

## INTERROGATING THOMAS MORE: THE CONUNDRUMS OF CONSCIENCE

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My subjects in this essay are Thomas More and the confounding claims of conscience. These are fascinating and important but also perplexing subjects, so I should warn you from the outset not to expect too much. In fact, I intend to follow the law professor's traditional practice—the one we flatter ourselves by calling “Socratic”—of mostly asking questions, leaving you to supply the answers, if there are any.

The questions to which I do not promise any answers have to do with More's understanding of—and his eloquent (and fatal) commitment to—conscience. “Freedom of conscience” is of course central to the modern discourse of religious freedom<sup>1</sup>—and perhaps to the modern self-understanding generally—so it is a major topic in John Noonan's and Ed Gaffney's magnificent book of readings on religious freedom; and Thomas More is included in that book as a leading and eloquent example of the commitment to conscience.<sup>2</sup> But conscience and “freedom of conscience” are also not well understood—or at least I am quite sure *I* do not well understand them—and that is why it seems worth posing some questions on the subject to someone who is surely one of the most intriguing exemplars of conscience.

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1. For an excellent discussion of the development and centrality of conscience in the modern understanding of religious freedom, see Noah Feldman, *The Intellectual Origins of the Establishment Clause*, 77 N.Y.U. L. Rev. 346 (2002).

2. John T. Noonan, Jr. & Edward McGlynn Gaffney, Jr., *Religious Freedom: History, Cases, and Other Materials on the Interaction of Religion and Government* 105-11 (Found. Press 2001). As it happens, it was in reading the section on More in Noonan and Gaffney that the questions I want to pose here presented themselves.

I. STATEMENT OF FACTS<sup>3</sup>

Thomas More, as you may recall, was a Londoner who made the difficult (for him at least) decision to forego the celibate life of a priest or monk and instead became perhaps the greatest lawyer and administrator of his generation. He eventually served as Lord Chancellor to King Henry VIII during the tempestuous period in which (despite More's efforts) England was moving away from Rome. More was also "the most avant-garde humanist north of the Alps"<sup>4</sup> in the early sixteenth century, collaborating with figures like Erasmus and writing works of wit and wisdom including the classic *Utopia*. And he was many other things that cannot be elaborated on here: a devoted family man, an admired poet, a lover of animals and of gardens.

More was also a paragon of piety in its various dimensions. He flagellated himself with a leather thong and wore a hair shirt underneath the velvet and fur and gold chain visible in the Hans Holbein portraits. He rose daily at 2 a.m. to work and pray until seven o'clock Mass at his home, and he also regularly attended Mass at the local village church and sang in the choir. Fridays and holy days were spent fasting and worshiping in his private chapel. More gave generously to the poor, brought the needy and sick into his home for food and care; and when he heard of a neighbor woman in labor he would fall to his knees and pray until her delivery.<sup>5</sup>

Although More seems to have been loved by his family and popular with the English people generally, not all of his contemporaries and not all historians have agreed with Samuel Johnson's judgment that Thomas More was "the person of the greatest virtue that these [British] islands ever produced."<sup>6</sup> Critics said (and some historians still say) that he was ambitious, vain, manipulative, deceitful—and, of course, religiously intolerant.<sup>7</sup> And he was well known for the biting sarcasm that he routinely directed against people or practices that angered or amused him. Though More himself may have regarded "humour as a correlative of the Holy Spirit"—a gift to be used "to cut people down to size, especially himself"<sup>8</sup>—it is perhaps under-

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3. Most of the facts described below can be found in any number of histories or biographies. For basic facts, I have relied mostly on Peter Ackroyd, *The Life of Thomas More* (Double Day 1998), and Richard Marius, *Thomas More* (Alfred A. Knopf, Inc. 1984).

4. John Guy, *Thomas More* 212 (Arnold 2000).

5. On More's piety, see Ackroyd, *supra* n. 3, at 254-56.

6. Quoted in Robert Bolt, *A Man for All Seasons: A Play in Two Acts* v (Random House 1962) (epigraph preceding preface quoting Samuel Johnson).

7. See e.g. James Wood, *Sir Thomas More: A Man for One Season in The Broken Estate: Essays on Literature and Belief* 15 (Random House 2000) ("Sir Thomas More [was] cruel in punishment, evasive in argument, lusty for power, and repressive in politics. He betrayed Christianity when he led it so violently into court politics, and he betrayed politics when he surrendered it so meekly to the defense of Catholicism. Above all, he betrayed his humanity when he surrendered it to the alarms of God.").

8. Guy, *supra* n. 4, at 212.

standable that not everyone appreciated this service.<sup>9</sup> Even his critics, however, typically have acknowledged his intelligence and personal integrity, as well as his courage and remarkable composure in the events leading to his execution:<sup>10</sup> More's joking with the executioners at the scaffold can hardly fail to impress even those not inclined to like him.<sup>11</sup>

For years More was a dedicated councillor to King Henry VIII, and when the eminent Lord Chancellor Cardinal Wolsey fell from power as a result of his inability to secure the annulment of the king's marriage to his first wife Catherine, More was appointed to replace him. But More was also a faithful son of the church, and he explained to Henry from the outset that he believed the king's marriage to Catherine was valid—it had after all received papal blessing—and hence that he could not support the king's project of canceling the marriage. Henry was initially respectful of More's position in this matter,<sup>12</sup> and of the claims of conscience generally: indeed, the king insisted that his own efforts to terminate a marriage he believed invalid were themselves an expression of conscience.<sup>13</sup> As political and religious (and perhaps libidinous?) pressures mounted, though, the king's tolerance waned.

In due course, the English bishops and the Parliament were induced to declare the English church independent of Rome, with Henry as its head; and the marriage to Catherine was then dissolved, promptly followed by the king's marriage to Anne Boleyn. These measures were controversial, and Henry accordingly resolved to permit no potentially dangerous dissent. So legislation was enacted making criticism of the king in these matters treasonous. And in 1534, Parliament passed the Act of Succession, ratifying the annulment and subsequent marriage to Anne Boleyn and requiring subjects to take an oath of allegiance to the royal couple and their issue. As More read it, the oath at least by implication also signified acceptance of

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9. One contemporary reported:

I cannot tell whether I should call him a foolish wise man or a wise foolish man, for undoubtedly he beside his learning had a great wit, but it was so mingled with taunting and mocking that it seemed to them that best knew him, that he thought nothing to be well spoken except he had ministered some mock in the communication.

Derek Wilson, *In the Lion's Court: Power, Ambition and Sudden Death in the Court of Henry VIII*, at 59 (Hutchinson 2001) (quoting Edward Hall).

10. Thus, Derek Wilson depicts More as "cynical," "a bigot, a fanatic, a man whose piety led him into such impious actions as vulgar abuse, lying, and persecution," ambitious, "exquisitely cruel," and a self-promoter who "picked up perks as a modern ex-public servant picks up company directorships." *Id.* at 17, 23, 58, 60, 224. But Wilson also acknowledges that More was a "high-principled idealist whose ambition was not of that viperous nature which would strike at anyone who stood in its path." *Id.* at 160-61. And he later describes More as having a "lucid legal mind, transparent honesty, lack of political agenda, and easy manner." *Id.* at 221.

11. Marius's biography, for example, sometimes reads like an exercise in debunking, but the attitude turns to admiration as the final events unfold. *See* Marius, *supra* n. 3.

12. *See* Ackroyd, *supra* n. 3, at 289.

13. *See* Marius, *supra* n. 3, at 358 ("Henry, sitting under a canopy of cloth of gold, spoke at length about the matter he said was dearest to his soul—the state of his own conscience. Catherine protested that his conscience had taken a very long time to awaken.").

the legislation separating the church from Rome and placing the king at its head,<sup>14</sup> a breach that was conclusively confirmed later that year with the passage of the Supremacy Act.

More refused to approve any of this (with only a bit of ambiguous waffling);<sup>15</sup> his recalcitrance led to his resignation as Chancellor in 1532 following the clergy's submission to Henry. Later, when subjects were required to take the oath affirming their support for these developments, More's family complied; More himself refused. But he also steadfastly avoided criticizing the king or the government for these actions; nor did he attempt to persuade anyone not to take the oath. He evidently believed or at least hoped that by maintaining a strict silence, even with his family and closest friends, he could avoid committing treason.

In this respect, his faith in the rule of law proved to be too sanguine. In 1534, after he refused to take the mandatory oath, More was imprisoned in the Tower of London. Even after his imprisonment and indeed right up until his trial, he was given numerous opportunities to escape his predicament by simply taking the oath that nearly everyone else in the realm had taken, but despite the pleas of family, close friends, and the king's officials, More remained steadfast. During his imprisonment he also persisted in rebuffing all efforts to coax out of him any potentially incriminating explanation of his reasons; he confined himself to saying that these were reasons of conscience.

Just over a year later he was tried anyway and convicted—largely, it seems, on the strength of perjured testimony. Only after the guilty verdict was returned did More finally come out and declare his conviction that Parliament had no power to make the king head of the church. Yet More also sincerely believed that the king was divinely ordained to his proper office.<sup>16</sup> So even as he spoke from the scaffold at his beheading, several days later, he continued to affirm that he was the king's loyal servant—though God's first.

Although More long refused to discuss the basis of his refusal to support the king's marital adventures and the separation from Rome, even with family or close friends, he did repeatedly insist, as noted, that his undisclosed reasons were reasons of conscience. A letter describing a conversation in prison between More and his beloved daughter Margaret (or Meg) has been compared to a Platonic dialogue on the subject of conscience.<sup>17</sup> But perhaps the most eloquent single statement on the subject—and the one

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14. Ackroyd, *supra* n. 3, at 364.

