Abstract

Duncan Derrett's 1964 analysis of Thomas More's trial has generally been accepted by historians, specifically in agreeing that the judges accepted More's objections against the first parts of the Indictment against him, alleging malicious silence and malicious conspiracy with Fisher, and dismissed those charges, leaving in place only the accusation by Richard Rich; this was the only charge argued before the Jury, upon which he was convicted. Derrett also construed More's final statement, against the validity of the statutory title of Supreme Head of the English Church, as a motion to invalidate the Jury's verdict.

The analysis that follows argues that the Indictment as a whole was presented to the Jury, and that More was found guilty of the whole; and that More's final statement was an explanation of his true mind concerning the King's churchly title, asserted with no expectation that the verdict could be reversed. The Judges should not be faulted for failing to declare the Supremacy Statutes "unconstitutional," as beyond Parliament's powers; but they should be found guilty of bowing to political pressure and convicting More against the clear intention of Parliament. Parliament insisted that malice must be established before any resistance to the King's titles could be judged to be high treason, but the Justices on More's Commission had dismissed this requirement as irrelevant, or as self-evident.

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Thomas More's Trial by Jury

1. Introduction

The trial of Thomas More was long denounced as a typical political miscarriage of justice, with participants simply doing the bidding of the reigning tyrant, Henry VIII. It cannot be denied that the King considered the outcome of the trial to be a foregone conclusion. As More's biographer of a century ago, Thomas Bridgett, pointed out, on 25 June, after Bishop John Fisher had been convicted and executed, Henry "ordered the preachers to set forth to the people the treasons of the late Bishop of Rochester, and of Sir Thomas More; joining them together though the latter was still untried."¹ But in

comparatively recent times the trial has been taken seriously as a carefully prepared and executed judicial process.

This paper will serve as a review not only of More's trial, but also of the account given of the trial by Duncan Derrett in 1964, as revised in 1977. Derrett is Emeritus Professor of Oriental Laws at the University of London, where he taught Hindu law from 1949 to 1982. Early Modern English law might seem to be out of his field, and he could with justice have given to his More essay a title similar to the one he adopted the next year, 1965, for his analysis of the trial of Jesus. That is, "An Oriental Lawyer Looks at the Trial of Thomas More." But Derrett's essay on the trial and other writings show that he is an expert Latinist and highly trained in the history of English law. Four years previously, in 1960, he published a very valuable edition of what he establishes as the earliest eyewitness account of More's trial, which I will refer to, in modified form, as the Guildhall Report, edited and translated in Appendix B below.

Derrett's reconstruction of the More trial has been taken as definitive ever since it first appeared, as witnessed, for example, by the Tudor historians Sir Geoffrey Elton and Gairdner's work is a "calendar," usually consisting of summaries of original documents, but sometimes he gives the exact texts.


Derrett was a Scholar in Classics of Jesus College, Oxford (1940-42, 1945-47). He took an M.A. from Oxford and a Ph.D. from London, and qualified as a barrister-at-law.


G. R. Elton, Policy and Police (Cambridge 1972), p. 409: "More faced the court on July 1st, in one of the famous trial scenes of history. Famous indeed, but only recently correctly interpreted. Mr.
John Guy. His main conclusions have also be supported by the preeminent historian of English law for this period, Sir John Baker, first in the Introduction to his 1977-78 edition of the law reports of Sir John Spelman (one of More's judges), and more recently, in 2003, in his volume in *The Oxford History of the Law of England*.8

However, I believe that there is room for serious discussion and reconsideration at every step of the trial, and one of Derrett's main conclusions, that most of the charges against More were dropped, is especially dubious. On this point, at least, I find earlier accounts to be more plausible, culminating in the book-length study of E. E. Reynolds, which was also published in 1964.9

My mode of proceeding will be to set out and comment upon all aspects of the trial from the beginning to the end, and raise whatever questions seem called for. In the interests of historical authenticity, I will be on the alert for anachronistic legal terminology in previous accounts. A chief guide to vocabulary usages of the time will be the Parliamentary Statutes.10 I of course solicit the help and advice of my audience in these efforts.

2. The Official Records of the Trial

The surviving records of Thomas More's trial, as found in the "Bag of Secrets" (*Baga de Secretis*), are calendared by James Gairdner in the *Letters and Papers of Henry VIII*,11 and can be summed up thus:

1. Saturday, June 26, 1535: Appointment of a Special Commission of Oyer and Teriner for Middlesex County. On the same day, the new Commissioners order

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Derrett's reconstruction has produced as accurate an account as we are ever likely to have, and the detail of events is best read in his paper." Elton's own account of the trial is on pp. 409-17.


the Sheriff of Middlesex to bring the Grand Jury before them in Westminster Hall on Monday, June 28.

2. Monday, June 28: The Grand Jury appears and finds the Bill of Indictment against Sir Thomas More to be a true bill.

3. Wednesday, June 30: The Commissioners order the Constable of the Tower, Sir William Kingston, to bring Sir Thomas More before them on Thursday, July 1.

4. Thursday, July 1: Sir Thomas is brought to the Commission by Sir Edmund Walsingham, Lieutenant of the Constable; he pleads Not guilty.

   The Commissioners order the Sheriff to present a Petty Jury that very day. He does so, and Sir Thomas is again summoned. The Jury returns a verdict of Guilty. Judgment is given as usual for high treason.

   The Commissioners consisted of twelve Councillors and a "quorum" of seven Justices. The Councillors were named in this order:

1) Sir Thomas Audeley, Chancellor;
2) Thomas (Howard), Duke of Norfolk (Anne's uncle);
3) Charles (Brandon), Duke of Suffolk (married to Henry VIII's sister);
4) Henry (Clifford), Earl of Cumberland;
5) Thomas (Boleyn), Earl of Wiltshire (Anne's father);
6) George (Hastings), Earl of Huntingdon (father-in-law of Reginald Pole's nieces);\footnote{\textsuperscript{13}}
7) Henry (Pole), Lord (Baron) Montague (brother of Reginald Pole);
8) George Boleyn, Lord (Viscount) Rochford (Anne's brother);
9) Andrew, Lord Windsor (Keeper of the Great Wardrobe);
10) Thomas Cromwell, Secretary;
11) Sir William FitzWilliam (Treasurer of the Household);

The Justices were:

1) Sir John FitzJames (Chief Justice of the King's Bench);
2) Sir John Baldwin (Chief Justice of Common Pleas);

\footnote{\textsuperscript{12}}For an analysis, see Schulte Herbrüggen, p. 129.
\footnote{\textsuperscript{13}}See the entry on Hastings in the \textit{Oxford DNB} (by Claire Cross): in 1531 he negotiated the marriage of his eldest son, Francis, to Catherine, eldest daughter and co-heir of Henry Pole, Lord Montague (Reginald's brother), and later obtained Montague's other daughter, Winifred, as wife for one of his younger sons, Thomas.
3) Sir Richard Lister (Baron of the Exchequer);
4) Sir John Porte (Justice of the King’s Bench);
5) Sir John Spelman (Justice of the King’s Bench);
6) Sir Walter Luke (Justice of the King’s Bench);
7) Sir Anthony FitzHerbert (Justice of Common Pleas).

The same Justices had served on the Commissions of 23 April (three Carthusian priors, the Bridgettine monk Richard Reynolds, and others) and 1 June (John Fisher and three Carthusians monks, Humphrey Middelmore, William Exmewe, and Sebastian Nudygate).\(^{14}\) The same was true of some of the Councillors: Rocheford, Montague, and Cromwell were on the 23 April panel, and Audeley, Norfolk, Cumberland, Wiltshire, and Cromwell were on the other. There is, however, no indication in any of our records that Cromwell took a role in More's actual trial, or that he was even present, and other Commissioners could also conceivably have been missing from the bench.

Quite clearly, the sheriff had already gathered candidates for a grand jury when the order came down to him on Saturday. When the Jurors appeared on Monday, they were shown the Indictment that had already been drawn up, doubtless by Cromwell, whose practice it was in cases of treason prosecution to compose the interrogatories to be put to the suspects beforehand, and then, in due course, to draft the indictments.\(^{15}\) The Commissioners, who on this occasion were represented only by the seven Justices on the panel, would then explain it to them, and introduce any witnesses that they wished to support it. Undoubtedly, the Jurors simply stamped the ready-made Indictment with their approval at the end of a probably very brief session. As usual, no records survive of the

\(^{14}\)Gairdner, *Letters and Papers* 8, no. 609.i (p. 229); no. 886.i (p. 350). Two other Justices of Common Pleas were included as well in these commissions: Sir Thomas Inglefield and Sir William Shelley. Shelley had served as Undersherriff with More, and had been reported to the Council for his opposition to heretical books, “and for the Lent assize of 1535 he was transferred to the home circuit under the watchful eye of his junior, the attorney-general Christopher Hales. . . . Shelley was dropped from the summer assize of 1535, when the judges were given specific instructions to publicize the supreme headship and the exemplary executions of Fisher and More; he was not commissioned again for almost a decade” (Christopher Whittick, *Oxford DNB*, s.v. Shelley).

Grand Jury proceedings, and doubtless none were made, since secrecy was the regular rule for the process.\textsuperscript{16}

As for the Petty Jury, the sheriff must have had them at the ready, too. In the similar orders for juries for the trial of Middelmore, Exmewe, and Nudygate on June 11 and for Bishop Fisher on June 17, it was specified that the jurors were to be from among "the inhabitants of the Tower."\textsuperscript{17} In other words, there was to be no searching at large for candidates.

But before the Jurors were summoned on the Thursday, More himself was stood before the Commissioners to have the entire Indictment presented to him. According to later procedure, at least, as stated by Sir John Baker, "it was necessary that the Indictment itself be in Latin [interpreting a Statute of 1362, and citing cases of 1607 and 1618], but the prisoner was not entitled to have it read in Latin [case of 1661], unless he could assign some error in law upon hearing it [so Matthew Hale, c. 1676]."\textsuperscript{18} But we may consider it likely that the whole Indictment was read to More in its original Latin.

According to Derrett's interpretation, More's objections against the first three-fourths of the Indictment were sustained by the Commissioners, and those parts of the Indictment were dismissed; and as a consequence he pleaded Not guilty only to the last part, dealing with Richard Rich. If so, only this last part of the full Indictment would have been explained to the Petty Jury, and they would have found him guilty only of making a treasonous assertion to Rich. However, I will suggest reasons to doubt this analysis of events.

In a standard criminal trial, More would have been entitled to twenty peremptory challenges to the prospective jurors, but there is nothing in the reports to indicate that he

\textsuperscript{16}I refer to the explanation given, for a slightly later period, by J. H. Baker, "Criminal Courts and Procedure at Common Law, 1550-1800" (1977), as reprinted in his collection of essays, \textit{The Legal Profession and the Common Law} (London 1986), pp. 259-301. On pp. 281-82, he explains the routine for indictments at assizes or sessions: clerks prepare the bills of indictment, and prosecutors take them into the grand-jury room, along with prosecution witnesses.


made any objection at all; and, according to Baker, it is questionable whether such challenges were allowed at all in cases of treason.  

