirytualltie and Temporaltie* as a sampling of public opinion on the issues that seemed to him to be dividing society along lay and clerical lines in early Tudor England.<sup>1</sup> St German's stance was that of an observer and reporter who had seen that it was noted through all the realm that "there is a greate dyuysyon bytwene the spyrityualtie and the temporaltie" (CW9, 178). He had seen in the past that there were divisions among the laity and among the clergy, but "nowe of late" so great a multitude of lay people were finding fault with the priestly and monastic orders that there seemed to be a great new fissure in the social fabric. St German claimed nothing more than to be reporting his perceptions of the public temper. What was "noted through all the realme" was that spiritual men were betraying the honor of God and coveting to rule rather than profit the people. It was St German's belief that the root of the matter was the assumption by spiritual men that their authority was incontestable because it was derived immediately from God. On this assumption, the clergy denounced as enemies of the Church all who spoke against clerical abuses, using their authority to punish and intimidate: "and therefore haue they punysshed many persons, which moch people haue iuged them to do vpon will, and of no loue vnto the people" (CW 9, 180)).

<sup>1</sup> An earlier version of this article was presented at the second annual conference of the Arizona Center for Medieval and Renaissance Studies, 16 February 1996. All references are taken from *The Complete Works of St. Thomas More* (Yale UP, 1963-1997), Volume 9, *The Apology*, ed. J.B. Trapp, 1979, and Volume 10, *The Debellation of Salem and Bizance*, eds. John Guy, Ralph Keen, Clarence Miller, and Ruth McGugan, 1987. Christopher St German's *A Treatise Concerning the Division...* is found in Appendix A of CW9, and his *Salem and Bizance* in Appendix B of CW10.

Nothing in St German's opening chapter could have come as a surprise. That the clergy were entrenched and using extraordinary powers in self-defense had been seen by many, and it was well known that English bishops for years had been using judicial powers (as, for instance, in the case of Richard Hunne) to suppress their opponents.<sup>2</sup> Threat of excommunication was being used as an instrument of discipline, and the heresy canons as instruments of extortion. Furthermore, the conflict of canon law and common law was a lively issue at the time of St German's *Treatise concernynge the Diuision*, and there seems little reason to doubt his assertion that among the laity—at least, among those who made their voices heard—there was an obvious consensus on clerical behavior and practices, including procedures in the church courts. Having observed the presence of division and having taken the measure of the people's concerns, St German next addressed the occasions and causes whence these arose. He arranged the rest of the *Diuision* into fifteen headings and under each of these singled out some excess in clerical conduct or misfeasance in the exercise of duties and prerogatives. In the first few chapters he observed that clerical confederacies, certain privileges claimed by the clergy (laws, for instance, providing extreme penalties for laying violent hands on clerks), and the obligation of various payments—tithes, offerings—were turning people against the Church. In the seventh and eighth chapters, he turned to the *ex officio* powers of bishops and ordinaries. He remarked that people were driven to purge and do penance on suspicion of heresy, that secret accusers and witnesses were used in heresy trials, and that often there was no distinction drawn between erring innocently and erring obstinately. It was a great peril, he reasoned, for the clergy to have the power of arresting for every light suspicion or accusation.

Of the remaining chapters, the ninth and the twelfth are of exceptional importance because they embody principles fundamental

<sup>2</sup> See J. Duncan M. Derrett's exceptionally fine analysis of the Richard Hunne affair in CW9, 219-27. See also S.F.C. Milsom, "Richard Hunne's 'Praemunire'," *EHR* 76 (1961), 80-82.

to St German's assessment of the lay-clerical conflict.<sup>3</sup> Chapters 9 and 12 contain the theoretical basis on which St German stands in his analysis of spiritual and temporal authority, and these two chapters are therefore thematically critical to the argument of the *Diuision*. The first of two fundamental principles is the inherently temporal nature of property, and the second is the sovereignty of the law of the realm inside England's borders. Of the first of these, "It is holden by them, that be lerned in the lawe of this realme," St German wrote,

that the parlyamente hathe an absolute power, as to the possessyon of all temporall thynges within thys realme, in whose handes so euer they be, spyrytuale, or temporalle, to take theym from one manne, and gyue theym to an other, wythoute any cause or consyderacyon. For yf they doo it, it byndeth in the lawe. (CW9, 194)

The Church's revenues, including tithes, fines, and grants, are, like all revenues, temporal goods and as such fall under the authority of the king in parliament. The Church, therefore, can claim no legitimate right to temporal possessions except by parliamentary license.