15. See Marius, *supra* n. 3, at 455-56. In his official capacity, for example, More made the case for the king's annulment in the Houses of Parliament. In making these presentations, he tried to avoid giving his personal opinion on the matter, and he also tried (probably without complete success) to avoid making statements that he believed to be false. See Ackroyd, *supra* n. 3, at 321.

16. Ackroyd, *supra* n. 3, at 197.

17. Marius, *supra* n. 3, at 467-68.

that Noonan and Gaffney select to include in their book—occurs in an earlier letter, in which More describes to Meg his initial arraignment where he refused to take the oath and was accordingly sent to the Tower, never to be restored to home and family. The letter recounts More's refusal to explain his reasons and his repeated invocations of conscience, and it ends with a ringing and what at least appears to be heartfelt endorsement of conscience. "How be it (as help me God) as touching the whole oath," More declares, "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.*"<sup>18</sup> It was not a casual or careless pronouncement: More reiterated this position more than once.<sup>19</sup>

## II. QUESTIONS PRESENTED

More's eloquent language is backed up with a demonstrated willingness to live (and to die) by what he professed. Moreover, the statement might serve as a succinct and moving expression of what freedom of conscience has often been taken to mean in modern constitutional thinking: so Thomas More might almost seem eligible for inclusion in the pantheon of champions of liberalism (or at least of liberalism's forerunners). It is hardly surprising, therefore, that a book like Noonan's and Gaffney's, which offers a rich selection of premodern materials always with an eye looking ahead to the more complete (though still imperfect) fulfillment of incipient religious freedom themes under the American Constitution, would include More's statement.

But alas, things are not as simple as they seem. A closer look at the context, and at More himself, may provoke doubts, or at least questions. The most obvious question, to those who knew him best anyway, was, why did he do it? Hilaire Belloc observes that "[t]o his own family as a whole probably, to his wife certainly, to nearly all his friends and to the mass of Englishmen of his time, his position was not heroic but absurd."<sup>20</sup> More knew that people thought this, and the course of his life suggests that he was someone who cared about the respect of others.<sup>21</sup> In a frank conversation during a prison visit, his beloved daughter Meg delicately but unmis-

18. Noonan & Gaffney, *supra* n. 2, at 111 (emphasis added).

19. E.g. Thomas More, *To Dr. Nicolas Wilson, Tower of London, 1534*, in *The Last Letters of Thomas More* 90 (Alvaro de Silva ed., Wm. B. Eerdmans 2000) [hereinafter *Last Letters*] ("[L]eaving every other man to their own conscience, myself will with good grace follow mine.").

20. Hilaire Belloc, *Characters of the Reformation* 65 (TAN Books & Publishers, Inc. 1992) (originally published 1936); see e.g. Ackroyd, *supra* n. 3, at 362, 375-76.

21. Cf. Belloc, *supra* n. 20, at 62 ("He keenly felt how ridiculous a man looks in any isolated position, how absurd it is to be a 'crank,' and he felt still more keenly misunderstandings with any of his own household. Such a man should naturally shrink more than would another from any action, let alone the acceptance of death itself, in which he would suffer the public accusation of eccentricity and perverseness, and the reproaches of his own wife.").

takably accused him of endangering his family, of showing ingratitude to the king who had been so “singularly gracious” to him, and of exhibiting a sort of stubborn arrogance in holding out against a course that “many great wise and well learned men” had approved. “[I]f ye change not your mind,” she warned, “you are likely to lose all those friends that are able to do you any good.”<sup>22</sup> Even so, More persisted in his fatal course. Why?

This biographical question concerning More—why did he do it?—is also a perennial question that can be asked about martyrs in general. Why does anyone attach such monumental importance to a statement of belief that he or she is willing to die for the matter? That question in turn seems relevant at one remove to a constitutional question of ongoing significance: what if anything is it about “conscience”—or about beliefs and actions that get placed under that heading—that leads us to suppose, sometimes anyway, that conscience is a distinctive moral category entitled to some special respect from the law?<sup>23</sup>

There are other questions that are slightly less obvious, and also more distinctive to More’s own particular demonstration of conscience. I will mention two. First, how can the statement I have just quoted from More—the statement declaring that he would “leave every man to his own conscience” and that every man should leave him to his—be reconciled with his enthusiastic persecution (sometimes to the death) of religionists who dissented from the Catholic faith? More not only tried to suppress Protestant writings; as Lord Chancellor he directed, supervised, and attempted to justify the prosecution and execution of Protestants themselves. Are we forced to conclude that More was inconsistent or opportunistic—that he was all in favor of a general right of conscience only when his own interests and life were at stake?

Second, if More’s beliefs were backed by the imperative of conscience, why was he so reticent about telling people what those beliefs were? Other martyrs for conscience have typically been less bashful. More’s friend and contemporary John Fisher, Bishop of Rochester, shared More’s disapproval of the king’s effort to rescind the marriage to Catherine, and he similarly lost his head for taking that stance. But Bishop Fisher, unlike More, left no doubt at any point about what he believed.<sup>24</sup> A more ancient predecessor in martyrdom, John the Baptist, was also beheaded for his disapproval of a king’s marriage,<sup>25</sup> but once again, John was not shy in expressing his condemnation. Compared with these more vocal proponents

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22. More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 73 (letter written by More).

23. For an illuminating discussion of the question, see John H. Garvey, *What Are Freedoms For?* 42-57 (Harvard U. Press 1996).

24. See Marius, *supra* n. 3, at 358-59.

25. *Matthew* 14:1-12 (New Intl.). John, however, was beheaded for declaring that a king’s marriage to his brother’s wife was *not* licit, whereas More and Fisher got into trouble for believing that Henry’s marriage to his deceased brother Arthur’s wife was valid.

of what they believed to be the divine law of marriage, More may seem timid, even afraid. If the relevant truths were so important that More was ultimately willing to die for them, why was he unwilling in the interim to stand up for those truths in public?

These questions may prompt cynical interpretations—interpretations suggesting that More was hypocritical in his professed regard for conscience, or that his simultaneous refusal either to take the oath or to condemn the king's actions manifested a mixture of courage and cowardice. Those interpretations might fit a lesser man, but they do not seem as credible with respect to More. His own position seems to have been more purely conscientious and more reflective—though also more convoluted and, yes, lawyerly.<sup>26</sup> It is just for that reason that More has so fascinated historians and biographers and even playwrights,<sup>27</sup> and why the questions I have noted seem worth our serious attention.

It is also why the answers to those questions, if we could discern them, might illuminate our own understanding of the troubled subject of "conscience." Because of course it is not as if "conscience" is something that we by now fully and satisfactorily understand. Questions persist—serious, central questions. I have already noted one: does conscience deserve any special respect in the law, and if so, why? Another common modern question concerns the scope of conscience. Does it cover only religious beliefs? *All* religious beliefs, or only some? Or, if conscience is not limited to religion, how much more does it encompass?

These questions—and the difficulty of finding comfortable answers to them—suggest uncertainty on a more basic level. What *is* "conscience" anyway? Is it some discrete faculty or cognitive power—a sort of sublime Jiminy Cricket chirping truth into our souls? Or, alternatively, is "conscience" merely a label we attach to the conclusions of our moral reasoning—or perhaps to our opinions (however come by) on moral questions? When we discuss, say, the question of conscientious objection from military service, can we even be confident that we are all referring to the same thing? Or that we mean the same thing that more historically removed figures such as More (or Madison, or Locke, or Roger Williams) meant when they uttered the word?

On this point there is cause for skepticism. We sense slippage, maybe even a sort of declension. Marie Failing observes that freedom of conscience "began as an argument that government must ensure a free response

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26. See Guy, *supra* n. 4, at 186 (remarking on "the impossibility of reducing to a sound bite the complexity of More's position as well as the inscrutability of his beliefs to a modern secular audience").

27. Probably the best known play about More is Thomas Bolt's *A Man for All Seasons* (a work which historian John Guy describes as "sumptuous drama but appalling history," Guy, *supra* n. 4, at 223), but it is not the only one. Much earlier, an aspiring playwright named William Shakespeare contributed to a play about More.

by the individual called distinctively by the Divine within" but by now "has come to mean very little beyond the notion of personal existential decision-making."<sup>28</sup> In a similar vein, Ronald Beiner suggests that a book on the subject by David Richards demeans the concept of conscience.

The spuriousness of this recurrent appeal to the sacredness of conscience is very clearly displayed in the discussion of pornography. How can this possibly be a matter of *conscience*? What is at issue here, surely, is the sacredness of consumer preferences.<sup>29</sup>

Beiner goes on to scoff that "[b]y [Richards's] contorted reasoning, the decision to snort cocaine constitutes an act of conscience."<sup>30</sup>

It could be that "conscience" is little more than an honorific term that we toss about when it suits our rhetorical purposes. In any case, and at the risk of committing gross understatement, I will only say that we have no reason to be confident, going on five centuries later, that we understand "conscience" any better than Thomas More did. So it is worth asking what conscience meant to him. In the remainder of this essay, therefore, I want to elaborate on the questions noted here, to try to dispel overly quick answers, and to suggest some directions in which more satisfying answers might be pursued.

### III. WHY DID HE DO IT?

More's willingness to die rather than take the oath puzzled his contemporaries, as I have said, and it may puzzle modern students of the episode as well. Brad Gregory has argued that the modern difficulty in understanding martyrs of the Reformation and Counter-Reformation period stems from a sort of modern devaluation of truth—in particular, religious truth—and a consequent effort to understand the martyrs through "reductionist" cultural, social, political, or anthropological explanations that cancel out or ignore the things that mattered most *to them*.<sup>31</sup> Conversely, once we acknowledge the seriousness of religious beliefs, martyrdom becomes "compellingly lucid."<sup>32</sup> Although there is probably a good deal of truth in Gregory's claim, it is important to recall that at least in More's case, his contemporaries (including those who knew him best and who shared his religious faith) also found unfathomable his determination to die rather than swear an oath that virtually all of them had found largely unobjectionable. So the puzzle in More's case cannot be passed off as merely a consequence of the incom-

28. Marie A. Failinger, *Wondering After Babel: Power, Freedom and Ideology in US Supreme Court Interpretations of the Religion Clauses*, in *Law and Religion* 81, 93-94 (Rex J. Adhar ed., Ashgate 2000).