3. The Indictment
   a) Contents of the Indictment

The Latin Indictment against Sir Thomas More, which was found to be a true bill by the Grand Jury and which was revealed to him in its entirety only as he stood trial on July 1, 1535, before the Commission of Oyer and Terminer, consisted of a range of charges, which were divided into four "articles" by Elsie Vaughan Hitchcock in 1932, and her divisions were accepted by E. E. Reynolds in 1964, but designated as "counts." Derrett, also in 1964, likewise distinguishes four "counts," but his divisions are different from those of Hitchcock and Reynolds. I will avoid the term "count," since it seems at this time to have still referred only to the expanded complaint made in court by a plaintiff in a civil suit: it is his "recounting" (in French, conte, story; in Latin, narratio). This point is made by Geoffrey Parmiter, who observes that the term was not used for indictments until the seventeenth century. As for the term "charge," in the sense of "accusation," it was already in use, though no one was yet speaking of "charges" in the plural. In the Guildhall Report, More refers to the individual accusations against him not only as "parts," but also as "heads" or "chapters" (capita) and "articles," standard terms for charges in ecclesiastical trials.

I have chosen to divide the Indictment into twelve sections, which are given in full, in Latin with English translations, in Appendix A below. Here is my summary:

(§1) Grand jurors of Middlesex County on 28 June 1535 present as follows:

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19Baker, Spelman's Reports, 2:108 and n. 10. Before 1530, the number of challenges allowed was thirty-five.
23Geoffrey de C. Parmiter, "The Indictment of St. Thomas More," The Downside Review 75 (1957) 149-66, p. 158; idem, "Tudor Indictments, Illustrated by the Indictment of St. Thomas More," Recusant history 6 (1961-62) 141-56, p. 147. In the latter article, Parmiter holds that the Indictment listed multiple facts but charged only one crime, denial of the Supremacy. But it seems clear that he was being charged with committing that crime multiple times.
(§2) Since, by the Act of Supremacy, 26 H8 (1534) c. 1, the King was accepted as Supreme Head of the Church in England;

(§3) And since, by the Act of Treason, 26 H8 (1534) c. 13, it was made high treason to deprive the King of his titles,

(§4) Nevertheless, Thomas More on 7 May 1535, seduced by diabolical instigation, maliciously attempted to deprive King Henry of his title of Supreme Head when, before Thomas Cromwell and others, upon being asked whether he approved of the King as Supreme Head, he maliciously remained silent and refused to give a direct answer.

(§5) On 12 May, More maliciously wrote to Bishop John Fisher, consenting to Fisher's denial of the Supremacy, telling him of his own silence, and calling the Act a two-edged sword.

(§6) On 26 May, More wrote again to Fisher, warning him not to use these words, lest there appear to be a confederacy between them.

(§7) On 3 June Fisher remained silent on the question and called the Act a two-edged sword.

(§8) On 3 June, More maliciously persevered in his silence.

(§9) Also on 3 June, More likewise called the Act a two-edged sword.

(§10) In order to conceal their treason, More and Fisher burned each letter as soon as it had been read.

(§11) On 12 June, More told Richard Rich that subjects could not be obligated by an act of Parliament making the King Supreme Head.

(§12) "And thus the aforesaid Jurors say that the aforesaid Thomas More falsely, traitorously, and maliciously by craft schemed, contrived, practiced, and attempted to deprive" the King of his title of Supreme Head.24

(Let me note here at the beginning that, though there are two Acts, or Statutes, at issue, it is usual to speak of violating "the Act" or "the Statute," in the singular.)

24The Latin of the quoted passage reads, "Sicque Juratores praedicti dicunt quod praefatus Thomas More false, proditorie, et maliciose, arte imaginavit, inventavit, practicavit, et attemptavit . . . deprivare" (p. 276).
To Sir John Spelman, one of the Justices on the Commission, this presentment boiled down to two charges:

1) Abetting Fisher's treason (cf. §§ 5-7, 9-10).

2) Attempting to deprive the King of his title (cf. §§ 4, 8, 11-12).

Specifically, Spelman says that More was arraigned for treason as aider-counselor-abettor to Fisher and also because, falsely-maliciously-traitorously desiring-willing-scheming, he contrived-practiced-attempted to deprive the King of his dignity-name-title of Supreme Head on Earth of the Church of England. In his use of synonymous triplets Spelman rivals the indenture-style rhetoric of the Indictment.

Now let us consider the impressions left by witnesses of the trial. In a report of the trial that was made to Reginald Pole, to judge by Pole's account of the trial, More was accused of only one thing, of remaining silent, which was judged to be malicious, and he was condemned for it.

In the Guildhall Report of the trial--that is, the eyewitness report best preserved in the Guildhall Manuscript--More considers the Indictment to consist of three "parts":

1) Remaining silent concerning the Act (cf. §§ 4, 8).
2) Arming Bishop Fisher against the Act (cf. § 5).
3) Conspiring with Bishop Fisher (cf. §§ 5-7, 9-10).

We note that the conversation with Rich (§ 11) is neglected entirely, whereas in William Roper's recollection, long after the event, of what he had been told, seemingly immediately after the trial, by persons who had actually witnessed it, this was the only

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26 Reginald Pole, Pro ecclesiasticae unitatis defensione (Rome [1539]; repr. Farnborough 1965), fols. 89v-90, edited and translated in Appendix D below. See Schulte Herbrüggen, p. 115. Pole's book was a treatise meant for Henry VIII, and it was sent to him on 27 May 1536; it had no title, and the title of the printed version was not his; it is usually referred to as De unitate. See Thomas F. Mayer, Reginald Pole, Prince and Prophet (Cambridge 2000), p. 13, and see Mayer's entry on Pole in the Oxford DNB. For an English translation, see Joseph G. Dwyer, Pole's Defense of the Unity of the Church (Westminster MD 1965).

27 See my edition and translation in Appendix B below, based on Derrett, "Neglected Versions of the Contemporary Account of the Trial of Sir Thomas More." Derrett takes the version of London, Guildhall MS 1231, as his primary text, but emends it according to other texts to produce what he calls the "Reconstructed text," which he cites as "R." In contrast, I give the Guildhall version throughout, unless otherwise noted. I also follow my own sense in matters of punctuation, capitalization, spacing, and spelling (as is true of all the texts I cite).
charge that More was indicted on: "Upon whose only report was Sir Thomas More indicted of treason upon the Statute whereby it was made treason to deny the King to be Supreme Head of the Church." 28

b) Was Part of the Indictment Quashed?

Derrett concludes from the discrepancy between Guildhall and Roper that More's arguments against the three first parts of the Indictment were in fact "motions" made to the Judges, that is to say, the Members of the Commission, against the validity of the Indictment; that More's contentions were accepted by the Judges, who dismissed those parts of the Indictment, which were dropped form the Indictment; and that only then did More plead Not guilty. 29 This sort of analysis might strike us as very authentic, especially with reference to More's alleged "motion in arrest of judgment," but it appears to be another instance of using legal jargon anachronistically. "Motions" were not made in court until the eighteenth century, it would seem, and then only by counsel on behalf of their clients 30--referring to civil suits. In criminal trials, we must remind ourselves, counsel was not allowed to defendants.

Sir John Baker seems to concur with Derrett's judgment that most of the Indictment was dropped, though he specifically mentions only the "remaining silent" charge. He says, referring to Derrett's arguments, that the Judges "apparently agreed that a refusal to answer questions was not an overt act of treason," but then he adds: "It is not quite clear whether this was a ruling, or a concession by prosecuting counsel." 31

I submit, however, that it is highly unlikely that any part of the Indictment was left unprosecuted. Such a conclusion does not in fact make sense of Roper's statement

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30The OED gives the first citation of "motion" used in this sense as dating from 1726; the second citation, of 1729, is from a law dictionary: "In the Courts of Chancery, King's Bench, etc., motions are made by barristers and counsellors at law for what concerns their clients' causes." To argue on the other side, however, it can be shown that there were legal meanings of "motion" and "move" in pleadings already in the fifteenth century; see the Middle English Dictionary (MED) s.v. "mocioun" 2(c) and "meven" 6b(c). The same is true even earlier of Law-Latin: see the Dictionary of Medieval Latin from British Sources, s.v. "motio" 7a-b and "movere" 7c; but there is no comparable usage in Law French; see J. H. Baker, Manual of Law French, ed. 2 (Aldershot 1990).
31Baker, Oxford History, p. 417 and n. 38. His treatment in Spelman's Reports, 2:139, is similar; see Appendix F below.
that it was only the Rich conversation upon which More was indicted, which is manifestly untrue;\textsuperscript{32} and Derrett does not take into consideration Spelman's summary of the charges.\textsuperscript{33} It hardly seems likely that the Commissioners, some of whom had undoubtedly helped to construct the case against More, would so easily have dropped most of it.

The Guildhall Report might seem to support Derrett's conclusion, in that it suggests that the Jury was summoned only after More presented his arguments against the charges: "This said, immediately twelve men were called by the Public Minister, after the custom of the British Nation, to whom were given the chapters of accusation, to deliberate and judge whether More had maliciously sinned against the Statute."\textsuperscript{34} Note that they are given charges, in the plural: \textit{capita accusationis}.

But the Guildhall Report does not mention More's plea of Not guilty, and says nothing about the confrontation of Rich and More. Moreover, Pole's account indicates that the Jury heard the discussion over the charge of remaining silent.\textsuperscript{35}

E. E. Reynolds gives a possible reason for Roper's omissions: he was simply filling in what was missing from the earlier account.\textsuperscript{36} But this argument is not really plausible, because Roper does not talk as if he is merely supplementing what others have reported.

Nevertheless, I think our best bet is to consider the two accounts—or three, counting Pole's--to be complementary.

Let me add a further consideration, drawing on Baker's general remarks about treason trials: "We know now that the judges were commonly consulted before indictments for treason were preferred, and that as a result of their advice many accused persons were released without trial," adding: "Prosecution decisions were commonly

\textsuperscript{32}It is peculiar that Roper would be so imprecise in his terminology, since he was not only a lawyer himself but also the chief clerk (protonotary) of the King's Bench. See Hugh Trevor-Roper's entry on Roper in the Oxford Dictionary of National Biography. As Trevor-Roper notes, Roper did not write his account of More's life for publication, but rather to supply information to Nicholas Harpsfield, whom Roper had commissioned to write More's official biography.

\textsuperscript{33}In his revised article, "Trial," p. 56, Derrett refers only briefly to Spelman's report, without giving his summary of the Indictment.

\textsuperscript{34}Guildhall Report, § 7 (see Appendix B below): "His dictis, continuo duodecim viri, de more Gentis Britannicae, per Ministrum Publicum sunt vocati, quibus data sunt capita accusationis, ut dispicerent ac judicarent, an Morus maliciose contra Decretum pecasset."

\textsuperscript{35}Reginald Pole, \textit{Pro defensione}, fol. 90 (below, Appendix D, no. 6).

\textsuperscript{36}Reynolds, \textit{Trial}, p. 106.
taken in Council, with the judges present." He continues: "This being so, one would not expect the judges as a rule to countenance purely legal objections by those who had been brought to trial on their advice, at least when they were the very objections which they had already considered privately." So, we should conclude that it was unlikely in More's case that the Judges would have admitted legal flaws in the Indictment that they had been consulted on. This is doubtless the reason why Baker gives an alternative to Derrett's conclusion, namely, that it may have been the Prosecutor (that is, Sir Christopher Hales, as we will see), and any advisors that he might have had, who, in response to More's legal objections on the point of silence, decided not to press forward. We note that Baker makes no comment about the other main charge, of conspiracy with Bishop Fisher, which Spelman singled out in his summary.

c) More's Pleading, and the Significance of "Maliciously"

Let us therefore start with Roper, who tells us that, when More was brought from the Tower and arraigned before the bar of the King's Bench, after the Indictment was read to him, he asserted that it was not true that he denied the King's Supremacy, and therefore he pleaded Not guilty.