On the basis of his second principle, the sovereignty of English law, St German upheld the uniformity of the king's jurisdiction, and he asserted that in making laws and constitutions that conflict with the law of the realm the Church has exceeded its authority. Several instances are given (*silva cedua*, for instance), but what St German chiefly wishes to challenge is the principle of clerical immunity. When it is asserted, he writes, that "it is an auncient custome,"

that priestes in felonies, murthers, & treasons shulde nat be put to aunswere before laye men, and that by reason of that olde custome, they oughte to be pryuyleged in that behalf, though it can nat be proued directly by the lawe of god: to that it maye be

<sup>3</sup> In making this assertion, I am conscious of going against J.B. Trapp's analysis of the *Diuision*, which I find misleading in several respects. I am doubtful, for instance, that its main point was the Church's resentment of criticism (CW9, lx) or that the "threefold functioning of the ecclesiastical courts was the heart of St. German's matter" (CW9, lviii). Trapp altogether passes over St German's argument of parliament's sovereignty in matters of property, and perhaps understates the importance St German ascribed to clerical immunity (CW 9, lxvi-lxvii).

answered, that there was neuer yet suche custom in this realm approued. (CW9, 199)

The central thesis of *A Treatise concernynge the Diuision*--that the clergy's claim to incontestable authority is the chief matter dividing laity and clergy--is embodied in the clergy's claim to be exempt from prosecution in the civil courts.<sup>4</sup> St German therefore lays bare the reasoning underlying the statute *Pro clero* (25 Edward III), from which the tradition of clerical immunity arose. He distinguishes felonies concerning the king's person from those concerning others (benefit of clergy applied only in the case of felonies "touchyng other persons than the kyng or his royal maiestie"), and he concludes that in cases of theft, murder, and other offenses against the king's peace, it was not only lawful to break the custom of clerical immunity, "but a right good & meritorious dede to do it, and a dede that the kyng is bounde to at his coronacion" (CW9, 202).

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Because it was St German's intent to survey lay attitudes concerning the clergy and then to sound their causes, the clergy almost inevitably were portrayed as bearing most of the responsibility for the conditions that were forcing England's spiritual and temporal spheres apart. However, St German strictly distinguished between clerical privileges and abuses thereof, and there seems no good reason to doubt his assurances that by doing so he was earnestly seeking ways to correct specific social ills. *A Treatise concernynge the Diuision* was not written in a spirit of detraction, and it was not, as More later tried to claim, an attempt to defame the clergy. Moreover, it contains no traces of motives that could be described as propagandistic, although its objectives, to be sure, were polemical. It implicitly argues for a liberalizing of customs and practices that St German held to be inconsistent with due and reasonable process, and it is suffused with the spirit of equity.<sup>5</sup> These features of the

<sup>4</sup> See especially CW 9,201.

<sup>5</sup> St German stated the fundamentals of his theory of equity in the first dialogue of *Doctor and Student*. The essential point--"a rightwysenes that consideryth al the pertyculer cyrcumstances of the dede, the whiche also is temperryed with the swetnes of mercy"--is

*Diuisio*--entirely in harmony with St German's agenda of judicial reform--are almost certainly what caught More's notice. That he perceived their potential consequences to be in some sense threatening is beyond doubt, but in precisely what sense and for what reasons are questions worth raising because they have not been convincingly resolved. When More chose to answer the *Diuisio*, he chose to do so strategically, not by countering its principal assertions but by singling out a select few on the basis of their usefulness in advancing his own agenda. Moreover, he never directly counters the fundamental matters articulated in the *Diuisio*'s ninth and twelfth chapters, and he thus seems to evade the substance of St German's position. Instead, More builds his main argument on one of St German's subordinate issues, *ex officio* powers used in the prosecution of heresy cases; but on this as well as other matters he tends to misrepresent St German's position for reasons that I shall turn to shortly.

## II. More's *Apology* : Ecclesiastical Authority

A *Treatise concernynge the Diuisio* was published anonymously either late in 1532 or the first few weeks of 1533.<sup>6</sup> More probably knew the identity of its author but chose, rather than naming him, to exploit the ironic impact of an epithet, the Pacifier. Because he included this author among those whom he censured in his *Apologie of Syr Thomas More Knyght*, this work turned out to be the first

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discussed by Richard M. Wunderli in *London Church Courts and Society on the Eve of the Reformation* (Cambridge, MA : Medieval Academy of America, 1981), 60, and by John Guy in *Christopher St German on Chancery and Statute* (London: Selden Society, 1985), 71-3 and 87. See also Z. Rueger, "Gerson's Concept of Equity and Christopher St German," *History of Political Thought*, 3 (1982), 1-30, and Charles Ogilvie, *The King's Government and the Common Law, 1471-1641* (Westport, CT : Greenwood Press, 1958), 93-4. Although More questioned his claim to be handling the lay-clerical division in the spirit of indifference, St German took care to maintain the appearance of equitable proceeding. Considerations that mitigate the rigor of law, for instance, are presented particularly in the seventh and ninth chapters of *The Treatise concernynge the Diuisio* when St German urges the use of charity and conscience, or when he notes their absence in penalties imposed under laws concerning tithes, mortuaries, and the liberties of the Church. Such "extremities" were used in the case of tithes "that no prescription / custome, composition nor other plee shall be admytted in the spyrytuall lawe agaynst them" (CW 9, 193).

<sup>6</sup> Dates of publication for *A Treatise concernynge the Diuisio*, and More's *Apologie* are established in CW9, lxxxix-xciii.

installment in a dispute that continued well into 1534. In the first few chapters of his *Apologie*, published shortly before Easter 1533, More renewed the battle against Tyndale and the other heretics, delaying his response to the author of the *Diuisio* until the beginning of his eleventh chapter. Meanwhile, however, he had reiterated in earlier chapters his stand on the Church's authority, and, since it was on the strength of this principle that he answered St German as well as Tyndale, its main elements ought here to be examined, if only briefly.