29. Ronald Beiner, *Philosophy in a Time of Lost Spirit: Essays on Contemporary Theory* 29 (U. of Toronto Press 1997).

30. *Id.* at 30.

31. Brad S. Gregory, *Salvation at Stake: Christian Martyrdom in Early Modern Europe* 8-15, 99-105 (Harvard U. Press 1999) (Gregory applies this argument to More in particular at 100-01).

32. *Id.* at 348.

measurability of early modern with modern or postmodern ways of thinking.

It seems prudent to start with one secure observation about which Gregory is surely right: More, like other martyrs of his and other periods, attached great importance to *beliefs*.<sup>33</sup> But why? And is the sort of thinking that leads a person to value belief so extravagantly a judgment we should accept as admirable, or at least reasonable, or rather something we should regard as . . . well, extreme and, to be candid, disordered? In More are we dealing with a paragon, or a pathological character?

Thinking sensibly, we may suspect that an action like More's reflects a sort of reversal of priorities, or of means and ends. Like the Sabbath, we may suppose, beliefs are made for man, not man for beliefs.<sup>34</sup> For example, we are told that man is a social animal: the man who does not live in and with society is not quite human, Aristotle suggested, but is either a beast or a god.<sup>35</sup> And beliefs function in this respect to help bind us together—to our families, communities, churches. Religious beliefs in particular serve this valuable function; it is sometimes remembered that the root of the word "religion" is "ligare," meaning "to bind together."<sup>36</sup> So when a person like More acts on belief not to secure but rather to sever the blessed ties that bind families and communities together, it may seem that he has confused the function of believing, or that he has treated the belief as an end in itself.

Something like this doubt surely afflicted More's family and friends. From their point of view, it seemed that More was stubbornly allowing a simple dispute about an abstract, legalistic proposition not only to propel him to his own death but also to jeopardize the lives and prospects of those he loved best, and to introduce contention into a realm to which More professed loyalty. Surely his intransigence reflected a sort of deranged or disproportionate devotion?

Up-to-date theorists might express a similar suspicion in somewhat different vocabulary. A good deal of modern thought runs in what we might call an evolutionary-pragmatic vein. This way of thinking understands human beings as the product of eons of evolutionary development in which organisms with the instincts and capacities that fit them to survive do in fact survive and reproduce more successfully than other organisms not so endowed. And among the various survival capacities are the cognitive abilities to perceive, to form and connect ideas, to adopt beliefs. In this view, beliefs serve an instrumental or pragmatic function; they equip us to survive, and to reproduce, and perhaps to satisfy other desires or "interests"

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33. *See id.* at 105 (observing that "martyrs were willing to die for their religious views because they believed them to be true, because revealed by God").

34. *Mark* 2:27 (New Intl.).

35. Aristotle, *Politics* bk. I, ch. 2.

36. Arthur Jacobson, *Taking Responsibility: Law's Relation to Justice and D'Amato's Deconstructive Practice*, 90 *Nw. U. L. Rev.* 1755, 1776 n. 60 (1996).

that we happen to possess. And beliefs are "true" insofar as they promote our good: "The true," as William James put it, "is the name of whatever proves itself to be good in the way of belief."<sup>37</sup> Martyrdom, in this conception, looks irrational; it looks to involve a confusion of means and ends. Beliefs are instruments that are supposed to help us survive, not carry us to our death.

To be sure, this view of the world is also a bit skittish about the phenomenon of irrationality, which after all ought to be selected out in the process by which organisms that are more "fit" come to replace the less "fit." Fortunately, the evolutionary-pragmatic orientation is marvelously supple, and hence can easily supply an account of seemingly eccentric behavior that endows such behavior with a kind of rationality. The instrumentalist strand supposes that actions are undertaken to satisfy "interests" (including the "interest" in survival), but instrumentalism is wonderfully nonjudgmental about what those "interests" are or should be: they might be pretty much anything a particular organism happens to want. So for any particular instance of apparently bizarre behavior, that behavior can be re-deemed for rationality by simply supposing that the agent wanted . . . well, whatever he or she was likely to get by the action. In this vein, it may seem that Thomas More's fatal refusal to take the oath makes perfect sense once we understand that death was less important to him than what he wanted to obtain. Which was . . . what?

Perhaps martyrdom? Though this is not something most of us crave, it is hard to deny that there have been a few people in history who have seen the martyr's death as something to be sought after.<sup>38</sup> Thomas More might have been of this mind. His formidable, perhaps immoderate piety—the hairshirt, the self-flagellation, the long hours spent in worship—may strike modern, sensible people as tending in this direction. And in his last years he was in poor health and frequent pain, suffering from kidney stones and a bad heart. More said that he was not afraid of dying: "a man may leese his head and have no harm," he quipped.<sup>39</sup>

Even so, this explanation does not quite fit the facts. The hypothesis that More was actively seeking martyrdom seems inconsistent with his determined, persistent efforts to escape the verdict and death sentence.<sup>40</sup> Moreover, despite his strained health, More still had much to relish in life. As Robert Bolt, the playwright, observed, More was "almost indecently

37. William James, *Pragmatism: A New Name for Some Old Ways of Thinking* 75-76 (Ralph Barton Perry ed., Longmans, Green & Co. 1946).

38. See Gregory, *supra* n. 31, at 104 ("Certain devout Christians, particularly within post-Tridentine Catholicism, actively yearned for martyrdom.")

39. More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 87; see also Ackroyd, *supra* n. 3, at 369; Marius, *supra* n. 3, at 465.

40. It is possible, however, as Marius speculates, that More might have desired death but also believed it was his duty to maintain his life—to "stay at his post," so to speak—as long as he could without violating other higher duties. Marius, *supra* n. 3, at 499.

successful"<sup>41</sup>—not only professionally, but domestically. Consequently, “he parted with more than most men when he parted with his life.”<sup>42</sup> And even if More was eager to finish his own life, he knew (and indeed was not permitted to forget) that his obstinacy was creating a serious risk for others whom he loved—namely, his family: the danger that he was creating for them was, he said, “[a] deadly grief unto me, and much more deadly than to hear of mine own death.”<sup>43</sup>

In addition, even if More did not fear death itself, he *was* seriously afraid of the horrible pain that accompanied the process of execution. His great worry, he said, was that in the end he would lack the courage to undergo this ordeal and hence would acquiesce: so he prayed that God would strengthen him against this temptation or, failing that, would forgive him.<sup>44</sup> We can hardly wonder at this fear. The prospect of having one’s head chopped off (even, if one is lucky, in one stroke) is unsettling enough. But in fact More could not count on this relatively gentle and efficient method of execution. The usual punishment for treason—and one suffered just a few days earlier by several Carthusian friars with whom More had allegedly collaborated—was more harrowing; and indeed, five days before his beheading, More had been given the usual sentence. “Sir Thomas More,” the presiding judge Thomas Audeley had intoned,

you are to be drawn on a hurdle through the City of London to Tyburn, there to be hanged till you be half dead, after that cut down yet alive, your bowels to be taken out of your body and burned before you, your privy parts cut off, your head cut off, your body to be divided in four parts, and your head and body to be set at such places as the King shall assign.<sup>45</sup>

More’s sentence had later been commuted to mere beheading only as a result of a belated gesture of mercy by his erstwhile friend, the king—a clemency hardly to be taken for granted.<sup>46</sup> Given these prospects, it seems plausible to suppose that instead of the gruesome initiation into martyrdom, More would have preferred to go on living, and worshiping, in the company of family and friends.

So if More’s actions cannot plausibly be accounted for by supposing that he was seeking martyrdom, what other good or goal might explain his conduct? But here the answer may seem easy. What he wanted (consistent with Christian teaching from the Sermon on the Mount<sup>47</sup> onward) was the

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41. Bolt, *supra* n. 6, at xv.

42. *Id.*

43. More, *To Margaret Roper, Tower of London, May 1534*, in *Last Letters*, *supra* n. 19, at 65.

44. More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 87-88.

45. Ackroyd, *supra* n. 3, at 398.

46. *Id.* at 403.

47. *Matthew* 5:10-12 (New Intl.).

superlative blessings that await the righteous—in particular those who remain faithful through affliction and persecution. He sought, in his own words, the “bliss of heaven.”<sup>48</sup> The modern student working in the evolutionary-pragmatic framework might accept this answer, even while supposing that those celestial goods are purely illusory: the point is that More *believed* his actions would serve to secure them. Based on those beliefs, it seems, his actions were wholly rational.<sup>49</sup>

This explanation has the virtue of providing a possible answer to the earlier question about whether it is wrong-headed to cling to belief even when the effect is to disrupt the society of family, church, or nation. Viewed in a more eternal and Christian framework, that is, a disruption in the here and now, however unfortunate, would be well worth the sacrifice if it would lead to a happier and more permanent union in the next life. And indeed, the prison letter containing More’s most ample response to those who urged him to adjust his conscience concluded with just this point: “[I]f anything should hap to me that you would be loath,” he counseled Meg, “pray to God for me, but trouble not yourself: as I shall full heartily pray for us all, that we may meet together once in heaven, where we shall make merry for ever, and never have trouble after.”<sup>50</sup>

But even if this explanation is correct as far as it goes, it thrusts upon us a different set of questions. After all, More’s own contemporaries largely shared his Christian understanding of the human drama but, as noted, they still seemed to regard his course as absurd. Why? Here I think we need to distinguish between *belief* and the *utterance* of belief. It may be understandable enough, that is, that More would not and should not actually abandon his faith, thereby sacrificing the blessings to which that faith pointed. The question, though, is why he or anyone should deem the mere utterance of a few words a renunciation of that faith. It is not a question of the importance of *beliefs*, but rather a question of the importance of *words*. After all, More could not and seemingly did not seriously expect his refusal to utter those words to achieve any important political results.<sup>51</sup> And in the Christian tradition, excessive scrupulosity is supposed to be a sin.<sup>52</sup> Why then was More so scrupulous in this matter of mere words?