He reserved the right to "a-void" the Indictment "after verdict"; that is, if the Jury returned a guilty verdict, he would offer reasons why the Indictment's substance ("the body of the matter") should be considered void.

But he did make an observation at the present time, just after pleading Not guilty: if the words, "maliciously, traitorously, and diabolically" were not in the Indictment, there would be no basis for any just charge against him. He presumably meant that the actions, or lack of actions, alleged in the Indictment, even if admitted or found to be true, would not constitute offenses in themselves. They could only be so construed as offenses

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38 Roper, *Life*, pp. 86: "When Sir Thomas More was brought from the Tower to Westminster Hall to answer the Indictment, and at the King's Bench bar before the Judges thereupon arraigned, he openly told them that he would upon that Indictment have abidden in law, but that he thereby should have been driven to confess of himself the matter indeed, [which] was, the denial of the King's Supremacy, which, he protested, was untrue. Wherefore he thereto pleaded Not guilty; and so reserved unto himself advantage to be taken of the body of the matter, after verdict, to a-void that Indictment. And moreover added that if those only odious terms, 'maliciously, traitorously, and diabolically' were put out of the Indictment, he saw therein nothing justly to charge him."
because of the assertion that his motivation in doing them was said to have been malicious.

d) Parliament's Intention Concerning Malice

Cromwell originally wanted to make the Act of Succession, passed earlier in the same calendar year, 1534 (but in the previous regnal year, 25 Henry VIII), say that mere spoken words against it would be treason, but his advisers were against it, and the Act as passed made words alone, when "maliciously and obstinately" uttered, to be only "misprision" of treason (that is, similar to, but less serious than, treason).[^39] But in the Treason Act Concerning Supremacy passed six months later, any maliciously spoken words against the King's Supremacy or other titles were declared to be high treason.[^40]

We find out in a roundabout way, from Bishop Fisher's brother Robert, as overheard by Fisher's servant Richard Wilson, that the Commons objected to the proposed form of the new Act, whereby "speaking is made high treason, which was never heard of before, that words should be high treason. But there was never such a sticking at the passing of any act in the Lower House as was at the passing of the same [the November 1534 Act of Treason Concerning Supremacy], and that was the [word] 'maliciously,' which, when it was put, it was not worth [lacuna], for they would expound the same Statute themselves at their pleasure" (Wilson's testimony of June 7, 1535).[^41] John Bellamy interprets this to mean: "The government was going to expound the treason act of 1534 according to its pleasure, regardless of the inclusion of the word 'maliciously.'"[^42] Whether or not this was in fact Robert Fisher's meaning, it turned out to be the case.

Robert Fisher's understanding of Parliament's intention, according to Wilson's further testimony (on June 8), was that "maliciously" was put into the Statute so that "a

[^39]: Act of Succession, 25 H8 (1533-34) c. 22 § 6 (Statutes 3:474); Elton, Policy and Police, pp. 276-77. The word "maliciously" is also in § 5 (p. 473), which declares anything done maliciously in writing or printing against the King's second marriage or its issue to be high treason.
[^40]: Act of Treason (Concerning Supremacy), 26 H8 (1534) c. 13 § 1 (Statutes 3:508-09)
[^41]: Gairdner, Letters and Papers 8, no. 856, sec. 2 (p. 326). More himself would no doubt have disagreed that mere words had never constituted treason (if not high treason) before this, since in 1533 he said he would "advise every man for fear of treason, beware of all such lewd language, and not, under color to teach the judges their part, to tell the people without necessity that though they talk traitorous words, yet it is no treason": More, The Debellation of Salem and Bizance, ed. John Guy, Ralph Keen, Clarence H. Miller, and Ruth McGugan, Complete Works, vol. 10 (New Haven 1987), ch. 14, p. 69. More is opposing Christopher St. German's implication that "to talk heresies is none heresy."
man might answer to the questions not maliciously, and be in no danger.” Wilson stated that Bishop Fisher himself said that "a man may answer a question without any malice.”

G. R. Elton maintains that the Commons did not put the term "maliciously" into the act, but that it was already in the proposed bill as presented to them (just as it was in the Act of Succession, as we have seen). He suggests rather "that the Commons' debates turned upon the safeguard provided by the requirements of malice to make words treason.” Which of course amounts to the same thing: Commons clearly intended to stipulate that only malicious words or actions violated the Statute.

It will be instructive to see the accounts given by William Rastell in his Life of More, even though Elton has judged them to be "artifice rather than report.” Rastell, born in 1508, set up as a printer of legal matters in 1529, and he was More's principal publisher. He also trained as a lawyer himself, being admitted to Lincoln's Inn in 1532, and he was undoubtedly an interested eyewitness to all of the subsequent events that we are concerned with here. He wrote his biography of More during his self-imposed exile in Louvain, between 1562 and his death in 1565, but it survives only in a few fragments, mainly dealing with Bishop Fisher. Rastell not only acted as a lawyer, but he served as a Justice of the Queen's Bench under Mary and Elizabeth, from 1558 (only three weeks before Mary's death) to 1562.

Rastell speaks of six Acts of the Parliament of 26 Henry VIII (1534) made in opposition to the Lords and Commons, which were "compassed by sinister and corrupt means." The second was the Act (c. 2) requiring every subject to swear an oath concerning the succession. He notes that the Act of Succession itself (passed earlier in 1534, 25 H8 c. 22) did not require such an oath, and the holy men who refused it (before this additional Act was passed) were wrongfully imprisoned for refusing it. The third Act

43Gairdner, loc. cit., sec. 14 (p. 327)
44Ibid., sec. 7 (p. 327).
45Elton, Policy and Police, pp. 283-84.
46Ibid., p. 408 n. 2.
47William Rastell, Life of More, i.e., The Rastell Fragments, Being "Certen Breef Notes Apperteyning to Bushope Fisher, Collected out of Sir Thomas Moores Life, Writt by Master Justice Restall," Appendix 1 of Elsie Vaughan Hitchcock's edition of Harpsfield's Life of More, pp. 219-52, 359-70; and see her Introduction, pp. ccxxv-ccxix: "Rastell's Life of More" (I take it that this is by Hitchcock, but it could be by R. W. Chambers, the author of the life of Harpfield just preceding, pp. clxxv-ccxiv).
he singles out is c. 22, the Act condemning Thomas More of misprision; the fourth is c. 1, the Act of Supremacy, and the fifth is c. 13, the Act of Treason enforcing it. He says this about the last-named Act:

Fifthly, an Act whereby it was made high treason to do or speak against the King's Supremacy and other things. Note diligently here that the bill was earnestly withstood, and could not be suffered to pass, unless the rigor of it were qualified with this word, "maliciously": and so not every speaking against the Supremacy to be treason, but only maliciously speaking. And so, for more plain declaration thereof, the word "maliciously" was twice put into the Act. And yet afterwards, in putting the Act in execution against Bishop Fisher, Sir Thomas More, the Carthusians, and others, the word "maliciously," plainly expressed in the Act, was adjudged by the King's Commissioners, before whom they were arraigned, to be void.\footnote{Rastell, Life of More, extract B, pp. 228-29.}

e) The Justices' Previous Pronouncements on Malice

As was stated at the beginning, all of the professional Judges (that is, the Justices) who were on the Commission trying More also served on the other trials of treason against the Supremacy Statutes. Let us listen to what they are reported to have said on the subject of malice, as well as other aspects of the trials pertinent to More's trial.

Rastell describes the trial of three Carthusian priors and the Bridgettine monk Richard Reynolds on April 28-29, 1535, thus:

The four religious persons were arraigned, and the Carthusians, by the mouth of John Houghton, their Prior, confessed that they denied the King's Supremacy, but not maliciously. The Jury could not agree to condemn these four religious persons, because their consciences persuaded them they did it not maliciously. The Judges hereupon resolved them that whosoever denied the Supremacy, denied it maliciously; and the expressing of the word "maliciously" in the Act was a void limitation and restraint of the construction of the words and intention of the offender. The Jury for all this could not agree to condemn them; whereupon Cromwell, in a rage, went unto the Jury and threatened them, if they condemned them not. And so, being overcome by his
threats, they found them guilty, and had great thanks. But they were afterwards ashamed to show their faces, and some of them took great thought for it.  

The extract from Rastell dealing with the efforts to get a damaging statement out of Bishop Fisher is taken from Chapter 55 of Book 3 of his Life of More. Immediately after the execution of the Carthusians and Reynolds on May 4, he says, certain members of the Council came and assured Fisher that his giving an opinion "could be no manner danger to him, because it should fully appear that he did it not of any malice or evil will towards the Prince, but only for the certifying of the King of his opinion." But Fisher realized that they were trying to ensnare him, and also, "credibly hearing how this word 'maliciously' in the Statute of Treason was of none effect in the Carthusians' condemnations, he therefore would make no answer to this question." But then a messenger arrived from the King asking to know his true opinion, which he could give with impunity.  

The extract continues with Chapter 58, which recounts the Bishop's trial in detail, giving the names of the Commissioners who sat in judgment against him on June 17 (including Audeley, Cromwell, FitzJames, and Spelman), and the names of the Jury. The only witness against him was the King's messenger spoken of before, who admitted that it was by the King's command that he had assured him, on his oath, that his response would not bring him any harm. "'But all this,' quoth this wicked witness, 'do not discharge you any whit.'" Fisher replies to his Judges:  

Oh, my Lords, how can this only testimony burden me, that ought, as the case standeth, by all equity, all justice, all worldly honesty, and all civil humanity, to be no whit charged here withal, though in my so doing I had committed

50Ibid., pp. 229-30. Note that Rastall mistakenly says that Houghton was the prior of the other two (Bevall and Axholme), but they were also priors, of their own houses.  
51Ibid., extract C, pp. 231-35. The Bollandist historian François Van Ortroy, "Vie du bienheureux martyr Jean Fisher, cardinal, évêque de Rochester (†1535)," Analecta Bollandiana 10 (1891) 121-365, 12 (1893) 97-247, at 10:176-78, rejects the story of the messenger as fiction, but R. W. Chambers, in his historical notes to Hitchcock's edition, pp. 363-68, argues learnedly for its authenticity. However, Elton, Policy and Police, p. 408 n. 2, points out that it is not in the Indictment, a point made by Van Ortroy as well. Van Ortroy gives the pertinent words of the Indictment on pp. 12:171-72 n. 2, and E. E. Reynolds, Saint John Fisher, rev. ed. (Wheathamstead 1972), pp. 285-86, gives a translation: he was charged with having explicitly denied the King's Supremacy under interrogation on May 7. Elton says, "Though this seems unlikely it is probable that he said enough, for he was always inclined to say too much" (p. 408).
treason? And besides this, the very Statute that maketh this speaking against the King's Supremacy treason is only and precisely limited where such speech is spoken maliciously. And now all ye, my Lords, perceive plainly that in my uttering and signifying unto the King of mine opinion and conscience, as touching this his claim of Supremacy in the Church of England, in such sort as I did, as ye have heard, there was no manner of malice in me at all, and so I committed no treason.