The foundation of the principle of authority to which More adhered was that the Holy Spirit leads the faithful not primarily by the written word but by the "tradycyon of the chyrche . . . taught and delyuered vnto chrysten people from age to age" (CW9, lxix and 18/13-14), for which he had the assurance of Matthew 28:18-20 and John 16:13.<sup>7</sup> The Church was gathered and the faith instilled before any part of the New Testament was put in writing, and no one, neither Luther nor his disciple Tyndale, can know which is the true scripture except by the credence one places in the Church.

And therfore syth the word of god is as stronge vnwryten as wryten, and whyche is hys worde wryten Tyndale can not tell but by the chyrch . . . why shold not Luther and Tyndale as well byleue the chyrch, in that it telleth theym, thys thyng dyd Cryste and hys apostles saye, as they muste byleue the chyrche (or ellys byleue nothyng) in that it telleth them, thys thyng dyd Crystes euangelystes and apostles wryte. (CW9, 18/27-37)

The Church, moreover, completes and perpetuates the written word by issuing incontrovertible decisions in cases of uncertainty, controversy, and division. The fountain of the heresies of Luther and Tyndale and their followers, More wrote, was the belief that all certain and necessary matters were contained in scripture, and that all other matters, being either of human institution or the invention of the

<sup>7</sup> For More's rejection of the argument that clerical jurisdiction was a usurpation of civil authority, see Glyn Redworth, *In Defense of the Church Catholic: The Life of Stephen Gardiner* (Oxford: Blackwell, 1990), 42-3. The rights of the spirituality, More held, were based on Christ's command of obedience to the Church in faith and in manners. For the scriptural bases of More's view of the Church's authority, see the Commentary to 1/7 in CW 9, 314-17. For remarks on the Church's authority with reference to Bishop Fisher and Jean Gerson, see Richard Rex, *The Theology of John Fisher* (Cambridge UP, 1991), 94-7.

devil, were to be held inessential. If, as More believed, the clergy's rights of adjudication and self-discipline were rooted in conciliar and decretal authority (and therefore did not fall within the cognizance of secular courts), then what was *truly* inessential was the distinction between those who sought to reform and those who sought to destroy the clergy. Those who made this distinction did so on the basis of nothing that fell under the heading of authority as More understood it, temporal or spiritual, and the same was true of those who claimed to distinguish between the Church's customs—its pilgrimages and all the rest—and abuses thereof. "There wyll no reason nor good consyence bere it," More wrote,

that we shuld suspecte that our prelates and ordynaryes in theyr iudgements agaynste heretykes, vse to do them wrong, syth all ye lawes bothe spyrytuall of the whole chyrch, and temporall of this realme, haue ordayned full fayth and credence to be gyuen to them therin. (CW9, 94/27-31)

When More seems only indirectly, and at times not at all, to be engaging with the fundamental issues that St German raised in the *Treatise concernynge the Diuision*, one of the reasons is that he was not willing to countenance the presumption of authority on which St German stood, first in his assertion of a division between spiritual and temporal men and then in his assessment of the causes to which the people's perception of this division was ascribed. More detected in the *Diuision* an attempt to assess canonical principles by common law standards, and he resisted being drawn into the dispute on this level by appealing to principles higher, he thought, than St German's notions of due and reasonable process. This is not to say that he failed to challenge St German, or to counter faults ascribed in the *Diuision* to the clergy, but that he did so on the basis of mainly ecclesiological rather than strictly judicial principles. He questioned St German's claim to be seeking in the spirit of indifference to appease conflicting factions, and in the vast midsection of the *Apologye*, chapters 11 to 39, he examined point by point most of the claims asserted against the clergy in St German's opening chapter: their controversies, neglect of duties, lust for riches and bodily ease, the harshness of their dealing with heretics, their "proude worldely countenance," and their use of

judicial powers to suppress their critics. More reproved the author of the *Diuision* for impugning the clergy as a whole under the pretense of singling out only the derelict few; he denied the existence of a lay-clerical division unique to contemporary England because the causes alleged to have produced it, far from being novel and alarming, were perennial; and he defended the Church's revenues and possessions on the grounds of their obvious and abundant spiritual benefits. "Suche as so murmur," More asserted, "agaynst chaunteries, trentals, obytes, pardons, and pylgrymages, as wold haue them all fordone, haue an inward hatered vnto the profyt of mens soules, besyde the enuye that they bere to prestes" (CW9, 73/1-6). More countered the imputed worldliness of priests on the grounds that no one ever claimed they were perfect, and he dismissed his adversary's pleas for the use of charity in the church courts as a tactic calculated to promote the spread of heresies.

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More raised the question of *ex officio* powers in his twenty-fourth chapter, introducing at the same time what would become the chief tactical maneuver not only in the closing chapters of the *Apologye* but also in the second of his responses to St German, *The Debellacon of Salem and Bizance*. This was the threat of the spread of heresy. "I fere me," he wrote, "there wolde as I shall after shew you, many a place in the realme swarme very full, ere euer [heretics] were brought byfore the ordynary by the meane of accusacyon" (CW9, 89/15-17). More's aim was to turn the Pacifier's arguments into an agenda for removing the barriers against heretics, leaving them free to swarm through the kingdom while the spiritual courts were held in check by the shackles of open accusations. His tactical point seems clear enough: *ex officio* powers, More is saying, are all that stand between the kingdom and imminent spiritual ruin. He had already demonized the heretics, particularly Tyndale and Luther, and now, as he turned to address the author of the *Diuision*, he wished to affirm episcopal authority and to represent the bishops' *ex officio* powers as England's only hope against the infection of heresy.