This puzzlement was in fact reinforced by one teaching of the faith—the teaching that what really counts in the eternal scheme is not what a

48. More, *From Margaret Roper, May 1534*, in *Last Letters*, *supra* n. 19, at 67.

49. See Gregory, *supra* n. 31, at 123 (“Early modern martyrs measured temporal pain against eternal gain and drew the logical conclusion. Torture and death were surely horrific—but incomparably less so than eternal suffering.”).

50. More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 89.

51. Cf. Belloc, *supra* n. 20, at 63 (“He could foresee no fruit following upon his great example. In fact, during all the four hundred years from his day to ours, no apparent political fruit has been borne by it.”).

52. For a collection of Christian teachings on the subject, see Jill Haak Adels, *The Wisdom of the Saints: An Anthology 153-55* (Oxford U. Press 1987).

person says with the lips but rather what is in the heart. The playwright Bolt captures the idea when he has Meg say to More: "'God more regards the thoughts of the heart than the words of the mouth.' Or so you've always told me." Based on this principle, Meg urges her father to "say the words of the oath and in your heart think otherwise."<sup>53</sup> Isn't this the sensible recommendation—the one that most of us would adopt in a similar contingency?<sup>54</sup>

So, why did More place so much emphasis on *the words*? A pair of tempting answers ought to be noticed so that we can reject them. We might suppose that More was one of those rare persons who, like Kant, hold that truth-telling is an absolute duty. We must speak only the truth no matter how unfair the demand or how dire the consequences. If your innocent friend (perhaps a Jew) is hiding in your basement and the police (perhaps the Nazi gestapo) show up at your door and ask if he is there, you must say yes.<sup>55</sup> But in fact it seems quite clear that More, though he earned a reputation for fairness and honesty,<sup>56</sup> did not hold to any such absolutist position. In the pursuit of his career and the performance of his duties as lawyer, government minister, and diplomat, for example, he was from time to time placed in positions in which calculated misrepresentations seemed called for; and in this respect as in others, More seems to have done his duty.<sup>57</sup>

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53. Bolt, *supra* n. 6, at 140. This exchange in the play appears to be based on the following passage from the most extended prison letter:

And some may be peradventure of that mind, that if they say one thing and think the while the contrary, God more regardeth their heart than their tongue, and that therefore their oath goeth upon that they think, and not upon that they say . . . . But in good faith, Marget, I can use no such ways in so great a matter: but like as if mine own conscience served me, I would not let to do it.

More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 79.

54. Chris Eberle points out to me that a revered modern martyr, Dietrich Bonhoeffer, took a somewhat different view on this issue, according to his friend and biographer:

It was 17 June 1940, in the village of Memel. That morning Bonhoeffer had been talking to Dr. Werner Wiesner at a poorly attended pastors' meeting; in the evening there was to be a Confessing church service. That afternoon he was sitting with me in an open air café just opposite the town, on the peninsula. We had come by ferry, past submarine tenders and minesweepers. The previous day Stalin had delivered an ultimatum to the Baltic states, but the world's attention was centered on Hitler's victory in France.

While we were enjoying the sun, suddenly the fanfare boomed out of the café's loudspeaker, signaling a special announcement: the message that France had surrendered. The people around the tables could hardly contain themselves; they jumped up, and some even climbed on their chairs. With outstretched arms they sang "*Deutschland, Deutschland über alles*" and the Horst Wessel song. We had stood up, too. Bonhoeffer raised his arm in the regulation Hitler salute, while I stood there dazed. "Raise your arm! Are you crazy?" he whispered to me, and later: "We shall have to run risks for very different things now, but not for that salute!"

Eberhard Bethge, *Dietrich Bonhoeffer: A Biography* 681 (Victoria J. Barnett ed., rev. ed., Fortress Press 2000).

55. Sissela Bok, *Lying: Moral Choice in Public and Private Life* 37-42 (Pantheon Books 1978). For a discussion that, though sympathetic, ultimately finds this absolutist position untenable, see *id.* at 32-46.

56. See Ackroyd, *supra* n. 3, at 192, 296-97.

57. For instances of dishonesty or "small lies" committed by More, see *id.* at 184, 190, 216, 220, 243, 321, 331, 350.

In a related vein, More might have held a conception of the self (or at least of his own self) in which truth-telling—or at least truth-telling where an oath is administered—is *constitutive* of the person; so lying under such circumstances would amount to a kind of self-negation or suicide. Thus, in response to Meg's question, noted above, Bolt has More respond in this way: "When a man takes an oath, Meg, he's holding his own self in his own hands. Like water. . . . And if he opens his fingers *then*—he needn't hope to find himself again."<sup>58</sup>

This is a poetic response, and I confess that I am not sure what it means. But in his introduction Bolt provides some help. He explains that although he himself is neither a Catholic nor in any meaningful sense a Christian, he became interested in More because More was "for me a man with an adamant sense of his own self." He was a "hero of selfhood."<sup>59</sup> Later conversations in the play help fill out the thought. At one point Bolt has More declare that "what matters to me is not whether [the Apostolic Succession of the Pope is] true or not but that I believe it to be true, or rather, not that *I believe* it, but that *I believe* it."<sup>60</sup> And late in the play, after More has just declared to Thomas Cromwell the necessity of loyalty to conscience and Cromwell has responded that this appeal to conscience is little more than "a noble motive for his frivolous self-conceit!" More answers:

MORE (*Earnestly*): It is not so, Master Cromwell—very and pure necessity for respect of my own soul.

CROMWELL: Your own self, you mean!

MORE: Yes, a man's soul is his self!<sup>61</sup>

So in this depiction, it seems, More—the "hero of selfhood"—is above all concerned to remain loyal to his beliefs not because he is confident they are *true*, but because they are *his*, and hence are constitutive of his very *self*. This is an intriguing interpretation, and it may well convey some oblique insight into More's thinking. Unfortunately, it also has the disadvantage of being, in the main, almost surely wrong. The historian John Guy suggests that the conception of conscience that Bolt ascribes to More actually belonged more properly to Henry VIII, who *did* repeatedly invoke conscience largely in the service of assertions of selfhood.<sup>62</sup> In contrast, More surely would not have declared that it did "not matter" to him whether his beliefs were true, nor would he have committed the typically modern incoherence

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58. Bolt, *supra* n. 6, at 140.

59. *Id.* at xii-xiv.

60. *Id.* at 91.

61. *Id.* at 153.

62. Guy, *supra* n. 4, at 204-05.

of imagining that he could *believe* an idea without thereby committing himself to the *truth* of the idea.<sup>63</sup>

But if Bolt's response to Meg's pressing and entirely sensible question—why not “say the words of the oath and in your heart think otherwise”?—implausibly transforms More into some sort of modern existentialist,<sup>64</sup> then what should the real More's response be? Why *were* the words so important?

And that is where I must leave the question—with only a parting, tentative suggestion about a possible direction to take in looking for an answer. For most of us, and surely for Thomas More, beliefs about the sorts of matters that we associate with “religion” are not simply dry propositions to which we give or withhold intellectual assent. Rather, these sorts of beliefs have a personal character to them.<sup>65</sup> “The square root of 16 is 4” and “God is merciful” are both propositions which we may believe or disbelieve; but to rest content with this similarity is to elide crucial differences—like saying that a groundhog's burrow is pretty much the same sort of thing as the Grand Canyon because they are both, basically, holes in the ground. The second proposition surely has a character that the first lacks; and one's response to it will touch on wholly different dimensions of one's being. In matters of belief with this sort of character, affirmation may involve not just intellectual assent but loving, trusting commitment of heart, mind, and soul. Conversely, false denial is not simply *dishonesty*; it may amount to a kind of *betrayal*.<sup>66</sup>

So suppose you happen to believe in the Big Bang theory, but a de-ranked despot takes power who favors the Steady State theory; and the des-

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63. Stanley Fish observes that “modern theorists try in every way possible to avoid” the fact that “[i]f you believe something you believe it to be true, and perforce, you regard those who believe contrary things to be in error.” Stanley Fish, *Mission Impossible: Settling the Just Bounds Between Church and State*, 97 Colum. L. Rev. 2255, 2258 (1997).

64. Interestingly, the fiercely Catholic presentation of Hilaire Belloc seems surprisingly (though hardly exactly) akin to Bolt's. Belloc depicts More as a sort of ambitious, waffling intellectual, who chose to die for the doctrine of papal supremacy even though he had no very strong belief in the doctrine and did not expect his death to accomplish anything positive. Belloc, *supra* n. 20, at 59-66. Belloc's More seems almost like a character out of Kierkegaard. “I suggest that the Martyr in his last moments had all the intellectual frailty of the intellectuals, and that at the end his skepticism was still working; but his glorious resolution stood—and that is the kernel of the affair. He had what is called ‘Heroic Faith.’” *Id.* at 110. See also Marius, *supra* n. 3, at xxii (“As with all martyrs who are not insane, it may be argued that [More] died not for what he believed but for what he wanted to believe.”). This interpretation of More as doubter who wanted to believe *might* be accurate, but it also seems suspiciously congenial to twentieth-century interpreters, who are sometimes inclined to suppose that the more strenuously a person defends his professed beliefs, the more he must be trying to conceal some deep, gnawing doubt. Isn't it possible that a person might energetically defend an embattled belief because . . . well, he believes it?