Rastell then narrates the response of the Commissioners:

To this was it answered to the Bishop by some of his Judges, utterly devoid of worldly shame, and affirmed by some of the residue, both that the word "maliciously" in the Statute was of none effect, for that none could speak against the King's Supremacy by any manner of means but that the speaking against it was treason; and also that that message or promise to him from the King himself neither could nor did, by rigor of our law, in any wise discharge him; but that in so declaring his mind and conscience against the King's Supremacy, though it were even at the King's own commandment and request, he by the Statute committed treason; and nothing might discharge him now of the cruel penalty of death appointed by the Statute for speaking against the King's Supremacy, howsoever the words were spoken, but only the King's pardon, if it would please His Grace to grant it him.

Rastell's account was obviously the source of the corresponding passages in the Life of Fisher, written most likely in the 1570s, and probably by John Young, in which the King's deceitful messenger is identified as none other than Richard Rich. Fisher is represented as addressing the Judges thus: "I pray you, my lords, consider that by all
equity, justice, woor[l]dy honesty and courteus dealing, I cannot, as the case standeth, be
directly charged therewith as with treason, though I had spoken the words in deed, the
same being not spoken maliciously, but in the way of advice and counsel, when it was
requested of me by the King himself. And that favor the very words of the Statute do
give me, being made only against such as shall maliciously gainsay the King's
Supremacy, and none other." To this, we are told, "it was answered by some of the
Judges that the word 'maliciously' in the Statute is but a superfluous and void word; for, if
a man speak against the King's Supremacy by any manner of means, that speaking is to
be understand and taken in law as maliciously." Fisher replies: "My lords, if the law be
so understood, then is it a very hard exposition, and, as I take it, contrary to the meaning
of them that made the law."54

Perhaps we can take as truth, or as verisimilar (close to truth), the back-and-forth
about maliciously in this account, even though the story of entrapment and the single
testimony of the entrapper does not seem to be true. Fisher was indicted specifically on
having denied the King's Supremacy on May 7,55 and, though the report of that
interrogation does not survive, his servant Richard Wilson said that he had heard him
give such an answer on that day.56

4. The Conduct of the Trial

As soon as More pleaded Not guilty, the Petty Jury was impaneled, and,
according to normal procedure, the Indictment would have been explained to them, in
More's presence. The explanation was presumably made by the Royal Procurator
(Proctor), as he is called in the Guildhall Report,57 which in Harpsfield comes out as the
King's Attorney.58 Pole calls him the King's Advocate.59 He was Sir Christopher
Hales,60 who, in the terminology of the time, was called the King's General Attorney.61

54Life of Fisher, section 174 (Van Ortoy, 12:178-79).
55Gairdner, Letters and Papers 8, no. 886.iii (p. 350).
56Ibid., no. 856.3 (p. 326). See also Maria Dowling, Fisher of Men: A Life of John Fisher, 1469-
1535 (Houndmills 1999), pp. 156-57.
57Guildhall Report, § 3.
58Harpsfield's Life, p. 185.
59Pole, Pro defensione, fol. 89v.
60See the Oxford DNB entry on Christopher Hales, by J. H. Baker.
6125 Henry VIII (1533-34) c. 16 § 2 (Statutes 3:457): "...the King's General Attorney and General
Solicitor which for the time is..."
According to Derrett, Hales "led for the Crown." By using this twentieth-century expression, however, he begs a very important question: he presumes the existence of a prosecuting "team," with one "leader" and one or more "followers." Accordingly, he adds: "Sir Richard Rich, the king's 'general solicitor' with him." This would indeed be shocking, at least to our modern sensibilities, if Rich, who figured prominently in the Indictment, and who was the Prosecution's sole recorded witness against More, and whom, according to the same record (Roper's account), More accused of giving perjured testimony, was also acting as a prosecutor at the trial. But Rich's participation in conducting the case seems to be a mere inference on Derrett's part, as being the sort of thing that the General Solicitor would be expected to do.

It is likely, I submit (making an inference of my own), that More made his responses to the first charges in the Indictment, which the Guildhall Report records, only at this time: that is, in the presence of the Petty Jury.

As noted, in such a trial, the Prosecutor explained the Indictment to the Jury, perhaps even giving an opening speech (Bellamy gives examples from treasons trials later in the century), while at the same time, or subsequently, confronting the Prisoner with the substance of the charges, with the Prisoner/Defendant responding. As Parmiter says, "The whole trial was virtually a long debate between the prisoner and the prosecuting counsel, in which they questioned each other and grappled with each other's arguments."

The Prosecution could also bring witnesses and documentary evidence as proofs of the charges. In More's case, it was not possible to introduce letters between More and Fisher, for they had all been burned. But it was possible to introduce written testimony concerning them. The only witnesses that we hear of are Rich and the two men who were with him when he conversed with More in the Tower, but it is likely that there were other witnesses as well, whose testimony was so routine that there was no need to mention it. As Bellamy points out, "Amongst the weapons which the prosecution used in order to prove its case, pride of place went to the introduction of examinations and confessions." And he adds: "It also assisted the crown's case if the person who had devised the

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62Derrett, "Trial," p. 60.
63Bellamy, Tudor Law of Treason, p. 147.
examinations or confessions and also the examiner who had interrogated, made an appearance in court to vouch for their veracity in front of the accused."\textsuperscript{65} As we will see below, servants in the Tower had been examined on the subject of letters between More and Fisher, among other things, and the chief examiner was a doctor of civil law named Thomas Legh.\textsuperscript{66} It may well be that Doctor Legh appeared to certify his recording of the examinations, and that the servants themselves were not required to testify \textit{viva voce}. And since Rich's conversation with More was the only part of the Indictment that was not vouched for by formal examinations--because it was based only on a private conversation, of which Rich had submitted a report in writing after it occurred--this was doubtless why he was required to appear in person to affirm and expand upon the contents of his report.

5. The First Part of the Accusation: Silence

\textbf{a) The Charge of Remaining Silent, and More's Defense}

According to the Guildhall Report, More characterized "the first part of the accusation" as charging him with showing malevolence towards the King because of his second marriage. This is not in the Indictment as we have it, but perhaps something of this nature came out in the explanation of the Indictment given to More, or to the Petty Jury, or to both. More replied that he had always spoken on that matter as his conscience urged him, and that he was never willing to conceal the truth from the King. For this sin, if it should be called a sin, he had been adjudged to perpetual prison, where remained for the last fifteen months, and his goods confiscated.\textsuperscript{67} He then said that he would limit himself only to the principal head or chapter of the accusation ("solum ad praecipuum caput accusationis"), namely, that he merited the penalty specified in the Statute because he had maliciously, falsely, and with unfaithful mind injured the King's majesty and name and titles, especially because, when asked by Secretary Cromwell what he thought of the Statute, he replied that he did not wish to occupy himself in such matters. "To which I clearly respond to you that it is not lawful for me to be judged to death for such

\textsuperscript{65}Bellamy, \textit{Tudor Law of Treason}, p. 148.
\textsuperscript{66}Gairdner, \textit{Letters and Papers} 8, no. 856 (pp. 325-31), examinations of 7-11 June, 1535, "before Sir Edmund Walsingham, lieutenant of the Tower, and Thomas Legh, D.C.L., and in presence of Henry Polstede, John Whalley, and John ap Rice."
\textsuperscript{67}Guildhall Report, § 2 (a).
silence on my part, because neither your Statute nor anything in the laws of the whole world can rightly ("jure") afflict anyone with punishment, unless one has committed a crime in word or deed, since laws have constituted no penalty for silence." 68

To this the Royal Proctor responded that, on the contrary, such silence in this case was a clear sign of evil intention against the Statute, since truly faithful subjects of the King, when asked their opinion of it, were bound to say it was good. 69

More replied, "But if it is true what universal law says, 'One who keeps silent seems to consent,' then that silence of mine gave approval to that Statute of yours more than it weakened it. But as for all the faithful being bound and obliged to make response, etc., I answer that there is a much greater obligation on the part of a good man and faithful subject to consult his own conscience and eternal salvation and to follow the prescriptions of reason than to take account of any other thing, especially since the kind of conscience that I have offers no offense to its Prince and stirs up no sedition." 70

Another version of this report, published in 1536 in a pamphlet of excerpts of letters on the English martyrs, titled Novitates quaedam, 71 has an ungrammatical addendum here: "asserting this to you, that my conscience had not been opened to any mortal." 72

To sum up, More says, according to the Guildhall Report, that he could be punished only for doing or saying something offensive, not for doing nothing and saying nothing, since there is no law anywhere that punishes silence. The King's Proctor objects

68Ibid., par. 2 (c): "Ad quod clare respondeo vobis, hujusmodi silentio me morti adjudicari non licere, quum quidem neque vestrum Decretum neque quicquid legum in toto orbe quemquam jure supplicio afficere potest, nisi quis vel dicto vel facto crimen admiserit, cum silentio nulla poena legibus sit constituta."

69Guildhall Report, § 3: "Tum Regius Procurator, suscipiens sermonem, 'Hujusmodi,' inquit, 'silentium certum aliquod indicium erat, nec obscura significatione, malignae aliquius cogitationis contra ipsum Decretum, propterque quod singuli subjecti, ut fideles suo Principi, interrogati [in] sententiam super illo Decreto, obligantur aperte et sine dissimulatione respondere ipsum esse bonum ac sanctum' ('Then the Royal Proctor started to speak, saying, 'Such silence was a sure indication and a not obscure sign of evil thoughts about the Statute, because all subjects, being faithful to their Prince, when interrogated on their view concerning the Statute, are obliged to respond openly, and without dissimulation, that it is good and holy')."

70Guildhall Report § 4: "Tum Morus, 'At si,' inquit, 'verum est quod jus commune ait, "Qui tacet, consentire videtur," neum istud silentium plus approbavit vestrum Statutum quam infirnavit. Quousque vero fidelis quisque tenetur et obligatur respondere, et cetera: respondeo, multo magis ad officium boni viri et fidelis subditi pertinere, ut suae conscientiae ac perpetuea salutis consulat, et rectae rationis praescriptum sequatur, quam [ullius alterius rei habeat rationem, propterque quod hujusmodi conscientia qualis est mea suo Principi nullam praebet offensionem neque seditionem excitat."


72Addition to Guildhall Report, § 4: "illud vobis asseverans, nulli mortalium meam conscientiam fuisse apertam."
that his silence was an offense in itself, in that all subjects have an obligation to give his opinion on the Statute when asked. More's rejoinder is that there is a principle of general law that silence signifies consent, and that furthermore the obligation to one's conscience is more important than any obligation to respond to interrogation (and he has never revealed his conscience on this point to anyone).

b) Reginald Pole and the Charge of Silence

Henry VIII had been expecting support for his dynastic moves from his clerical cousin, Reginald Pole, who was living abroad, and he seemed not to have thought that the elimination of Thomas More would have had any effect on his allegiance. Perhaps it was to ensure his complicit attitude that Pole's elder brother, Henry Lord Montague, was put on the Commission that tried More. But Pole was appalled when he heard of the conviction and execution of Fisher and More. He was so shocked, he tells the King, that he remained stupefied for a month, until he finally brought himself to break his silence and speak his mind.