"I purpose not to medle," More wrote in the fortieth of *The Apologye*'s fifty chapters,

wyth euery parte of hys boke y<sup>l</sup> I thynke were well done for hym to amende: yet in hys seuenth chaptyer & hys eyghte, which twayne treat all of these maters of heresy, for the great weyghte of the mater I shall not forbere to shew you some dyfference and dyuersyte bytwene hys mynde and myne. (CW9, 129/29-34)

By singling out the seventh and eighth chapters of the *Diuision*, More was contriving to separate the question of heresy from other issues raised by St German, and contriving by doing so to magnify its importance and thus to create an opening for a defense of *ex officio* powers. He hoped to distinguish the issue of heresy in this way in order to bring into focus the single most important matter among all the clerical powers and privileges that were being debated, and this, from More's point of view, was the *ex officio* authority of bishops. By giving *ex officio* a place of paramount importance, More was effectively narrowing the scope of his dialogue with St German and making certain that the powers and duties of the spiritual judiciary would at least in part displace the main premise of the *Diuision*, which was that the spiritual and temporal spheres were being torn apart by unprecedented controversy. More was also contriving to secure a forum for the canonical model of proceeding in questions of heresy. By portraying St German's seventh and eighth chapters as a threat to the bishops' *ex officio* powers, even though by doing so he misrepresented St German's position, More was creating for himself an opening for an extended defense of the heresy canons. It did not suit More's objectives to give a fair and accurate sense of St German's stand on *ex officio* (St German did not propose repealing it, for instance) because what he had in mind had less to do with resolving England's social conflicts than with defending canonical authority. St German was not advocating statutory measures of conflict resolution, and he was not pressing for changes in the heresy laws. "I know well," St German wrote in one of the chapters, the seventh, that More singled out to illustrate the difference between his mind and his adversary's, "y<sup>l</sup> it is right expedient, that stray lawes be made for punisshment of heresies" (CW9, 190).

What St German did propose was increased protection ("indempnitie") of accusers and witnesses as a hedge against abuses of *ex officio*. Nevertheless, it served More's purposes to obscure St German's real argument because he was seeking a pretext for reaffirming the wisdom of popes and the authority of councils and for reminding all who were following his quarrel with St German that canonical authority more than once had been endorsed and proclaimed by English kings and parliaments.

More's strategy, which turned out to be successful, was to make it difficult for St. German to leave the matter of *ex officio* alone or to treat it as one of several subordinate issues in the division between lay and clerical. More was attempting to influence the direction of the rest of the dialogue by selecting what would be at least one of the main debating points in its forthcoming installments. Having commenced his discussion of the bishops' *ex officio* powers in the *Apology's* fortieth chapter, he proceeded in his closing chapters to identify procedural matters that were interwoven with the power of ordinaries, by virtue of their office, to convene putative heretics before their courts without accusations or indictments. His objective was to alter the direction of the dialogue and revise the main points in dispute, hoping to turn his learning and persuasive powers to a defense of the spiritual jurisdiction and of the canons having to do with heresy and the prosecution thereof.

### III. *Salem and Bizance* : St German's Response

St German began soon after the appearance of More's *Apology* around Easter 1533 to prepare his response, and it was in print by Michaelmas with a title--*Salem and Bizance* (Jerusalem and Byzantium)--that contained a symbolic reiteration of his plea for unity among Christians.<sup>8</sup> St German began by announcing that he would depart from the order of issues as they were treated in the consecutive chapters of the *Apology*, and in ensuing pages he objected more than once to More's tactics of clouding and misrepresenting positions he had taken in the *Diuision*. He claimed that More had failed to engage

<sup>8</sup> On the date of publication of *Salem and Bizance*, see the Commentary to 5/35-36 in CW10, 242. St German explains his title in chapter xxii: see CW10, 383-4.

the principal matters of the *Diuisio*n and had confined himself, rather, to one of several subordinate issues, the punishment of heretics (CW10, 331-32). He also singled out the eleven chapters (3-5, 9-16) that More had neglected altogether (CW10, 382). It had not escaped St German's notice, in other words, that More was dealing selectively with *A Treatise concernynge the Diuisio*n and choosing, furthermore, to evade the principal issues. St German's position was that More had not dealt forthrightly with the matters that were dividing clergy and laity. For reasons that were not spelled out in *Salem and Bizance*, More was taking steps to obscure the evidence on which St German's hypothesis of a division between clergy and laity rested. It was therefore impossible for St German to proceed without indicating that a kind of structural impropriety had been committed, and without attempting to restore priorities to something like their logical order. The formal aspects of *Salem and Bizance* reflect, then, St German's sense of a need to correct misrepresentations in More's rebuttal of his *Diuisio*n and to resurrect what had been the main point of the dispute at the beginning, a hostile division between the spiritual and temporal orders, its causes, and its consequences.