65. The point is elaborated at some length in Steven D. Smith, *Believing Persons, Personal Believings: The Neglected Center of the First Amendment*, 2002 U. Ill. L. Rev. 1233, 1260-79.

66. Was More hinting at something like this thought when he asserted that he would gladly take the oath if it were possible to do so “and God therewith not offended”? More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 74.

pot requires everyone to swear support for that theory or die. If you swear contrary to your true inner belief, no one is likely to condemn you;<sup>67</sup> they are more likely to think ill of you if you make a show of fanatical scrupulosity on a matter of no apparent significance. But now suppose you are threatened with death unless you swear that you do not love your spouse. And suppose that he or she is listening as you make your response.<sup>68</sup> The problem is at least more complicated now.

The historian John Bossy has emphasized how intensely and thoroughly personal was the religion of the late middle ages and early modernity—the religion cherished by Thomas More. Christian truth was conceived not so much as a body of theological propositions, Bossy suggests, as an extended family network that encompassed not only one's immediate family and neighbors but also the saints, the angels, and the holy family of Jesus, Mary, Mary's cousin Elizabeth and her son John the Baptist, Mary's father Joachim and her cousin Anne, and so on.<sup>69</sup> "The whole, for better or worse, was 'Christianity,' a word which until the seventeenth century meant a body of people, and has since then, as most European languages testify, meant an 'ism' or body of beliefs."<sup>70</sup> So for More, it seems, religious faith would have meant much more than affirming, or declining to affirm, a dry and abstract creed. And denial of the faith, even if only in words, might have amounted to a kind of personal betrayal.

So, does this personal quality of religious belief figure in the answer to the puzzle? The suggestion encounters a familiar objection: More's family and friends presumably shared the same personal religion, and yet they found his refusal unfathomable. But it is also true that very few of More's contemporaries took and felt their religion as intensely as he did; for most of them, the visible flesh-and-blood family and friends might have blotted out the personality of the more distant, no longer mortal relations. It is hard to be sure. I only suggest that this aspect of belief might help to explain why More felt compelled to die rather than take an oath—on matters of great moment—affirming what he did not believe.

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67. In his play *Galileo*, Bertolt Brecht tried to make Galileo seem despicable for recanting his cosmological theories under the pressure of the Inquisition, but as one authoritative commentator points out, neither the play itself nor the most lauded performances of the play have been successful in this respect. See Eric Bentley, *Introduction: The Science Fiction of Bertolt Brecht*, in Bertolt Brecht, *Galileo* 20-29 (Eric Bentley ed., Grove Press, Inc. 1966). See e.g. *id.* at 21 ("One cannot find, within the boundaries of the play itself, a full justification for the virulence of the final condemnation. . . . It seems to me that even Ernst Busch, the Galileo of the Berlin ensemble production, could not make real the image of a corrupted Galileo.").

68. Alan Brownstein's paper for this conference nicely develops this point in connection with his analysis of George Orwell's *1984*. See Alan Brownstein, *Justifying Free Exercise Rights*, 1 U. St. Thomas L.J. 518 (2003).

69. See generally John Bossy, *Christianity in the West 1400-1700*, at 1-87 (Oxford U. Press 1985).

70. *Id.* at 171. See also Ackroyd, *supra* n. 3, at 114-15, 124-25.

The difficulty in giving any confident answer to the question of why More did what he did makes it even more difficult to say what response he might have given to one set of more modern questions—to the questions, that is, about whether and why government should give special respect (including, perhaps, exemptions from otherwise applicable laws) to those who are in conscience opposed. Or even if we might hazard an answer on More's behalf to the *why*, I doubt that we can confidently answer the *whether*. More was not addressing that sort of political or constitutional question, of course: rather, he was trying to answer critics (including friends and family) who wanted to know why *he* in particular insisted on adhering to conscience at such cost. And he was in any case not given to abstract theory—was in fact suspicious of it.<sup>71</sup> So his reflections were naturally somewhat specific, and personal.

To be sure, in the course of his correspondence and conversation he made statements that we might take to be of more general and political application. For example, he remarked at one point that he could not afford to trust his soul to anyone else's judgment because he may "carry my soul a wrong way."<sup>72</sup> The remark might be taken to anticipate the common argument—made by Locke, for instance<sup>73</sup>—that government should not be permitted to compel people in matters of faith because there is no reason to suppose that government will get the matters right: so it might compel us to accept falsehood, not truth. In context, though, I think we cannot be confident that More intended any such general proposition. He might merely have meant, for instance, that with respect to questions of *this kind*—questions that he had studied as carefully as anyone had and on which he believed his views to be consistent with Christian tradition generally—he himself had no reason to defer to the dubious opinions of a mercurial, lustful king and those who were anxious to stay in the king's good graces.

#### IV. THE CONSCIENCE OF THE INQUISITOR?

The questions we have been considering thus far—namely, why did he do it?—might be asked of any martyr. Now we consider a question more distinctive to More. In the letter reproduced in Noonan and Gaffney, as noted, More says that he is content to leave every man to his own conscience and that they should leave him to his. But in fact, in his various offices and especially as Lord Chancellor, More actively persecuted and prosecuted Protestant dissenters and in some cases approved their execu-

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71. See *id.* at 162.

72. More, *Margaret Roper to Alice Alington, August 1534*, in *Last letters*, *supra* n. 19, at 79.

73. See John Locke, *A Letter Concerning Toleration* 32 (The Liberal Arts Press Inc. 1950) ("The one only narrow way which leads to heaven is not better known to the magistrate than to private persons, and therefore I cannot safely take him for my guide, who may probably be as ignorant of the way as myself.").

tion.<sup>74</sup> As Peter Ackroyd explains, “[h]is opponents were genuinely following their consciences,”<sup>75</sup> but More “truly believed Lutherans to be ‘*daemonum satellites*’ (‘agents of the demons’) who must, if necessary, be destroyed by burning.”<sup>76</sup>

How can this conduct be squared with More’s professed respect for conscience? Two related explanations are tempting but less than persuasive. We might imagine that More was simply a creature of his time—that his genuine but somewhat inchoate respect for conscience had not had the opportunity to overcome his inherited, taken-for-granted assumption that heretics should be punished, even killed. We might, in other words, give the same sort of account that Noonan and Gaffney give for Thomas Aquinas’s intolerant strand. “[T]here were,” they say, “venerable teachers—the Gospel itself, never a small authority—that pointed to more merciful and more magnanimous conclusions. Practice was decisive. In the world Thomas [Aquinas] knew, heretics were sent to the flames.”<sup>77</sup>

In a similar vein, we might suppose that in persecuting Protestants, More was simply fulfilling the demands of his office as Chancellor. So it was not exactly *More* who persecuted heretics; rather it was *the law*, with More merely acting as the law’s dutiful minister.

Probably there is some truth in these suggestions. Persecution of heretics *was* a familiar practice,<sup>78</sup> and More *was* enforcing the law and performing the duties of his office.<sup>79</sup> Still, I think these explanations fall short of absolving More (if he needs absolution, as by modern liberal standards he surely does) or of explaining away inconsistencies. Far from being an unreflective practitioner of the received wisdom, More was probably as thoughtful and deliberate in such matters as any human being can be. And it was not as if he had never given the issue of religious persecution careful thought: indeed, in *Utopia*, written a decade-and-a-half before the events in question, he at least seems to present arguments favoring a general policy of religious toleration.<sup>80</sup> So his actions while serving as Chancellor seem to

74. See Ackroyd, *supra* n. 3, at 247-48, 277-78, 298-307; Marius, *supra* n. 3, at 386-406; Guy, *supra* n. 4, at 106-25.

75. Ackroyd, *supra* n. 3, at 302.

76. *Id.* at 248.

77. Noonan & Gaffney, *supra* n. 2, at 87.

78. Cf. Ackroyd, *supra* n. 3, at 303 (“He approved of burning . . . and in that respect was no different from most of his contemporaries.”). For a discussion of the common commitment to the necessity of suppressing heretics, if necessary through execution, see Gregory, *supra* n. 31, at 74-96.

79. See Guy, *supra* n. 4, at 122 (observing that “More was ‘set’ to the anti-Lutheran campaign by Henry VIII . . . . In attacking heresy as Lord Chancellor, he was continuing the King’s agenda.”).

80. See Thomas More, *Utopia* 117-23 (Paul Turner trans., Penguin 1965) (first published 1516). The Utopian legislator was “quite certain that it was stupid and arrogant to bully everyone else into adopting one’s own particular creed.” *Id.* at 119. Consequently, the Utopians “made a law, by which everyone was free to practise what religion he liked, and to try and convert other people to his own faith, provided he did it quietly and politely, by rational argument.” *Id.*

have been the result of full, mature reflection—not of mindless conformity to custom.

Moreover, though we might like to imagine More reluctantly carrying out the requirements of his office, this description does not fit the facts. More did not merely do what his official duties demanded; he pursued the heretics zealously, exceeding both the efforts of his predecessor Wolsey and the king's own wishes. On occasion he attempted to apprehend a wayward preacher toward whom the king was well disposed, hoping to act quickly before the king's leniency might step in to save the hapless heretic.<sup>81</sup>

In short, More did not merely follow prescribed or traditional practice in his vigorous persecution of heretics: he endorsed the practice wholeheartedly. “[H]e cried for heretics to be burned alive,” Richard Marius asserts, “and he rejoiced when some of them went to the fire. This fury was not a bizarre lapse in an otherwise noble character; it was almost the essence of the man.”<sup>82</sup> How can this course be squared with his professed respect for conscience?

Perhaps More was simply inconsistent? After all, “a foolish consistency is the hobgoblin of little minds,”<sup>83</sup> as they say, and More's was certainly no little mind. Or perhaps he was guilty of a self-serving hypocrisy, favoring conscience only when respect for conscience would benefit him? But once again, these suggestions seem implausible. The issues involved in religion and the state and conscience were matters that More confronted throughout his career, and it seems incredible that a mind as earnest and probing as his could have overlooked such a gross inconsistency as he at least appears (from our standpoint) to have committed. And his professions of willingness to “leave every man to his own conscience” were made in contexts, such as in a letter to his daughter, where they hardly seem calculated to secure any advantage to More.