Pole was living in Padua when the executions of Fisher and More took place, which must have been reported to him immediately. Doubtless his informant was not his brother, who, if he was at all troubled by the outcome of More's trial, would hardly have passed on his adverse opinion to Reginald. He was clearly very disturbed to hear of

Pole was Henry VIII's second cousin, being the grandson of George Duke of Clarence, brother of Edward IV, Henry's grandfather. He had always been of a clerical and scholarly bent, but was as yet only in minor orders (and therefore still able to marry), even after being named cardinal in late 1536. There is no record cited of Pole's ordinations to the minor orders, which probably occurred during his early studies. Being in minor orders was the normal prerequisite for receiving benefices, and he received his first, as Dean of Wimborne in Dorset, in February of 1518, a month before his eighteenth birthday. See A. B. Emden, A Biographical Register of the University of Oxford, A.D. 1501 to 1540 (Oxford 1974), p. 453. He is identified as a cleric in the record: Letters and Papers 2, ed. J. S. Brewer (1864) no. 3943, p. 1227.

Pole, Pro defensione, fol. 107v: "Previously I remained silent, since I carried my fear with me always, but now you will see that I will not flee from speaking out what I think. Let me say, with God as my witness, what happened to me. From the time that I heard of the slaughter of those men, I do not deny that I lay senseless and unable to speak for almost a month, so stunned was I by the novelty and wonder of such unheard-of cruelty, but finally, as I collected myself, having always found myself in agreement with those men, I decided that my views should not be further hidden from sight. And not only that, but whereas I had been accustomed to whisper them now and then into a friend's ear, I now persuaded myself that they were to be preached from the housetops, as if Christ Himself were commanding it" ("Qui antea semper silerem, qui timorem semper praemieram, jam videas quae non refugiam quae sentio proloqui. Equidem, ut teste jam Deo, dicam quid mihi acciderit, quo primum tempore de illorum nece accepi, quamquam certe non inficior me unum circiter mensem, quasi stupidum et sine voce jacuisse, rei novitatem et miraculam tam inauditae crudelitatis perculsum, tamen, ut me collegi, qui semper cum illis viris sensisset, non modo non occultandum amplius sententiam meam esse duxi, sed si illam antea in amici aurem insussurrare interdum solitus eram, tum supra tecta depraedicandam quasi jubente Christo, mihi persuadebam").
Reginald's harsh stance against the King in his treatise, not least, of course, because of the backlash that could be expected against his family, specifically himself and their mother, the Countess of Salisbury.\(^75\)

But since Pole did not start writing his treatise until September or so, and did not finish it until the next year, he would have had time to read another account. His most likely supplementary source would be the *Expositio fidelis*, a letter purportedly written by a disciple of Erasmus, dated 23 July 1535.\(^76\) This account incorporated the substance of the *Paris News Letter*, the French translation of the original Latin account represented by the Guildhall Report.\(^77\)

Pole claims to be drawing on the records (*acta*) of More's trial, while admitting in effect that he knows nothing about Fisher's trial. He says that "they" might have been able to come up with a plausible charge against Fisher, since, as befitted his position as a bishop, he had openly opposed their Law. But they could find no such pretext for any likely charge against More.\(^78\) Instead they recited a long and intricate accusation against him filled with ambiguous allegations of lese majesty, which was designed to obscure the fact that they had nothing of substance to charge him with. It was so prolix and complex that More, even with his extraordinary memory, openly admitted that he could not remember even a third of what was said. He would, however, reply to a few of the charges, or rather to the one point that was the basis of everything else, namely, the allegation that he did not approve of their new Law.\(^79\)

More made two arguments against this charge. First, he said that, since the Law had been passed after he had been committed to life imprisonment, it did not apply to

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\(^{75}\)See Montague's letter to Reginald, 13 September 1536, calendared by Gairdner, *Letters and Papers* 11 (1888) no. 451, pp. 181-82; and by Thomas F. Mayer, *The Correspondence of Reginald Pole, A Calendar*, 3 vols. (Aldershot 2002-04), 1:118 (no. 120). Montague's attitude about the matters under dispute is paraphrased by Gairdner thus: "I, who lack learning, could never conceive that laws made by man were of such strength but that they might be undone again by man, for what seems politic at one time, by abuse proves at another time the contrary."

\(^{76}\)The letter was printed in 1535 by the Dutch printer Froben, in whose house Erasmus was living. Its full title is: *Expositio fidelis de morte D. Thomae Mori et quorundam aliorum insignium virorum in Anglia*; it is edited in *Opus epistolarum Des. Erasmi Roterdami*, ed. P. S. Allen et al., 12 vols. (Oxford 1906-58), in vol. 11, ed. H. M. Allen and H. W. Garrod (1948), Appendix 27, pp. 368-78.

\(^{77}\)As noted above, Derrett prints the French text in parallel to his reconstruction of the Latin account ("Neglected Versions"). Of Pole he says, "Cardinal Pole had some scraps of information from an eye-witness, but he used them indifferently and relied upon the *Paris News Letter*, or another version of the original account" ("Trial," p. 56).


\(^{79}\)Ibid., fol. 89-89v (no. 3).
him, because he was legally dead, and he was not obliged to comment on any legislation that did not pertain to him. Second, he had done nothing in word or deed against the Law.  

The Judges were astounded by this response and reduced to silence, which turned into rage and fear that More would escape their net. They turned to the Royal Advocate to come to the rescue, and he told More that his very silence was being charged against him as a crime. Specifically, when he was interrogated in prison on what he thought about the Law, More replied that all of his thoughts were now on God alone, and that he no longer had any concern about human laws, which did not apply to him. This silence, the Advocate concluded, was a sign of his malicious intentions. The Judges seized upon this ploy with great relief, seeing it as a way to keep the case from collapsing, and they all began to cry out, "Malice, malice!"  

More tried to answer this argument by saying that no one could be legitimately condemned for impugning a law merely by remaining silent about it, and in fact, according to the legal maxim, silence would signify assent, not dissent. But no attention was paid to him, and the Jury was called forth to give a verdict.  

Pole's picture of the Judges' consternation at More's initial response could hardly be true of all of them, certainly not of those who had connived in formulating the Indictment or who, particularly the Justices among them, were experienced enough to take in the terms of the Indictment. But there may be some truth to it as far as some of the "lay" members of the panel were concerned.  

c) The Rules of Law Concerning Silence  

For purposes of our present investigation, we can leave aside the question of the relative priority of conscience over other obligations. Let us proceed to take up More's defense in reverse order. What is the general law, *jus commune*, on the significance of  

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80 Ibid., fol. 89v (no. 4).  
81 Ibid., fols. 89v-90 (nos. 5-6).  
82 Ibid., fol. 90 (no. 6).  
83 In my view, the historical meaning of the phrase *jus commune* in the Middle Ages and Renaissance was always "the general law on a specific point," and never "the body of general law." This latter meaning has been given to the phrase by modern historians, who take it to refer (both now and in the past) to a combination of canon and Roman civil law and sometimes feudal law; this new meaning corresponds to the Italian term, *diritto comune*. See my paper, "Medieval *Jus commune* versus/uersus Modern *Ius commune*; or, Old 'Juice' and New 'Use,'" *Proceedings of the Twelfth International Congress of*
silence? And what does it have to say about obligations to speak or to act, and are penalties ever in order for failure to speak and act when called for?

The principle that More cites, "Qui tacet, consentire videtur," is the forty-third of eighty-eight "Rules of Law" (Regulae Juris) given at the end of the Sext, that is, the Liber Sextus, issued by Pope Boniface VIII in 1298.84 This principle has proved very puzzling to students of Thomas More, and we need to examine it, and to discuss various kinds of silence, and various implications of silence in different circumstances.

Let me point out first of all that the very next Rule of Law, the forty-fourth, also deals with silence: "One who remains silent neither confesses nor denies."85

Both of these rules seem to be outlandish: partially contradictory, and of no modern relevance. But, properly understood, they are both commonsensical and fully in use today. The first rule pertains to one's reaction to an action; the second, one's reaction to a yes-and-no question. Let me illustrate. Let's say that a beachfront property in Malibu has a path leading from the public street to the public beach. If persons ask the owner if they are allowed to use the path and he makes no answer, they don't know where they stand, whether he approves or disapproves. But if they then go ahead and use the path and the owner voices no objection, their doubt is resolved: the owner assents to their actions. Another version of the first rule adds the rider, "ubi tractatur de ejus [i.e., suo] commodo,"86 that is, "when it deals with his own interest."

d) Qui tacet consentire videtur in Convocation, 1531

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85 Sext 5.12.44: "Is qui tacet non fatetur, sed nec utique negare videtur": more literally translated: "He who is silent does not confess, nor is he seen to deny." This rule derives from Justinian's Digest 50.17: De diversis regulis juris antiqui, chap. 142 (or 184 in Medieval-Renaissance editions): "Qui tacet non utique fatetur, sed tamen verum est eum non negare."

More was not the first to invoke the principle of assent by silence in connection with the question of the Royal Supremacy; it had been done over four years earlier, when Henry first proposed this title to the Southern Convocation at the beginning of 1531.

After secret negotiations between Councillors and Justices of the King with the Speaker of Convocation and other members of the Clergy, the title proposed for approval on February 7 was this: "Sole Protector and Supreme Head of the English Church and Clergy." We are told that "this concept of the Supremacy did not well please the Prelates and the Clergy, and they desired it to be modified." For three sessions they negotiated with the Royal Councillors to change the King's mind and to express the article in milder terms. Finally, George Boleyn Viscount Rocheford brought back Henry's final formulation, with refusal of further discussion: "Sole Protector and Supreme Head after God."

But somehow further modifications were made, and the article presented by Archibishop Warham for approval on February 11 read as follows: "As His Majesty is the Singular and Unique Protector and Supreme Lord of the English Church and Clergy, we recognize that he is also Supreme Head, insofar as the Law of Christ allows." Bishop Fisher is thought to have been behind this saving phrase, but he and the other bishops were hardly satisfied with it. The proposal seems to have been met by complete silence, whereupon Warham said, "Qui tacet consentire videtur." Then someone broke the silence, saying, "Well, then, we are all remaining silent." The record concludes: "Therefore, by unanimous consent both Houses subscribed to this article."

This sort of consent, whereby abstentions were turned into Aye votes, was hardly a ringing endorsement, and the procedure was not quite as simple as is stated. Warham later in the day succeeded in getting the signatures of the bishops present, including Fisher's, but the lower Clergy were by no means unanimous in their consent, and in fact

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some members, notably those who represented Fisher's diocese of Rochester, entered protests that their approval of the title in no way lessened their obedience to the Pope.\footnote{Dowling, loc. cit.; Stanford E. Lehmberg, \textit{The Reformation Parliament, 1529-1536} (Cambridge 1970), p. 115.}

More had undoubtedly heard of these proceedings and therefore had precedent in using the maxim on silence in his own behalf.

e) \textbf{Obligation to Speak (Silence as Sin or Crime)}

Now then, are there situations in which one is obliged in conscience to declare one's conscience or one's thoughts? In the criminal procedure of both English Common Law and international Canon Law (that is, the inquisitorial system), the defendant is obliged to speak to the charges, that is, about a specific past crime, not about his thoughts. In an inquisition, one would be put under oath at this point, forced to swear to tell the truth about guilt or innocence. This was an addition to the original rules, but justified from the practice of compurgation, according to which one must swear to one's innocence after suspicion is proved. This oath was an obligation in conscience, and any denial of guilt by a guilty person would constitute perjury, both in the eyes of God and man. In contrast, in the Common-Law tradition, no oath was taken, and a plea of Not guilty meant no more than \textit{Volo contendere}.\footnote{H. A. Kelly, "The Right to Remain Silent: Before and After Joan of Arc," \textit{Speculum} 68 (1993) 992-1026, repr. in \textit{Inquisitions and Other Trial Procedures in the Medieval West}, as chap. 3 (Aldershot 2001), p. 996.} In other words, the right against self-incrimination extended further in English practice, at least as eventually conceived. But remaining silent when charged, which is nowadays taken to be the equivalent of a Not guilty plea, was in the past considered a serious offense, which eventually led to the barbarous custom of pressing to death.\footnote{See Baker, \textit{Introduction to English Legal History}, pp. 508-09.} In More's day, a failure to plead would result in conviction. In 1534, the year before More's trial, when Lord Dacre of the North was tried for treason, according to Spelman's report, he readily pleaded Not guilty, but refused to say that he wished to be tried by his peers. The High Steward then "told him that he would have judgment as a traitor, as one who refused to be tried according to law, if he would not say that he would be tried by his peers."\footnote{Spelman's Reports, Crown no. 26 (1:54).} A decade later, failure to plead was declared by statute to be equivalent to a plea of Guilty (or, more accurately, to being
found guilty by a jury). In a Statute passed just after Henry VIII's death, one who refused to plead was said to "stand willfully, or of malice, mute." But outside of this special situation, was anyone ever legally or morally obliged to speak out, when remaining silent would be a crime? Yes, of course, and another legal maxim can be cited to confirm it: "Qui potest et debet vetare, tacens jubet." That is, "If one can and should speak against something, by remaining silent one commands it"—referring to an occurring or impending crime.