The question of heresy is not introduced until the fourteenth of the twenty-four chapters of *Salem and Bizance*, while earlier chapters seek to correct errors in the *Apologie* and to counter arguments More had used to obscure St German's real objectives. A variety of matters are raised in these early chapters: More's plea for harshness in dealing with heretics, for instance, his defense of the Church's wealth, his attempt to suppress criticism of the clergy, and his contention that the author of the *Diuisio*n was seeking to malign the spirituality *in toto*. Finally, in his fourteenth chapter, St German opened the question of heresy by pleading for leniency for those whose heresies were not obdurate, and he cautioned the spiritual judiciary to proceed with prosecutions only after suspected heretics were examined with openminded thoroughness and in secret. In his fifteenth chapter--"Of the sute *ex officio*"--St German sought to refute More in four matters wherein he had attempted to show similarities in canonical and civil procedures, and in the rest of *Salem and Bizance* he returned to questions of clerical conduct and esteem, closing with the protest that

it was never his intent to ascribe the lay-clerical division to heresies or apostasies. That was More's position.<sup>9</sup>

#### IV. Once More : *The Debellation*

St German was doing three things: first, clearing himself of the charge that he sought to malign the spirituality, then exposing More's strategy of misrepresentation, and, finally, showing the potential for abuses in *ex officio* proceedings. In the structural plan as well as most of the arguments of *Salem and Bizance*, St German was doing his best to show that heresy trials were not the principal matter at issue but only one of several factors dividing temporal against spiritual men. Whether he succeeded is a moot question because More's strategy was not to debate the merits of the question of a lay-clerical division but to make St German seem blindly permissive when it came to heresy and heretics. He pushed ahead as soon as *Salem and Bizance* was in print with a response that built upon the opening he had created for himself in the closing chapters of the *Apologie*. Its most remarkable feature was a vigorous defense of the entire canonical apparatus. More chose the title *The Debellation of Salem and Bizance* and completed this, his second, response to St. German around All Saints' Day of 1533. It was published soon thereafter, probably in November (CW10, xcv-xcviii). In the opening and closing chapters More stated his principal theme: that the defaming of the ordinaries was part of a strategy to bring about changes in the heresy laws. The structural plan of the *Debellation* follows exactly that of St German's *Salem and Bizance*, each of its twenty-one chapters corresponding in sequence to each of St German's, but More divided the *Debellation* in two, opening the second part with chapter fifteen. It is of considerable significance, moreover, that Chapter 15 was the first to be set in type and, therefore, almost certainly the first to be composed (CW10, xcv). In early chapters More defended the clergy's honor and rectitude, and in chapters eleven to fourteen he countered St German's arguments concerning the clergy's prosecutorial zeal and their use of malicious prosecutions. More announced at the beginning of the crucial fifteenth

<sup>9</sup> "For surely I doo not take it," St German objected, that the divisions "began eyther by heresies, or Apostasies, as master More in his apologie meaneth that they shulde do" (CW10, 374/30-32).

chapter, by far the lengthiest in the *Debellation*, that he would handle St German's arguments in order, countering first his claim that repealing *ex officio* would do no harm, then that keeping it would do great harm, and, at last, countering his arguments against the parallels More had drawn between *ex officio* and common law procedures. This statement of objectives, however, betrays a decidedly slanted reading of the fifteenth chapter of *Salem and Bizance* because at no point does St German directly assert that repealing *ex officio* would do no harm or that keeping it would do great harm. St German objectively may be said to have implied what More said he claimed to have asserted. More was not exactly putting words in St German's mouth, but he does seem to have been seeking to alter the main thrust of chapter 15 of *Salem and Bizance* as if to make it answer to his own strategic requirements, which were to demonstrate the harm of repealing *ex officio* and the good of keeping it.

Having done so, More turned to substance. He defended the spiritual judges' authority, *ex officio*, to convent without open accusers and to use secret witnesses. Indemnification and other safeguards against the intimidation of witnesses were insufficient, he affirmed, to remove the need for *ex officio* procedures, so great was the fear of retaliation. More defended the canon (*Ad abolendam*) whereby suspected heretics could be driven to purgation, or, failing that, excommunicated, as well as the canon whereby those who remained excommunicated a year could be punished as heretics (*Excommunicamus et anathematisamus*).<sup>10</sup> He challenged the use of compurgation in cases of heretical preachers, and he upheld the principle of episcopal discretion (*arbitrium episcopi*) when it was deemed appropriate to weigh the special circumstances of a cause or the quality of a person suspected. Finally, More wished his readers to grasp that all of Christendom was arrayed against his adversary and that in challenging the authority of spiritual courts he was impugning popes and councils, particularly those responsible for issuing and reaffirming *Ad abolendam*--Lucius III, Innocent III, and the members of the Fourth Lateran Council (1215), whose numbers included

<sup>10</sup> The provisions of these two canons are set out in the Commentary to 110/32-33 and 113/34-36 in CW 10, 280-82.

ambassadors, emperors, and patriarchs in a "great ful & whole counsaile of crystendome" (CW10, 144/34-35). No Christian nation, More concluded, has renounced this same suit of office without renouncing the Christian faith as well. Were it abolished,

men sholde shortly se wythout any doute great encrease of heretykes, whych, where as they were wonte but to crepe to gether in corners, and secretly scoulke to gether in lurkes lanys, shall sone wax bolde and put oute theyr hornes and flocke and swarm to gether so thicke in thopen stretes, y<sup>t</sup> such myscheyfe wolde fynally folowe theron, as wo wyll euery good man be that sholde lyue to se yt. (CW10, 145/29-35)

What distinguishes chapter 15 of the *Debellation* is that it contains More's most forceful statement of the legitimacy not only of *ex officio* procedure but of the foundation of canonical authority that it rested on.