Could More have believed, in persecuting the Protestants, that they were not actually sincere in their religious opinions, and hence were not truly acting from conscience? Though the question may seem almost frivolous, it cannot be dismissed too quickly. Historically, inquisitors have sometimes been disturbingly ready to conclude that their antagonists could not *really* believe what they say they believe: how could an honest and moderately intelligent person truly believe anything so manifestly wrong-headed?<sup>84</sup> More surely believed that Protestant doctrines were patently

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81. Marius, *supra* n. 3, at 391-95.

82. *Id.* at xxiv. In a similar vein, John Guy argues that More was enforcing the law against heretics and carrying out the king's program. But More also repeatedly expressed his loathing of heretics, and he asked that his epitaph record that he had been “grievous” to “thieves, murderers and heretics.” Guy concludes that “[t]his is too extreme. There is too much passion, even satisfaction.” Guy, *supra* n. 4, at 217.

83. Ralph Waldo Emerson, *Essays* 34 (Judd & Detweiler, Inc. 1932).

84. See e.g. Timothy L. Hall, *Separating Church and State: Roger Williams and Religious Liberty* 61-62 (U. of Ill. Press 1998) (discussing Puritan view that heretics who persist after having

false and practically insidious, and that proponents such as Luther and Tyn-dale were veritable demons and Antichrists; his passionate response to Lu-ther denounced the Reformer as an ape, an ass, a drunkard, a lousy little friar, a piece of scurf, a pestilential buffoon, and a liar (all in proper Latin, of course).<sup>85</sup> Moreover, he was perfectly well aware that not all avowals of conscience are genuine. Thus, in the controversy over the oath, he com-mented sarcastically, perhaps even bitterly, on those who, desiring "the keeping of the prince's pleasure, and the avoiding of his indignation, [and from] the fear of the losing of their worldly substance," had conveniently managed to "frame their conscience afresh to think otherwise than they thought."<sup>86</sup> And he remarked that "believe I not even very surely, that every man so thinketh that so saith."<sup>87</sup> He also described one of the heretics who was burned during his administration as being full of a "spiryte of error and lyenge."<sup>88</sup> One biographer, Richard Marius, thus suggests that More "refused to suppose that even those heretics who died in witness to their hope could possibly be sincere."<sup>89</sup>

So is it possible that in persecuting Protestants, More did not believe he was punishing anyone for what they sincerely, in conscience, believed? Perhaps, but the hypothesis is still hard to accept. It is hard to believe that More himself could really have believed that people who were willing to go to the pyre because of their faith were simply feigning the beliefs they pro-fessed. As More's comments indicate, the eminent men like Cromwell and Cranmer who conveniently reported that their consciences allowed them to support the king's policies had obvious, powerful motives to "frame their consciences afresh." The deliverances of their consciences cost them noth-ing—in the short run, at least—but rather paved the way to wealth and power in the government or the church. It would be easy to suspect such men of insincerity. In the same way, and given Anne Boleyn's pious or shrewd resistance to having extra-marital relations with Henry,<sup>90</sup> it is not hard to imagine possible inducements arising from organs other than the

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been "convinced" of their errors by adequate arguments do not act from conscience but rather from "wilfulness"). This sort of tactic can show up in surprising places—including in the heart of modern liberalism. Thus, Ronald Dworkin has famously argued that virtually no one *really* be-lieves abortion is murder: the millions of people who say they believe this only think they do. See Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* 9-19 (1st ed., Vintage Books 1994). Moreover, it is not clear that this tactic is necessa-rially any more offensive or contemptuous than the other modern liberal tactic for dealing with the differently-minded—that is, peremptorily dismissing them as "unreasonable."

85. See Ackroyd, *supra* n. 3, at 279, 248, 307, 310-11, 230.

86. More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 85.

87. *Id.* at 78.

88. Ackroyd, *supra* n. 3, at 299.

89. Marius, *supra* n. 3, at 518. See generally Gregory, *supra* n. 31, at 330-36.

90. See David Starkey, *The Reign of Henry VIII: Personalities and Politics* 85, 88 (Vintage 2002).

brain or the heart for Henry's own protestations that his conscience would not allow him to stay married to Catherine.

But the Protestants whom More persecuted were a different story altogether. *Their* lives were a record of hardship, persecution, and in some cases painful death—all more or less voluntarily accepted (though reluctantly, and sometimes with considerable vacillation reflected in recantations and later reavowals) rather than deny the religious beliefs they professed. Observing the horror of their punishments and deaths, it would be hard to imagine why they would feign beliefs in order to incur such treatment.<sup>91</sup> Misguided they might have been—More obviously thought so, anyway—but it would be hard to suppose that they were misrepresenting what they actually believed. To put the point differently: the very accusation of insincerity, made against Protestant martyrs who were burned at the stake for what they *said* they believed, necessarily acknowledges that a person may deceive others (and perhaps himself) about what he *really* believes. But in that case, the executioners who *said* they believed their victims were not merely wrong but insincere seem much more susceptible to this diagnosis than the martyrs themselves do.

But if these excuses will not work, then what *is* the explanation? Could the apparent inconsistency reflect a sort of semantic misunderstanding? Perhaps More was simply not using the word "conscience" in anything like the way we typically use it today? In this vein, the historian John Guy suggests that for More "conscience" did not refer to individual judgment, as it usually does for us, but rather to something more like conformity to Catholic teaching. "The view that individuals could read the Bible and make judgements about religious doctrine and the Church was a Protestant position," Guy explains. "Catholic 'conscience' was to be anchored to the 'consensus' or 'common faith' of Christendom."<sup>92</sup> In short, "[c]onscience' should conform to Catholic tradition as this had evolved since the time of the Apostles."<sup>93</sup>

By this reading, when More said he would leave every man to his own conscience, he might have meant something like, "I leave every man alone so long as he conforms to Catholic teaching." "Freedom of conscience" would thus mean for More almost the opposite of what it has come to mean today; it would mean something like "freedom to believe and assert what the Church teaches." But although he might lose his claim to being an incipient liberal, More would at least be rescued from suspicions of inconsistency or hypocrisy.

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91. See e.g. Ackroyd, *supra* n. 3, at 304 ("[O]ne heretic took forty-five minutes to die, and John Foxe records of him that 'when the left arm was on fyre and burned, he touched it with his right hand, and it fell from his bodye, and he continued to pray to the end wythout mouyng.'").

92. Guy, *supra* n. 4, at 199-200.

93. *Id.* at 197.

Guy's account points us in a helpful direction, I suspect, but it also provokes doubts. For one thing, if by conscience More meant only the freedom to follow Catholic teaching, then it seems, ironically, that More himself would have departed from Catholic teaching. Brian Tierney reports that the medieval church's position, expressed in canon law, taught that "[n]o one ought to act against his own conscience and he should follow his conscience *rather than the judgment of the church* where he is certain"—even to the point of enduring excommunication.<sup>94</sup> In addition, Guy's account does not quite succeed in making sense of More's statement in his letter to his daughter. After all, when he made the statement More pretty clearly thought that the men who were accusing and imprisoning him were in fact mistaken in their understanding of church teaching both on marriage and on the nature and authority of the church. Yet More indicated that he respected their right to follow their (in his view, erroneous) consciences.

A more nuanced interpretation might steer around these objections. In his longest treatment of the issue, More drew a distinction between Christian truths that are definitely established and truths that have not been authoritatively declared. The truths that fit into the first category are those that have been pronounced by a general council or that have been universally accepted by Christians.<sup>95</sup> And More suggested that conscience does not excuse anyone in denying these established truths. However, if a question has not been definitively resolved in either of these two ways, then Christians are permitted to form their own best judgments. The validity of the king's marriage to Catherine was arguably one of these debatable matters; hence, even though More might be convinced that he was right about the question, those who in good faith reached a different conclusion should be free to declare it.<sup>96</sup> But this same freedom might not apply to Luther and his followers, who (in More's view) might have placed themselves in opposition to established Christian truths.

By this interpretation, More favored deference to conscience within a very limited scope. And if this was More's view, we can even imagine a

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94. Brian Tierney, *Religious Rights: A Historical Perspective in Religious Liberty in Western Thought* 29, 37 (Noel B. Reynolds & W. Cole Durham, Jr. eds., Scholars Press 1996) (emphasis added) (quoting the Ordinary Gloss to the Decretals).

95. More's treatment in this letter does not invoke any doctrine of papal sovereignty or papal infallibility. Whether he eventually accepted some such doctrine has been a subject of disagreement among historians. More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 82-84. For the argument that More *did* come to accept some notion of papal sovereignty, see Belloc, *supra* n. 20, at 63; Ackroyd, *supra* n. 3, at 228, 270. For the contrary view, see Marius, *supra* n. 3, at 432-33, 458, 517. John Guy argues that all the available evidence shows that More believed in papal primacy but not papal supremacy; whether More changed his mind at the end of his life cannot be known. Guy, *supra* n. 4, at 201-03, 222.

96. More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 82-84. It would be harder to suppose, though, that More placed questions involving the separation of the church from Rome and the designation of Henry as the head of the church in this same "unresolved and subject to differing interpretations" category.

rationale that might have supported it. Conscience, after all, was not some free-standing, self-grounding value. And "freedom of conscience" was not some self-evident truth—something that any honest, sane person would immediately embrace. More knew far too much about history and the world to believe *that*. Rather, the sanctity of conscience was an idea that derived its meaning and support from within the larger framework of Christian truth. Hence, one who would deny, subvert, and assail the truth of Christianity (as More at least seems to have believed the Protestant heretics were doing), had dubious standing to invoke the principle of freedom of conscience.