Can we point to any other circumstances in which one is obliged to bring one's private thoughts to light? There was indeed such an obligation placed upon everyone in the sacrament of confession, but the confessor was himself bound to silence by the severely strict seal of confession. But what about in a court of law? Were there any circumstances in which one was obliged to answer questions posed by a judge that would reveal secret desires or thoughts?

Here is St. Thomas's opinion on a similar question, speaking from the viewpoint of the accusatorial and inquisitorial systems of criminal procedure, which of course were operative in the ecclesiastical courts in England. A judge has no right to prosecute a crime unless 1) there is an accuser, or 2) there is confirmed public suspicion, or 3) the judge witnesses the crime himself. When one or other of the first two conditions is met, the defendant is morally bound to respond truthfully, even though his response will convict him, because his obligation to obey his superior supersedes his obligation or right against self-incrimination. However, if the judge were to ask a question in violation of the law (for instance, let us say, concerning deeds not connected with the charged crime, or concerning unspoken beliefs), then the defendant is not required to answer at all. What then should he do, if remaining silent will not suffice? Well, he can

Footnotes:

93 Henry VIII (1543-44), c. 5 ("A Bill Concerning the Six Articles") §7: "If any person . . . stand mute or will not directly answer to the same offenses whereof he . . . be indicted as is aforesaid, then that every such person . . . for his . . . contumacy shall have judgment to suffer like pains of death, losses, forfeitures, and imprisonment as if the same person . . . so indicted had been thereof found Guilty by verdict of twelve men" (Statutes 3:962).
94 1 Edward VI (1547) c. 12 §9 (Statutes 4:20).
95 Black's Law Dictionary, loc cit.
96 This is the sort of situation envisaged in Justinian, Code 9.8.5, which says that those who were aware of treason (and did not reveal it) are to be punished. Derrett, "More's Silence and His Trial," suggests that Henry VIII's ministers may have had this law in mind when indicting More for his silence.
97 Thomas Aquinas, Summa 2-2.67.3 ad 2.
enter an appeal to a higher court, or extricate himself in some other licit way.\textsuperscript{98} One may not lie, but one may conceal the truth. One is not obliged to tell a judge the whole truth, but only what the law allows him to demand.\textsuperscript{99}

Duncan Derrett, when discussing More's defense that "silence itself is no crime," first cites, without comment, St. Thomas's treatment of sins of omission, which would seem to affirm just the opposite. Thomas says that a sin of omission is the refusal to obey an affirmative precept, and he gives the example of the obligation to go to church.\textsuperscript{100} This is a good example for us, because failure to go to church would rank as a crime as well as a sin, a crime being something punishable in the external forum, not simply a sin in the internal forum of conscience and confession.

Would there not be a similar precept in a Statute that commanded Henry VIII's subjects to acknowledge his ecclesiastical Supremacy? Perhaps, but this situation did not come up, precisely, since neither of the relevant Statutes of November 1534 imposed such an obligation. The first, "An Act Concerning the King's Highness to be Supreme Head of the Church of England," simply declares him to be such.\textsuperscript{101} The second, "An Act Whereby Divers Offenses Be Made High Treason," specifies as treason only the malicious use of words, writing, or craft that would deprive the King or Queen of any title or dignity belonging to them.\textsuperscript{102} Nevertheless, the King's ministers made the case (as the Indictment shows) that the King's subjects had the obligation to give a supportive answer when officially required to do so.

What if the second Statute actually had required subjects to support the King's title, or to reveal their opinions about it, under oath? Would they have had a moral and legal obligation to comply? More recorded in the letter that he sent to his daughter on June 3, 1535, that the King's Council, headed by Cromwell, claimed to be transmitting a command from Henry that More should make a plain answer as to whether he thought the

\begin{itemize}
\item \textsuperscript{99}Thomas, Summa, 2-2.69.2 corpus. For the text and further explanation, see "Right," p. 1002 n. 46.
\item \textsuperscript{100}Thomas Aquinas, Summa Theologica 1-2.71.5 (corpus and response to objection 3). See Derrett, "Trial," pp. 63, 593 n. 40.
\item \textsuperscript{101}26 Henry VIII (1534) c. 1 (Statutes, 3:492).
\item \textsuperscript{102}26 Henry VIII (1534) c. 13 (Statutes 3:508-09).
\end{itemize}
Statute "lawful or not," but then Cromwell further defined More's choices: not a plain "yes or no," but "that I should either [ac]knowledge and confess it lawful that His Highness should be Supreme Head of the Church of England, or else to utter plainly my malignity." More was able to avoid this command by responding that he had no malignity.\footnote{Thomas More, Letter to Margaret Roper, 3 June 1535, no. 64 in \textit{St. Thomas More: Selected Letters}, ed. Elizabeth Frances Rogers (New Haven 1961), pp. 249-53; numbered as no. 216 in Rogers's complete edition, \textit{The Correspondence of Sir Thomas More} (Princeton 1947), pp. 555-59. For an edition in modern spelling, see Alvaro de Silva, \textit{The Last Letters of Thomas More} (Grand Rapids 2000) no. 22, pp. 118-22.} In other words, he was not "mute of malice."

However, when Chancellor Audeley and Cromwell said that "the King might by his laws compel me to make a plain answer thereto, either the one way or the other," More replied that he would not dispute the King's authority to do so, but he responded tentatively ("under correction") that it would be "somewhat hard," or, in case his conscience were against the Statutes (he was not saying that it was), it would be "a very hard thing," because affirmation would mean the loss of his soul (that is, a mortal sin), and denial would entail the destruction of his body.

In point of fact, More had in the previous year almost been subjected to this sort of hard case, when he had been required to take the oath supposedly called for in the Act of Succession. But he was able to evade the decision by pointing out that the text of the oath presented to him differed from the oath described in the Statute, which was simply to "observe . . . the whole effect and contents of this present Act."\footnote{25 Henry VIII (1533-34) c. 22: "An Act for the Establishment of the King's Succession," § 9 (Statutes 3:474).} But it is doubtful that he would have sworn an oath that was in conformity with the Statute, since the Statute declared the marriage of Henry and Catherine void. As he wrote to his daughter Margaret, "Though I would not deny to swear to the succession, yet unto the oath that there was offered me I could not swear without the jeoparding of my soul to perpetual damnation."\footnote{More to Margaret Roper, ca. 17 April 1534 (ed. de Silva, no. 6), p. 58.} The oath that More refused was presumably the same as the oath spelled out in a new Act of Succession, passed just after the Act of Supremacy.\footnote{26 Henry VIII c. 2: "An Act Ratifying the Oath that Every of the King's Subjects Hath Taken and Shall Hereafter Be Bound to Take for Due Observation of the Act Made for the Surety of the Succession of the King's Highness in the Crown of the Realm" (Statutes 3:492-93).} This oath is said in the Act to be the one intended in the original Act; it calls for faith and obedience.
to the King and the heirs that will be born to him and Queen Anne, and seems if anything to be less demanding than the language of the first Act. There is certainly no explicit call for affirmation that the King's first marriage was null and his second one valid. But More must have decided that such an affirmation would be entailed or implied in taking the oath, and if he were ordered to take it he would have had to refuse—that is, remain silent.

f) Silence and Declaring Conscience in Inquisitorial Proceedings

In the interrogation reported by More in his letter to Margaret of June 3, Cromwell went on to point out that More, or at least the bishops, had made a practice of examining heretics on the question of "whether they believed the Pope to be the Head of the Church," and compelling them to make a precise answer. Why, then, could not the King compel an answer concerning his title?

More replied in effect that an obligation imposed by the universal Church was different from a local law. So while he did not deny Cromwell's assertion that bishops were in the habit of compelling statements of belief from heresy suspects, he seemed to assume that what he said was true. It looks like a case of silence signifying affirmation!

I have discussed the principle of silence-as-assent in my essay, "The Right to Remain Silent: Before and After Joan of Arc," in connection with the rules of due process for defendants in inquisitorial procedure. I liken our modern right to remain silent before arraignment to the implicit right accorded to defendants under the rules of inquisition, established by Innocent III at the Fourth Lateran Council in 1215. According to these rules, the first order of business is to state the charges against the summoned suspect; the charges must concern only a public crime, for which probable cause has been established: that is, it must be proved that reputable persons believe that the suspect is guilty. Only then is the suspect required to say whether he or she is guilty or innocent; if the latter, the judge must present proof of guilt (not simply proof of suspicion). But Boniface VIII in his Sext of 1298 authorized judges to skip the preliminaries of stating the charges and proving suspicion if the defendant does not object—that is, remains silent on the matter. The great lay canonist John Andrew in his Ordinary Gloss to the Sext defended this procedure on the grounds that lack of objection on the part of the defendant

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107 More to Margaret, 3 June (de Silva no. 22), p. 120.
signified consent. But that would be true only if the defendant knew what he was being silent about. The greatest of all English authorities on canon law and canonical procedure, William Lyndwood, says in his *Provinciale* (finished in 1432), that "through taciturnity alone no consent can be assumed." By the way, we know that More possessed his own copy of the *Provinciale*, and he describes himself as consulting it in his *Dialogue Concerning Heresies*.

In other words, to be strictly legal, the inquisitor would have to inform the defendant of his or her right to have charges explained before being interrogated on any subject. Inquisitors did have this obligation, of course, because they were bound to follow canon law, but it was rarely or never stressed. Similarly, in the United States, defendants always had the right to remain silent before arraignment, but it was only after the 1966 *Miranda* ruling that defendants were guaranteed of the right to know this right.

So, what was the situation in England in More's time? Did More's silence in response to Cromwell on this question mean that bishops did regularly interrogate suspects upon their beliefs? When More defended bishops' procedures against suspected heretics in reponse to Christopher St. German's charges, he repeatedly insisted that he knew of no case in which heresy suspects were ever condemned without positive proof of previous misdeeds, and not simply for hitherto unexpressed beliefs.