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The step that proved to be decisive in shaping the substance of his debate with St German was More's decision, carried out in the fortieth chapter of the *Apology*, to make *ex officio* the principal point of contention. Of all the matters brought forth in St German's *Treatise concernynge the Diuision*, More thought none more momentous than this. The *ex officio* question provoked More's adversarial instincts, and he addressed it with a greater degree of professional interest than he did other matters--clerical wealth and customs and the clergy's low esteem--matters given high priority in *A Treatise concernynge the Diuision*. He was determined that *ex officio* powers were to be regarded as constituting a class by themselves. It seems abundantly clear, moreover, not only from evidence in the *Apology* and the *Debellation* but from historical circumstances as well, that this position was founded first on More's belief that these powers were critical in the Church's ability to combat heresy and, second, on his perception that their repeal was a distinct possibility. More had good reason to believe considerably earlier than the closing weeks of 1532, when St German's *Diuision* is thought to have appeared in print, that the spiritual judiciary's special powers were imperiled by the reform movement in parliament. He well may have believed, in fact, that the

bishops' *ex officio* powers were doomed already because it seems entirely likely that a strategy of using statute to curtail the spiritual judiciary was in place before the end of parliament's first session.

Among the records collected in the sixth volume of *Letters and Papers* under the heading "Billes dependyng in the Comen Hous syns the last prorogacion" is a notice of a draft bill that would have placed the exact restrictions on *ex officio* powers that More thought would unleash the heretics. The notice in *Letters and Papers* does not bear a date, but G.R.Elton conjectured that the draft to which it referred, which was written in an unidentified hand, probably should be ascribed to the first session of the Reformation Parliament (3 November to 17 December 1529).<sup>11</sup> Had it ever been enacted, the bill represented by this draft would have restrained bishops

from citing or arresting any of the King's subjects to appear before them in cases of heresy, unless the bishop or his commissary be free from any private grudge against the accused, and there be three or at least two credible witnesses; a copy of the libel to be in all cases delivered to the accused with the names of his accusers.<sup>12</sup>

It is not implausible that the draft here abstracted is the legislation that Chapuys referred to when he wrote to Charles V near the end of the 1532 session of parliament that More and the bishops were speaking out against a bill that would strip prelates of their authority to "lay hands on men's bodies in heresy cases."<sup>13</sup> It was by now inescapable to More, the bishops, and everyone else that the reformers' strategy was to cripple *ex officio* by statute. However, neither of these bills--the one abstracted in the sixth volume of *Letters and Papers* or the one referred to by Chapuys (if these were, in fact, two separate pieces of legislation)--ever came to fruition in laws

enacted by the Reformation Parliament, although certain of their provisions were embodied in the 1534 act repealing the heresy law of 1401.<sup>14</sup>

Chapuys was not the only one to make mention of the heresy controversy in the 1532 session of parliament. Only weeks before the Supplication against the Ordinaries was delivered to the king, Edward Hall noticed that the Commons were complaining "of the crueltie of the Ordinaries,"

for callyng men before theym *Ex officio*: that is, by reason of ther office: For the Ordinaries woulde sende for men and ley Accusacions to them of Heresy, and say they were accused, and ley Articles to them, but no Accuser should be brought furth, whiche to the Commons was very dredeful and greuou: for the partie so Assited must either Abiure or be burned, for Purgacion he myght make none.<sup>15</sup>

A few days after the Supplication was presented to the king, the duke of Norfolk was known to be speaking of "the infinite clamours of the temporality here in Parliament against the misuse of the spiritual jurisdiction," and Bishop Strype found evidence that Stephen Gardiner about the same time was trying to persuade Convocation that the clergy's power of making laws and excommunicating was held not by God but by the leniency and sufferance of temporal princes.<sup>16</sup>

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There is abundant evidence, then, quite apart from the Supplication against the Ordinaries, that the Commons early in 1532 were moving in the direction of St German's version of the disposition of temporal and spiritual powers, and that there were some who were contemplating statutory measures for limiting the bishops'

<sup>11</sup> "Parliamentary Drafts, 1529-1540," *BIHR* 25 (1952), 122.

<sup>12</sup> J.S. Brewer and James Gairdner, eds., *Letters and Papers, Foreign and Domestic of the Reign of Henry VIII*, 21 volumes. London, 1848-73, VI, 120.

<sup>13</sup> Stanford E. Lehmborg, *The Reformation Parliament, 1529-1536* (Cambridge UP, 1970), 157.

<sup>14</sup> Lehmborg, 186-87.

<sup>15</sup> Edward Hall, *Hall's Chronicle; containing the History of England . . . to the end of the Reign of Henry VIII. 1809* (New York: AMS Press, 1965), 784.