We might put the point in more contemporary terms. In More's world, anti-Christian heresy created something very much like the conundrum sometimes noticed in modern free speech theory. Are those who reject and seek to destroy freedom of speech entitled to claim the protection of freedom of speech—and to use it to immunize the very speech through which they seek to subvert free speech? The question troubled free speech advocates throughout the twentieth century.<sup>97</sup> So far as I can see, there is no single, obviously correct answer to that question. Probably the prevailing opinion—memorably expressed by Oliver Wendell Holmes—is that freedom of speech should be extended even to those who would destroy free speech: "If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way."<sup>98</sup> But at least a possible answer—one that responsible thinkers have sometimes given, and that might be formulated in terms of logic, or equity, or simple practicality—suggests that a person who opposes and seeks to destroy a particular right sacrifices her standing to invoke that right.<sup>99</sup>

So who knows? Perhaps More was employing similar reasoning in persecuting and attempting to silence those who (in his estimation) were seeking to undermine Christianity, which was after all the necessary foundation for the sanctity of conscience. Even an errant conscience might have been worthy of respect so long as the error remained within broad Christian parameters—but not if it sought to undermine Christianity?

So, was this More's overall conclusion? His discussion of the subject in the prison letters, once again, is primarily intended to explain how *he* could at once refuse to take the oath and yet happily allow others to take it. More did not pretend to be writing a general treatise on the role of con-

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97. For a discussion, see Steven D. Smith, *Radically Subversive Speech and the Authority of Law*, 94 Mich. L. Rev. 348 (1995).

98. *Gilow v. N.Y.*, 268 U.S. 652, 673 (1925) (Holmes, J., dissenting).

99. See *id.* at 668-70. See also Robert Bork, *Neutral Principles and Some First Amendment Problems*, 47 Ind. L.J. 1, 31 (1971); Carl A. Auerbach, *The Communist Control Act of 1954: A Proposed Legal-Political Theory of Free Speech*, 23 U. Chi. L. Rev. 173, 188-89 (1956).

science in relation to government. So it is hard to draw definite conclusions. More *might* have favored a right of conscience thus narrowly conceived. Or he might have favored something more generous: certainly his earlier discussion in *Utopia* would lead one to think so.<sup>100</sup> Or he might not have favored a *political or legal* freedom of conscience at all. I do not think we can be sure.

What we *can* be sure of, I think, is that for More, conscience was inseparably connected to truth—even, to use a modern designation, to Truth.<sup>101</sup> As a matter of *meaning*, to say that something was a reason of conscience was to say that it arose from a belief about some matter of vital truth. And as a *normative* matter, the preeminent value of conscience was connected to the sacred value of truth.<sup>102</sup> For better (as I suspect) or worse, that insistence on the connection between conscience and Truth would seem to distance More's conception of conscience from some of the notions that go under that name today.

#### V. MORE'S ENIGMATIC SILENCE

But this observation about the connection of conscience to truth makes our third set of questions all the more challenging. We might be tempted to interpret More's position, that is, as holding that truth (and by extension the affirmation of truth) is a supreme value, for which all other mundane goods (including life itself) must be sacrificed. More might have said along with Aquinas that "[t]ruth must consequently be the ultimate end of the whole universe, and the consideration of the wise man aims principally at truth."<sup>103</sup> And he might have believed—indeed, he surely *did* believe—that despite this-worldly persecutions and punishments, adhering to God's truth ensures eternal rewards.

But if More's martyrdom manifested a commitment to the preeminent value of truth, then why was he so reticent to declare the relevant truths in public—or even for that matter in private, to his family and friends? Having concluded that truth was more valuable than life, he willfully allowed his family and friends to linger in the darkness of error. So he silently stood by as they took an oath affirming what he believed to be pernicious falsehoods—an oath that he himself had refused to take on the premise that to do so would be to sacrifice his own soul. How could More have been so com-

100. See *supra* n. 80.

101. Richard Rorty explains that "[u]ncapitalized, 'truth' and 'goodness' name properties of sentences, or of actions and situations. Capitalized, they are the proper names of objects—goals or standards which can be loved with all one's heart and soul and mind, objects of ultimate concern." Richard Rorty, *Consequences of Pragmatism* xiv (U. of Minn. Press 1982).

102. For a contemporary statement emphasizing the connection, see John Paul II, *Veritatis Splendor*, No. 32 (Aug. 6, 1993) (available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_06081993\\_veritatis-splendor\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor_en.html)).

103. Thomas Aquinas, *Summa Contra Gentiles, Book One: God* ch. 1, ¶ 2, 60 (Anton C. Pegis trans., U. of Notre Dame Press 1975).

placent while those he loved solemnly committed themselves to what he believed to be damnable error?

It is true, of course, that More's refusal to explain his reasons was calculated to increase not only his own chances of survival, but theirs as well. Suppose he had he fully expounded all of his objections to the oath. He was a persuasive man, and he might well have convinced his family; they might have come to grasp the same truths that animated his own actions. In that case, they might have followed his example in refusing to take the oath, and they might as a result have suffered the same fate he did. Surely the extinction of his family was not his wish.<sup>104</sup> Or they might have sworn anyway—but now in bad faith: this was also not an outcome he could have welcomed.

Framed in these terms, and appreciated from the human perspective of people like you and me who have had (or are) fathers, children, and friends, More's protective silence seems eminently understandable. And yet hard questions remain. Specifically, if truth is a preeminent good, and if the blessings that come from adhering to truth (even in the face of affliction and death) vastly exceed all mundane goods, then why was More willing to choose the greater good for himself while declining to help family and friends to make—or at least to have the chance to make—that same choice? In this vein, Richard Marius observes that

a certain insoluble mystery hangs over [More's martyrdom], a mystery that baffled his contemporaries and confuses moderns. . . . What kind of martyr is it who will not make a strong, clear statement of the reasons for his martyrdom? His entire family swore the oath that he would not swear because he thought it would damn his soul. He did not reproach anyone in his family for what they all did. In his view of the world, fathers were supposed to be instructors in virtue to their households. Yet More refused to instruct his family about the oath.<sup>105</sup>

I said at the outset that I would be asking questions, not providing answers; and I have no solution to the puzzle described by Marius. It may be that at this point More was human, all too human, and that his natural desire to spare his wife and children possible imprisonment, torture, and premature death led him to forego presenting them with the option of choosing truth at the cost of mortal life and mundane prosperity. If this was his judgment, it ought to be readily forgivable—for *us*, at least. On an earlier occasion, when Jesus' disciple Peter expressed a similar priority, he received a sharp lordly rebuke;<sup>106</sup> but surely we frail mortals can sympa-

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104. See Marius, *supra* n. 3, at 470 ("We may take his own statements at face value, of course—that he feared the harm that might come to them because of his refusal—and we may extrapolate from that love for them an unwillingness to see them suffer in any way.").

105. *Id.* at 470.

106. See *Matthew* 16:21-23 (New Intl.):

thize with Peter's kindly though human intentions—and with More's, if this was the reason for his silence.

Or More might have believed that his family and friends were not as yet faced with the same dire choice that he confronted—and that by leaving them ignorant of his more considered reasons he could spare them that painful choice. Maybe he thought that his family, his friends—even, perhaps, the men who condemned and executed him—could take the oath without spiritual harm to themselves, so long as they remained innocent of the governing truths. More's own misfortune, perhaps, was that he had thought too carefully about the issues;<sup>107</sup> hence, he could not swear without knowingly betraying the truth, and the Truth. But others were not cursed with More's more considered understanding. And the most charitable course he could take was to leave his loved ones in the protective comfort of ignorance.<sup>108</sup>

Once again, this speculation calls for further reflection on how More understood "conscience"—and, by extension, on the delicate relation between conscience and truth. We have already seen that in More's view, it seems, conscience was necessarily related to, and dependent on, truth—or on Truth. But to be *dependent on* truth is not necessarily to be *equivalent to* truth, or to the correct apprehension of truth. Conscience seems more naturally to refer to something like a sincere *commitment to* truth, and to a sincere (even if mistaken) *belief in* the truth of the specific ideas or propositions one affirms.

So it begins to seem that conscience resides at the end of a narrow road, with practical and conceptual mists looming on either side. If we do not believe in truth, and in the preeminent value of truth, then conscience loses its dignity. Believing—really, truly *believing*—will seem a form of delusion, more to be pitied or perhaps despised than honored. But if we

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From that time on Jesus began to explain to his disciples that he must go to Jerusalem and suffer many things at the hands of the elders, chief priests and teachers of the law, and that he must be killed and on the third day be raised to life.

Peter took him aside and began to rebuke him. "Never, Lord!" he said. "This shall never happen to you!"

Jesus turned and said to Peter, "Get behind me, Satan! You are a stumbling block to me; you do not have in mind the things of God, but the things of men."

107. In this vein, perhaps, More indicated that though others might in good conscience take the oath, he could not "now have I so looked for [the matter] and so long." More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 79. In an earlier letter, More reported that he was bound in this matter "[w]herein I had not informed my conscience neither suddenly nor slightly, but by long leisure and diligent search for the matter." More, *To Margaret Roper*, in *Last Letters*, *supra* n. 19, at 60.

108. See Marius, *supra* n. 3, at 470:

We may conjecture that one reason for his silence was to spare the consciences of his dearly beloved. If they swore the oath in genuine ignorance of its true meaning, they could be saved in heaven; if he told them why the oath was damnable and why he refused to swear it, they would be informed, no longer saved by what Catholics would later call "invincible ignorance," and not able to claim a clear conscience before God. So his silence might, in his mind, have kept his children and his wife and all the rest of his household from hell.

believe only in the value of “objective truth,” so to speak, or in actually and accurately apprehending the truth, then conscience loses its distinctive function. Because if the good consists simply in ascertaining and living by what *is* the truth, then even though ascertaining and living by what we *believe to be* the truth is admittedly the best we can do, still there is no point in emphasizing—or valuing—the *believing* in its own right. “Embrace the truth” would be like “Bet on the fastest horse.” In each case, to be sure, you can only do what *you believe* satisfies the injunction. Even so, your *believing* in itself counts for nothing; it does nothing to redeem even a good faith mistake.