However, the English bishops, beginning back in 1382, started a policy of compelling suspected Wycliffites to state their views concerning Wycliffite doctrines, and a similar policy was mandated by Pope Martin V at the end of the Council of Constance. We do in fact find questions of this sort being put to heresy suspects in More's time, and in the case of the forty-five questions administered to John Lambert a bit later, in 1538, two of the questions do indeed deal with the Supremacy of the Pope. However, I have found no instance in which anyone was actually prosecuted for their

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109 John Andrew, Ordinary Gloss to *Sext* 5.1.2 ad v. *reclamante*; *CJC* (1582) 3:1:610-611.
responses to such questions. All convictions that I have seen were on the basis of past deeds, such as the preaching or teaching of condemned propositions.\textsuperscript{114}

Strictly speaking, however, admissions of belief in or support for heretical opinions would have been grounds for conviction, under the inquisitorial rules, because anything admitted in court became "notorious," an instant crime, a confession with no need of further proof, even though obtained by "unconstitutional" means.

g) More's Conscience and Speaking Out

But even though More believed that the King's assumption of such a title was wrong, and believed further that to confirm it would be mortally sinful, he obviously did not believe that he had an obligation to say so in public or to convince others of his position. To do so would have been to court death needlessly, a form of suicide, and it would also have put others in danger of death. Presumably, More would have come to a different conclusion if it had been a matter of affirming his Christian faith in general, but we don't know.

h) Proof of the First Part

As noted, no witnesses are said to have been called to prove the first part of the accusation against More, but would they have been needed, even to affirm the authenticity of the examinations taken? After all, some of the Judges (that is, the Commissioners), notably Chancellor Audeley, witnessed the cited events. This would fall under the canonical category of notoriety, as just explained: no further proof is needed when the judge has seen the alleged crime. Moreover, More himself confessed the truth of the indicted events: he did indeed remain silent on the subject of the Act on the two named occasions when he was asked to give his opinion.

Of course, whether such silence constituted malice (as the Judges decreed by acclamation in Pole's account), or whether it was necessary to prove it, is something else again, to be discussed below.

6. The Second and Third Parts: Collusion with Fisher

a) More's Responses

More distinguishes as the "Second Part of the Accusation" against him, according to the Guildhall Report, the charge that he contravened the Statute and worked for its abolition by a series of eight letters he wrote to Bishop Fisher, by which he armed him against the Statute. He says that he would dearly like those letters to be read publicly, which is impossible since, as they tell him, the Bishop burned them. Therefore he will recall their contents for them: "Some of them dealt with familiar matters, such as our old custom and friendship called for. One of them responded to his request to know how I answered when first examined on the Statute. I replied that I had exonerated my conscience and followed reason, and I urged him to do the same." That was all that was in them, with nothing worthy of death.115

More says that the Third Part of the Accusation charges him with telling the Commissioners that the Statute was like a two-edged sword, and that Fisher had made the same comparison, indicating connivance between them. More responds that he was speaking only hypothetically: "I respond that I was not speaking straightforwardly but only conditionally; that is, if there should be some statute that was like a two-edged sword, how could any person take care against coming up against one edge or the other?" ("Respondeo me non simpliciter sed sub conditione esse locutum, videlicet, si esset aliquod decretum simile gladio ancipiti, quonammodo quisquam hominum sibi possit cavere ne in alterutram aciem incurrat"). He does not know what Fisher said, but if he spoke in the same way, it was not done through any conspiracy, but rather the similarity can be accounted for by their similar training. (Just as, we might say, no collusion would be needed nowadays to account for the use of proverbial expressions like "Damned if you do, damned if you don't," or "Catch 22.") More repeats that he never said anything maliciously against the Statute.116

b) Joint Use of Two-Edged-Sword Image

We can speculate that the origin of this combined set of charges against More began with the fact that both he and Fisher on the same day made use of the same simile

115Guildhall Report, § 5.
116Ibid., § 6.
of a two-edged sword. This would have been seen as rock-solid evidence of possible collusion between them. It could be testified to by Audeley and the other Commissioners who had been among the group of interrogators on June 3. A fragmentary report of the interrogation of More on June 3 survives, which has him using the sword metaphor.\footnote{See Gairdner, \textit{Letters and Papers} 8, no. 814.i (p. 309), for the fragmentary report of the interrogation of More.} He did not include a reference to the metaphor in the detailed report of the interrogation that he sent to his daughter Margaret, discussed above.\footnote{More, \textit{Select Letters}, no. 64, pp. 249-53; de silva, no. 22, pp. 118-22.}

c) Evidence of Letters Having Been Exchanged (No Evidence on Contents)

Cromwell and the others who were establishing the case against More must then have set out to try to show that More and Fisher had connived together. One way of doing this would be to demonstrate that they had had a written correspondence when they were both in the Tower, which was easy to do, since it was admitted to by both More and Fisher. But nothing could be proved about the malicious content of such letters, unless the letters themselves could be found, or unless Fisher or More confessed the same, or testimony to this effect could be had from someone who had read them.

They therefore set about interrogating servants in the Tower, from June 7 to June 11.\footnote{Gairdner, \textit{Letters and Papers} 8, no. 856 (pp. 325-31). Reynolds, \textit{Trial}, pp. 94-97, mixes up the dates, thinking that Richard Wilson was interrogated only on June 11; he was in fact interrogated extensively on June 7 and 8 as well.} A series of eight interrogatories was administered to them, starting with Fisher's servant Richard Wilson, on June 7. We can surmise the content of the questions from the answers given, and conclude that the last one or two dealt with letters or other communications between More and Fisher. Wilson said that he saw two letters from More, but did not know their content.\footnote{Gairdner, \textit{Letters and Papers} 8, no. 856, sec. 6 (p. 326).} He said that when the Council interviewed Fisher about the Statute, Fisher "stuck to the word 'maliciously'"; when the Council voiced their suspicion that he had had counsel from More on this point, he said, no, that his brother Robert had told him, and advised him to say so.\footnote{Ibid., sec. 7 (p. 327). I cited above Wilson's testimony about what Robert Fisher had reported concerning the Parliamentary debate over the term "maliciously."} Wilson said further that he heard Fisher tell the Tower servant George Gold that "there was no peril in the Statutes..."
except it were maliciously done and spoken." He suspected that Fisher told Gold to tell
More so, seven or eight days before the Council came to interrogate Fisher.122

Wilson never sent anything to More or More's servant concerning the King's
matter, in word or in writing. He often suspected that Gold carried letters between Fisher
and More. He saw Fisher burn papers, and he himself burned papers at Fisher's bidding,
but did not know what they were; but among them were papers written before he came to
the Tower.123 After the Council's first examination of Fisher, Fisher gave Gold a letter to
More, but he did not read it. Wilson and Gold agreed among themselves to deny that any
letters were sent between More and Fisher. Wilson heard Fisher tell Gold that "he might
say he never carried any letters on the King's business, but he would not counsel him to
be forsworn for other things."124 (As we will see below, Fisher wished them to keep as
quiet as they could about the letters, without forswearing themselves.)

Wilson was again interrogated on June 8, when he said, among other things, that
after the Council's second examination of Fisher, Fisher told him that they expressed
displeasure with the Lieutenant of the Tower for negligent keeping of Fisher and More,
because they suspected that they had been counseling each other, "because both stuck
much upon one point." Wilson inquired whether it was about the word "maliciously," but
Fisher made no answer.125 Wilson thought that after the last examination letters passed
between Fisher and More, for he saw Gold bring Fisher a letter, and afterwards he (Gold,
it seems) cast it into the fire; that was on Sunday (June 6).126

Also on June 8, George Gold was examined. He said that on June 6, Fisher wrote
a letter to More, and the next day More sent an answer, along with Fisher's letter, and that
he burned both, at Fisher's command.127 About ten days before, Fisher sent a letter to
More, which More had him burn, and the next day he carried an answer to Fisher, which
Fisher had him burn. Altogether he conveyed about a dozen letters between Fisher and

122 Ibid., sec. 8.
123 Ibid., sec. 9-11.
125 Ibid., sec. 20 (p. 328).
126 Ibid., sec. 24.
127 Ibid., sec. 25 (p. 329).
More. Fisher, Wilson, and Gold were agreed to deny carrying any such letters, but if Gold were to swear to the matter on a book, he was to tell the truth.\footnote{Ibid., secc. 28, 33, 34.}

On June 10, More's servant John Awood, was examined, and said that about a fortnight after the Council had come to the Tower, Fisher sent Gold to More to find out what answer he had given; More replied in a letter that he would not dispute the King's title but only say his prayers. Soon after, More sent another letter, saying that he would not counsel Fisher to make the same answer, lest the Council should think that they had agreed to do so. After the Council returned to the Tower for another confrontation, Fisher told More what answer he had made, but Awood did not know if More sent a reply.\footnote{Ibid., sec. 41 (p. 330).}

d) Fisher's Testimony on Contents of Letters

The interrogations continued on June 11, with no further results on any More-Fisher exchanges,\footnote{Ibid., secc. 44-54 (pp. 330-331).} and on June 12, Fisher himself was interrogated.\footnote{Ibid., no. 858 (pp. 331-32).} Fisher recounted what his brother had told him, that the Commons were worried that the penalty specified by the Act concerning treasonous words could be too easily incurred, unless the specification of malice were added. He said that about four letters had passed between him and More on the matters of the question that was being put to him. This question included pre-Supremacy controversy, since he said that More asked him what answer he gave on the matter for which he had been sent to the Tower, and Fisher sent a reply. As for More's answer to the demand to comment on the Act of Supremacy, Fisher said that he became aware of More's response from Gold's showing him the letter that More wrote to his daughter Margaret. Fisher then sent a letter to More to know his reply more precisely, but Fisher did not recall what More answered. He also wrote to More to tell him about what his brother had told him of the Parliament dispute over the word "maliciously," but did not ask More's advice. More wrote to advise him not to give the impression that they had agreed upon their answers. He wrote to More that he told the Council that the Act condemned only those who spoke with malice against the King's title, and that the Act did not compel a man to answer. He burned all of More's letters as
soon as he received them, because he had promised the Lieutenant not to do anything to cause him to be blamed. As to whether there was any compact between him and Wilson and Gold concerning letters, he replied that "they were agreed to keep it as secret as they might."132

e) More's Previous Testimony

Finally, on June 14, More himself was interrogated. He said that Fisher had sent him a letter asking him what he had said to the Council, and More replied that he told the Council that he did not wish to meddle in the matter. Fisher sent him another letter, telling him that since the word "maliciously" was used in the Statute, one who did not speak out of malice did not violate the Statute. He replied that he agreed, but feared that it would not be interpreted in that way. More did not tell Fisher the answer he gave to the Council [that is, in full detail?] and advised him to make his own answer different, lest confederacy be suspected between them.133

More then added that he had written to Fisher after his last examination, which has to refer to the discussion that he had with Richard Rich, which, according to the Indictment, occurred just two days earlier than the present interrogation of June 14, namely, on June 12. He told Fisher that Master Solicitor told him at that examination that remaining silent was the equivalent of speaking against the Statute, "as all the learned men of Europe would justify." Therefore, More told Fisher, "he could only reckon on the uttermost"—that is, he feared the direst consequences—and he asked Fisher to pray for him, as he would for Fisher.134

That same day, June 14, both Fisher and More were asked to affirm Henry as Supreme Head, and to acknowledge his marriage to Queen Anne. More replied that he could make no answer to the first, and, as to the second, he had never spoken against it.135

When asked if any of the letters to or from Fisher survived, More said that Gold insisted on burning them. More tried to persuade Gold to let some friend read them, so

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132Ibid., no. 858.5-30; Fisher's answers in sections 5-6 and 19 are given in full by Reynolds, Trial, pp. 98-101.
133Gairdner, no. 867.iii.2 (p. 341).
134Ibid.
135Ibid., no. 867.iv (p. 342). For Fisher's replies, see no. 867.i (pp. 340-41): to the first, he stood by his previous answer; to the second, he agreed to the Act of Succession (something that More would not do). Fisher was unwilling to answer further, lest he fall under the penalties specified in the Statutes.
that he could testify to their contents. That is, he could bear witness that they were innocuous. Gold himself, we conclude, was illiterate, and Roper tells us the same about John Awood.

f) Upshot

The upshot of these responses is that Fisher destroyed the letters for fear of compromising the Lieutenant of the Tower, and that More wanted them preserved, so that they would exonerate him of any charge of collusion with Fisher. The servants had no knowledge of the contents of the letters, certainly of nothing incriminating. And, finally, there is no evidence yet recovered that Fisher used the metaphor of a two-edged sword in his responses to the Council on June 3, but we should probably leave open the possibility that he did actually do so. As we saw, the written report of More's usage that day survives in a very fragile condition, and it may be that the similar report on Fisher was made but failed to survive. But it is hard to see how they could have had any evidence that More used the metaphor in one of his letters to Fisher, as the Indictment alleges. This part of the Indictment may have been a ploy to try to get More to confess the fact, if it was a fact. However, More in effect denied it, and said that if Fisher did actually speak similarly, it was not through any communication from him.