<sup>16</sup> G.R. Elton, "The Commons' Supplication of 1532: Parliamentary Manoeuvres in the Reign of Henry VIII," *EHR* 66 (1951), 513; John Strype, *Ecclesiastical Memorials* (Oxford: Clarendon, 1822), I, i, 209.

*ex officio* powers. More probably knew as early as the first session of the Reformation Parliament and without doubt by the end of the 1532 session that legislation was being prepared that would weaken the Church's ability to fight heresy. That he chose to include in his *Apology* a response to the *Treatise concernynge the Diuision* indicates that he was inclined to think that procedures used in the spiritual courts to defend the Church against heresy were facing a serious threat. Because he was convinced that *ex officio* powers were of critical importance in teaching and defending doctrinal orthodoxy, he chose to challenge St German primarily on matters contained in the ninth chapter of the *Diuision*, the chapter on the evils of *ex officio*. Enough was known of the reformers' legislative agenda to suppose that St German's version of a diminished spiritual judiciary could easily be written into the laws of the realm; but because More was certain that that would permit heresies to flourish, he vigorously defended the bishops' courts in the *Apology*. St German answered in *Salem and Bizance* by trying to bring the dialogue back to his own analysis of the lay-clerical conflict, while at the same time countering More's defense of the bishops' *ex officio* powers. More renewed his claim in *The Debellation of Salem and Bizance* that the vilifying of the clergy was the first step in a move to alter the heresy laws, and he then launched a massive defense of the canonical foundation of the procedures historically used by the Church in discriminating and correcting heretical errors.

#### V. Structures : A Conclusion

One of the salient features of this exchange is that its four installments do not exactly mesh. More's *Apology*, as St German pointed out, veered away from the substantive matter of *A Treatise concernynge the Diuision*, and nothing St German said in *Salem and Bizance* worked to alter the course More was determined to follow in the *Debellation*. The confrontational dimension of this debate has to be regarded as one of its problematical features. More and St German were quite obviously on divergent courses and at times seem to have been speaking past each other, particularly when More--seemingly oblivious of the fact that neither the *Diuision* nor *Salem and Bizance* can be construed as challenging the Church's authority to discipline

heretics--repeatedly raises fears of repealing the heresy laws. By what objectives could More have been shaping these responses that seem at times to misrepresent St German and at times to engage issues only tangentially related to St German's principal arguments? For what conceivable ends could More have been negotiating not on one but on two levels? These questions bear upon the substance of the dispute, but they also bear upon what we may think of as its structural elements. The four works taken as a whole conform to a structural framework in the sense that, in retrospect, we are able to discern patterns of assertion, response, and counter-response. At the time, obviously, no structural arrangement was agreed upon by the disputants: witness, for instance, St German's surprise at More's treatment of his *Diuision* in the *Apology*. The structural lines of polemical debate are in this sense unpredictable. In CW10 John Guy addressed this feature of More's dispute with St German--the structural framework of assertion and counter-assertion (lxxiv-lxxvi, lxxxiii, lxxxvi). Some of his conclusions, however, seem unlikely when viewed in the light of the liberties More took with St German's arguments.

Guy's structural analysis falls into four parts:

1. St German began by asserting the presence of a division and explaining its causes, and More countered in his *Apology* first by defending his stand against the Protestant heretics and then by rebutting St German's theory of a division between clergy and laity, portraying St German as a friend of heresy.
2. In his next work, *Salem and Bizance*, St German defended his earlier assertions but introduced new matter as well, and More, in *The Debellation of Salem and Bizance*, first dealt with issues raised previously in the *Treatise of the Diuision* and the *Apology* and then, in chapter 15, responded to the new matter introduced in *Salem and Bizance*.
3. In the *Debellation's* fifteenth chapter, the chapter wherein he responded to St German's new matter, More countered St. German on two points, that changing the heresy law would do no harm and that the law as it stood harmed the innocent, and

then defended the comparisons of *ex officio* and common law procedures that he had proposed in his *Apologye*.

4. In the remaining chapters of the *Debellation* More answered the arguments of the last five chapters of *Salem and Bizance*, specifically addressing the integrity of the spiritual judges, the heresy statute of 1414, clerical confederacies, and St German's charge that he had misquoted *A Treatise concernynge the Diuision*.

My summary of necessity omits much of the substance of Guy's analysis, and it is in no way meant to imply an assessment of his very exact and erudite handling of the judicial technicalities of More's dispute with St German. It is meant, however, to indicate that in his assessment of the specifically structural features of their exchange Guy omitted important matters and consequently conveyed a misleading sense of the adversaries' tactical maneuvering. Guy failed, for instance, to notice the repeated warnings More gave in the closing chapters of *The Apologye* about tampering with the heresy laws, and he also overlooked the repeated objections made by St German in *Salem and Bizance* to More's selective treatment of issues raised in *A Treatise concernynge the Diuision*. Having slighted these matters, Guy was perhaps not in a particularly favorable position to assess the complete significance of the crucial fifteenth chapter of More's *Debellation of Salem and Bizance* or to portray exactly the scope of More's strategic planning.