For More’s combination of deadly commitment and resolute muteness to make sense, in other words, and more generally for conscience to have some distinctive function and virtue, it seems there must be redeeming value in at least some kinds of sincere, reflective commitments to perceived truth—even if the believer is mistaken. In a sense, sincere *belief* must be able to redeem real *error*. (So at least this kind of redemptive error *does* have rights, so to speak.)

But if this construal of More’s conduct seems plausible, there is still something paradoxical and unsettling—and unsettled—about it. It is far from clear just how *error*—even error sincerely embraced in the illusion that it is truth—can have redemptive force. Believers and theologians have struggled with that problem for centuries, and it is fair to say that no obviously satisfactory, generally accepted solution to the problem has yet emerged. So far as I know, More himself offered no theory. Perhaps he would not have welcomed any such theory. The suggestion that though we err we will nonetheless be redeemed by virtue of sincerely believing begins to sound suspiciously like the signature doctrine of the enemy whom More came to regard as Antichrist; the notion resonates with Luther’s idea that we are justified by faith even in our fallen, error-ridden condition.<sup>109</sup> And the suggestion looks like an invitation to religious pluralism—a prospect that, as Brad Gregory notes, “horrified and disgusted” believers like More.<sup>110</sup>

Moreover, there is something disturbing about a course of reasoning that begins with an ostensible commitment to the preeminent value of truth and then somehow ends up with the practical conclusion that the kindest and best course to take, in some contexts anyway, is deliberately to leave those we love in what we know to be error. And if a commitment to truth can justify this “leave them in ignorance” strategy in a specific context, what are the limits of the strategy? Might it mature into a general philosophy of, among other things, church and state and of expression generally—

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109. See Steven D. Smith, *Getting Over Equality: A Critical Diagnosis of Religious Freedom in America* 163-76 (N.Y.U. Press 2001) (where I have tried to elaborate on the connection).

110. Gregory, *supra* n. 31, at 346.

a philosophy in which those wielding authority stalwartly disavow any responsibility or capacity to instruct their subjects in truth, insisting instead (albeit incoherently) that so far as they are concerned “there is no such thing as a false idea”?<sup>111</sup> And if so, might that strategy not end up devouring its own premises (or at least leaving them rigorously, aggressively undefended), and thus consuming itself?

## VI. THOMAS MORE ON THE BRINK OF MODERNITY

So, have these reflections on More’s understanding of conscience issued in any conclusions of practical value *to us* as we address the modern questions that arise in connection with the “freedom of conscience”? Perhaps not. As we have seen, it is hard to be sure precisely what More thought about some of the central issues he was forced to confront. And if we could be sure, it is not clear that his thoughts would be responsive to *our* questions. And even if they were responsive to our questions, there is a good chance that we would not like his answers. So it is not surprising that when we seek guidance from distinguished forbears on the subject of “conscience,” we tend to look not to Thomas More but rather to John Locke, or Roger Williams, or James Madison—to people who seem to speak in less tortured (or perhaps less nuanced) fashion, and who speak more directly to *us*.

Still, even if More is not immediately helpful to us in a practical way, he can be illuminating, I think, in a more prophetic and portentous way. His ordeal foreshadowed what was to come: it anticipated both why “conscience” would become so central to the modern self-understanding and yet so troublesome as a legal and practical device.

In retrospect, historians can see that More lived in what Derek Wilson calls a “fulcrum moment in human destiny”<sup>112</sup>—a time when the medieval world was crossing a divide into modernity. The transition had various dimensions, but for our purposes the crucial transformation involved the breakup of Christendom and the advent of a pluralistic society. And indeed More himself, along with his fellow humanists, seems to have sensed that, to borrow a phrase, “the times they are a-changin’.” In his early years he anticipated the changes with excitement:<sup>113</sup> his almost embarrassingly sanguine encomium to the nineteen-year-old Henry VIII upon Henry’s assumption of the throne in 1509 typified his early enthusiasm for the coming age.<sup>114</sup> But like the king himself, the new order eventually turned on More,

111. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974).

112. Wilson, *supra* n. 9, at 11.

113. See Belloc, *supra* n. 20, at 62 (“More was a reformer. . . . He was indignant against the social order of his time as well as against the abuses of the Church.”).

114. *E.g.* Starkey, *supra* n. 90, at 24-25 (More wrote a poem in Latin and presented it to the new king in a handsome copy decorated with white and red roses. The poem began, “[t]his day is the end of our slavery, the fount of our liberty, the end of our sadness, the beginning of joy.”);

crushing his fondest hopes; and he became a passionate, desperate defender of the old faith and the old ways. Hence his persecution of the heretics, his violent verbal attacks on Luther and his ideas, his quiet but steadfast resistance to England's separation from Rome.

In particular, More had enjoyed the good fortune (in his estimation) of living in a time in which the state (however fickle and fallible its rulers might be) had worked together with the church (however urgently it needed reform) to inculcate the saving truths of Christianity in the educated and uneducated alike.<sup>115</sup> And although a modern conception of religious equality under a neutral, secular state lay far in the future, More perceived that this pervasively imperfect but still basically secure world that he knew and cherished—and that he had wanted so much to reform *because* he cherished it—was coming apart. Its decomposition created fearsome prospects. The direst possibility—which must have seemed all too likely as More looked at what was happening both on the Continent and at home—was that the state would subordinate the church and would affirmatively work to inculcate a form of religion that he believed to be false.<sup>116</sup>

More's own effort and sacrifice were of course devoted to maintaining the older order in which state and church cooperate in support of truth. But he struggled on in this cause without any great hope of success. On the contrary, he himself predicted that the time would soon come in which "it shall seeme that there shall bee than no chrysten countreyes left at all."<sup>117</sup> So rather than a regime in which the government affirmatively promotes false religion, perhaps the best that might be hoped for would be a government that simply leaves people to find truth on their own? But even if this was the least dismal among dismal prospects,<sup>118</sup> there was no particular reason then—as there is little now—to suppose that if people are left to look for truth on their own, all of them (or most of them, or even very many of them) will actually find it.

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Wilson, *supra* n. 9, at 53 (The poem continued, "[n]ow the people, freed, run before their king with bright faces. Their joy is almost beyond their own comprehension. They rejoice, they exult, they leap for joy and celebrate their having such a king. 'The King' is all that any mouth can say.").

115. See generally Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England c. 1400 - c. 1580* (Yale U. Press 1994).

116. Cf. Marius, *supra* n. 3, at 516 ("A church in the clutches of a government that no longer protected it but rather ruled it was in the hands of the enemy, perhaps in the hands of Satan himself.").

117. Ackroyd, *supra* n. 3, at 358 (quoting Thomas More, *Treatise on the Passion; Treatise on the Blessed Body; Instructions and Prayers*, in *The Yale Edition of the Complete Works of St. Thomas More* vol. 13, 70 (Garry E. Haupt ed., New Haven & London 1976)).

118. Cf. Gregory, *supra* n. 31, at 346 (arguing that to early modern Christians "[t]he prospect of doctrine pluralism horrified and disgusted them. They preferred a world in which truth did battle, come what may, to one swarming with ever-proliferating heresies."); *id.* at 352 ("Institutionally and intellectually, our world is one the committed early modern Christians scarcely could have imagined. I am certain they would not have wanted to live in it.").

So in the world that was coming into view, sincerity of conviction might be the most that could be expected of a person—and the most, we might earnestly hope, that a merciful deity *would* demand of a person. And this prospect in turn might suggest that the relative priority of truth and conscience would need to be reversed. Conscience could no longer be a sort of corollary or secondary motif—a minor, mostly innocuous concession to sincere but errant conviction. Instead, conscience (along with all the conundrums that accompany it) would need to become the dominant theme.

If that was not exactly the vision that More intended to die for, it is nonetheless the sort of order that his martyrdom foreshadowed. One of the deep ironies of More's enigmatic path to martyrdom is the remarkable resemblance between More's repeated assertions that he simply could not take an oath in violation of his conscience and Martin Luther's famous protest that until he was shown his error from the scriptures he could not recant his controversial doctrines. More's "sith standing my conscience, I can in nowise do it"<sup>119</sup> and Luther's legendary "'Here I stand: I can do no other'"<sup>120</sup> seem interchangeable. The men were bitter enemies, each heaping abuse and vulgarities on the other in vocabulary that makes high school locker room talk seem tame. But both More and Luther stood firm and courageous against the constituted authorities who attempted to cow them into submission; and each did so on the basis of a claim—a claim that critics in each case found astonishingly presumptuous—that he was compelled by conscience<sup>121</sup> to follow his own considered understanding of Christian truths rather than bow to the interpretations of those in power.

In the world of warring opinions and authorities that was opening up, it seems, faithful Christians were led by convoluted but ineluctable paths to this position. Realistically, what else *could* they do? In this way, Luther eagerly (though perhaps not wholly presciently) and More with profound misgivings converged to usher in the Age of . . . Conscience?

Whatever that might turn out to mean.

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119. More, *Margaret Roper to Alice Alington, August 1534*, in *Last Letters*, *supra* n. 19, at 74.

120. Whether Luther uttered the exact words that have come down in legend is doubtful, but they capture the essence of his statement. See Owen Chadwick, *The Reformation* 56 (Penguin Books 1964).

121. For a discussion of the conception of conscience that underlay Luther's famous statement, see Heiko A. Oberman, *Luther: Man between God and the Devil* 203-04 (Yale U. Press 1989).