First, More took pains in *The Apologye* to raise fears of changing the heresy laws. In chapter 47 he accused St German of trying to induce "thys prudent parlyament" to change the law (2 *Henry IV*) empowering ordinaries to arrest and imprison heretics (CW9, 162/27-28) and in chapter 49 he cautioned every good man, "as touchyng any new order concernynge heresy, wyth the chaunge of lawes before dyuysed for the repressyon of them," to keep the laws already made until there were changes in the conditions that the laws were meant to remedy (CW9, 170/10-11). However, St German had not called for a change in the heresy laws. He had discussed ecclesiastical legislation in the third and fourth chapters of the *Diuision*, and in the seventh and eighth he had singled out seven particularly oppressive canons, but

nowhere did he suggest altering the English statutes concerning heresy. He closed his eighth chapter with an appeal to the king to look into the matter of arrests on charges of heresy "vpon euery lyght complaynt" (CW9, 193), but this is as close as he came to tampering with the laws. There is, therefore, an element of exaggeration in More's insinuations that *A Treatise concernynge the Diuision* was part of a strategy to repeal the heresy laws, and St German, as we have seen, sensed that something was amiss in More's partial and selective treatment of matters raised in the *Diuision*. In *Salem and Bizance* he accused More of exaggerating the importance he had ascribed to heresy in his analysis of the lay-clerical conflict, and when he expanded his treatment of the use of *ex officio* powers he did so because More had made it impossible for him to avoid it. He was responding to a challenge with a tactic intended to counter the misrepresentations of More's *Apologye*.

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More's strategies, however, were not in the least affected by the claim that he was not playing fair. Having raised warnings in the *Apologye* about tampering with the laws, More opened the fifteenth chapter of the *Debellation*--the chapter written first, the lengthiest chapter, and the one containing his most systematic exposition of canonical doctrine--by accusing St German of trying to bring the spiritual judges into suspicion and obloquy for the purpose of repealing the suit *ex officio*. This is More's caution to the reader in the opening paragraphs of his fifteenth chapter:

Therefore haue this poynt in this mater euer before your eyen, that y<sup>e</sup> chaunge of that law yf that lawe be good, but yf he chaunge it in to a better, or at the leste as good, is a comen harme to the whole realme. And that harme happeneth in y<sup>e</sup> grettest thyng that we coulde possyble take harme in, yf we be (as I wote well we be & euer entende to be) faythfull trew chrysten people. (CW10, 87/12-18)

This is not the beginning of a rebuttal of new matter introduced in St German's fifteenth chapter, as Guy would have it; more to the point, it is the beginning of a rigorous defense of the position More had taken in the closing chapters of the *Apologye* against the

advocates of changes in the heresy laws. It is, moreover, the beginning of one of More's most rigorous defenses of canonical authority, and it was intended for the reformers in parliament as well as St German. They were the ones who counted in More's view because they were the ones enacting Cromwell's reforming agenda into statute. St German's objectives were in certain ways identical to theirs, and his *Treatise concernynge the Diuision and Salem and Bizance* could in no sense be seen as inimical to their attempts to repeal *ex officio* and the fifteenth century heresy laws. Furthermore, St German's parliamentary draft of 1531, whether More knew it or not, contained specific proposals for reforming the spiritual judiciary.<sup>17</sup> Nevertheless, whether or not he associated St German with those in parliament who sought to diminish the powers of the church courts, it was St German's *Treatise concernynge the Diuision* that gave More his opportunity to voice his opposition to their agenda. In other words, More saw in St German's *Treatise concernynge the Diuision* an opening through which he could confront the parliamentary reformers with the catastrophic consequences of using statute in a manner that could only end up rewarding the likes of Frith, Barnes, and Tyndale. The reformers in parliament rather than St German were the primary audience for whom More intended the closing chapters of the *Apology* and the fifteenth chapter of *The Debellation of Salem and Bizance*. What in More's eyes was at stake--the legitimacy and force of the Church's councils and decrees--is what he sought to convey as forcefully as he could, particularly in the fifteenth chapter of the *Debellation*. For this reason, chapter fifteen of this work as well as the last ten chapters of the *Apology* ought to be seen not as Elton and most others have seen them, as the embittered utterances of one who knew his battle was lost, but as the chief product of the final phase of More's active participation in the parliamentary politics of the 1530's.

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To take the view, as Guy did, that in *A Treatise concernynge the Diuision and Salem and Bizance* St German was trying to smooth the

way for changes in the heresy laws along lines favored by the court is not entirely unwarranted. To do so, however, is to take More's view of these works, which is the view to which St German strongly objected when in *Salem and Bizance* he accused More of misrepresentations. It makes more sense to read More's misrepresentations in the light of St German's objections and to see them for what they were: tactical maneuverings designed to shift attention away from the division between spirituality and temporality and to focus it on the evils of using statute to loosen the restraints on heresy. More sought to portray St German as an instrument of heresy, and Guy seems to have been led by More's portrayal when he saw St German as acting in the interests of whatever powers at court were orchestrating parliamentary initiatives to get the heresy laws repealed. If, as Elton thought, *The Debellation of Salem and Bizance* is a passionate overreaction to a nonheretical adversary, what explains its strong feeling is not More's impulse to answer every challenge, as Elton conjectured, but his perception that statute was about to be used to assist the forces of error.<sup>18</sup>

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<sup>17</sup> Guy, *Chancery and Statute*, 19 and 25-6.

<sup>18</sup> Elton's remarks on More's attitude toward St German appear in his review of CW9 in *EHR* 95 (1980), 368.