7. The Last Part of the Indictment: More's Alleged Statement to Richard Rich

a) Absence from Guildhall and Pole Reports

The Guildhall Manuscript gives nothing further of the charges against More or of More's defense; specifically, it is silent about the last part of the Indictment, the purported conversation with Richard Rich, for which we will have to go to Roper's account. Instead, Guildhall speaks of the Jury, as cited above, and says that after about a quarter of an hour the Jurors returned with a verdict of Guilty.

As stated above, Derrett's conclusion is that More's arguments against the "three counts" (as set out in Guildhall) convinced the Judges, and that they found in More's favor and dismissed those charges, leaving only the charge about More's statements to

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136Ibid., no. 867.iii.3 (p. 342).
137Roper, Life, p. 75.
Rich standing, which was prosecuted by having Rich testify, and More responding.\textsuperscript{138} If this were true, then, as we noted above, More would have made his objections against the first three parts of the Indictment before the Jury was summoned. But surely he would have spoken against the rest of the Indictment at that time as well, though to no avail. Then, following Derrett's scenario, he would have repeated and enlarged upon his objections to the final part of the Indictment, in the presence of the Jury, after which the Jury would have been sent out and returned with the verdict of Guilty. That would mean that the Guildhall reporter completely ignored the whole core of the trial, upon which More was convicted. It does not seem likely. Perhaps more plausible is the conclusion that Guildhall portrayed More as subsuming the whole of the Rich charge, even though it made up a full third of the Indictment in length, in the first article, where he was accused of impugning the Act by refusing to given an answer about it. This would fit with Reginald Pole's informant's account as well (except that he also ignored the charge of colluding with Fisher). As we will see, More maintained that he did not say anything against the Act when speaking to Rich.

Weighing against Derrett's hypothesis that the judges dismissed the bulk of the Indictment against More is that, as I have noted before, Spelman, one of the Judges, does not mention such a dismissal, and he also says that he was convicted of aiding and abetting Fisher's treason as well as maliciously practicing against the Statute.


That a conversation occurred between More and Rich on the date specified is beyond dispute, being admitted by More himself. A report of it, presumably filed by Rich, still exists in fragmentary form in the Public Record Office (PRO), and the Indictment's account was based on it, as is particularly clear from Brian Byron's analysis.\textsuperscript{139}

\textsuperscript{138} Derrett, "Trial," pp. 65-68.
There are crucial differences between the PRO/Indictment account of the conversation and the account that Roper gives. Previously, Roper has been read as saying that he is giving Rich's distorted account, as he presented it at the trial. But in Byron's plausible explanation, Roper gives the account that More himself gave at the trial, except for the crucial last words, whose meaning Rich perjuriously distorted.

According to the Roper account, More told Rich that Parliament could make Rich King but could not make Rich Pope, any more than it could make God not-God.


According to the PRO/Indictment account, however, More told Rich that Parliament could make him King, but could not make God not-God, and could not make the King Supreme Head of the Church of England.

In other words, Rich "changed cases": instead of the actual example he used in his discussion with More, of himself as King being made Pope by Parliament, he substituted in his report the example of the present King, Henry VIII, being made Supreme Head of the English Church, and falsely claimed that More denied that Parliament had the power to make such a declaration.

The charge in the Indictment is as follows: "Thomas More falsely, treasonously, and maliciously, in his words persevering in his treason and malice, and desiring to put forth and defend his aforesaid treasonous and malicious proposal, responded to the aforesaid Richard Rich," in answer to Rich's question as to why he should not affirm the King to be Supreme Head on Earth of the Church of England, just as he would if Parliament were to declare Rich to be king: "that those cases are not like, because a king can be made by Parliament, and can be deprived by Parliament, to which act any subject being at the Parliament may give his consent; but to the case of a primacy, the subject cannot be bound, because he cannot give his consent from him in Parliament. And although the king were generally accepted as such in England, yet most outer parts do not affirm it." ① In following the report in the PRO, the Indictment would seem to preserve what must have been the actual gist of More's response, but speaking of the primacy of

①More's Indictment § 11 (e); see Appendix A. In translating this section, I closely follow Byron, p. 35 (159). In the passage, "cannot give his consent from him in Parliament" ("consensum suum ab eo ad Parliamentum praebere not potest"), it is not clear who "him" refers to.
the whole Church, not just the Church in England. In other words, More was really saying that the English Parliament could declare Richard Rich to be Pope, and even though the English might accept it, other regions of the world would not. The same gist can be found even in Roper's account of Rich's report of More's words: "'No more,' said Sir Thomas More, as Master Rich reported of him, 'could the Parliament make the King the Supreme Head of the Church.'"141 That is (More originally meant), Parliament could not make King Richard Rich Supreme Head of the Universal Church.

The conclusion of the PRO report, giving Rich's last words to More, which was not incorporated into the Indictment, is deciphered by Byron (modernizing the spelling) thus: "Well, Sir, God comfort you, for I see your mind will not change, which I fear will be very dangerous to you, for I suppose your concealment to the question that hath been asked of you is as high offense as other that hath denied it. And this Jesu send you better grace."142 Byron notes that Rich here acknowledged to More that he had not revealed his mind on the Act, but that he considered his concealment as much of an offense as that of another, who has expressly spoken against it—referring, Byron suggests, to Bishop Fisher, who had recently been tricked into an absolute denial of the Statute.143 As we have seen above, More told his interrogators that, two days after his talk with Rich, he reported to Fisher that this was the substance of what Master Solicitor told him.144

d) More's Defense Against Rich's Testimony

At the trial itself, Roper does not recount Rich's testimony, but only refers to it: "'For proof to the Jury that Sir Thomas More was guilty of this treason, Master Rich was called forth to give evidence unto them upon his oath, as he did.'"145

More told Rich and the Jury the he was sorry to see that Rich had perjured himself; and he went on to say that he had long known Rich to be an untrustworthy character, and to urge the unlikelihood of More's making such a damning statement to him, of the sort that he had never made to any other person. Moreover, even if he had made such a statement, since the conversation was private, it could not be alleged that it was spoken maliciously, as was required by the Statute to be constituted an offense: just

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141 Roper, *Life*, p. 86.
142 Byron, p. 39 (162).
143 Ibid., p. 40 (162).
144 Ibid., no. 867.iii.2 (p. 341).
as the Statute for Forcible Entries would not be violated by a peaceable rather than forcible entry. There was nothing in More's history to suggest that he had any malicious intentions against the King.  

Then, Roper says, "Master Rich, seeing himself so disproved and his credit so fouly defaced, caused Sir Richard Southwell and Master Palmer, that at the time of their communication were in the chamber, to be sworn what words had passed between them." They both testified that they had not paid any attention to what was being said.  

What does Roper mean by saying that Rich "caused" the two men to testify? Are we to take it that Rich did indeed have a role in prosecuting the case against More? Possibly, but it seems just as likely that what Roper intends is that Rich requested, perhaps with some insistence, that Prosecutor Hales swear the others as witnesses, in order to bolster his account.

Roper adds that More alleged in his defense "many other reasons not now in my remembrance . . . to the discredit of Master Rich's aforesaid evidence, and proof of the clearness of his own conscience. All which notwithstanding, the Jury found him Guilty." Which means, of course, that the Jury heard More's statements in his own defense.

8. The Jury's Verdict

a) A Rapid Result

John Bellamy tells us that "the place where the jurors debated their verdict was usually apart from the courtroom." The average length of time for jury deliberation in Tudor treason trials (taking the rest of the sixteenth century into consideration) was about an hour. The Guildhall Report says that in More's trial the Jury deliberated about a quarter of an hour, whereupon they returned with a verdict of Guilty. In Pole's account

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146 Ibid., pp. 87-91.
147 Ibid., p. 91
148 Ibid., pp. 91-92.
149 Bellamy, Tudor Law of Treason, p. 168.
150 Ibid., p. 169.
151 Guildhall Report, par. 7 (p. 219): "Qui sedentes prope quarta horae parte, deliberatione inter se habita, ut redierunt in conspectum Principum ac Judicum Delegatorum, rogati equid sentirent de reo, responderunt, 'Gylthi,' quod lingua Britannica sonat, 'Condemnandus,' aut 'Dignus est morte'" ("And they, sitting about a quarter of an hour, after deliberation was had among them, when they returned to the sight of
the verdict came much sooner, as soon as the Jury could assemble, which happened with
almost unbelievable speed. Pole portrays them as swayed by the Judges’ shouts of
"Malice, malice!" which were ringing through the courtroom. In other words, the Jury
not only witnessed the debate over More's silence, but found it to be the decisive aspect
of the trial.

b) The Question of a Single Witness

In Roper's view, as we have just seen, the evidence against More, which as he
presents it consisted only of Rich's testimony, was successfully discredited, but the Jury
found him guilty notwithstanding. Such an outcome, conviction by a jury on the basis of
a single witness, is still possible in our own day. Of course, the judge is free to nullify a
guilty verdict if he thinks that the evidence was insufficient; this is an option that Tudor
judges did not seem to have. But let us inquire into sixteenth-century thinking on the
sufficiency or insufficiency of a single witness.

This question was put into eloquent form in the Life of Fisher, expanded from
Rastell's account in his Life of More. Here, Fisher says, "Let me demand this question:
whether a single testimony of one man may be admitted as sufficient to prove me guilty
of treason for speaking these words, or no; and whether my answer negatively may not be
accepted against his affirmative to my avail and benefit, or no?" To that, the Judges and
lawyers answered that, 'Being the King's case, it rested much in the conscience and
discretion of the Jury, and as they upon the evidence given before them shall find it, you
are either to be acquitted or else by judgment to be condemned.'

c) The Jurors as Witnesses

The answer attributed to the judges and lawyers here is a good one. As Bellamy
points out, although the King's case in any treason trial (or any other trial, let us add)
might have been helped "to have several witnesses attesting to the guilt of the accused, he
had by no means lost if he had only one, or none at all for that matter." Baker puts it
thus: "A jury in theory needed no formal evidence to support their verdict, since they
might use their own knowledge acquired before the trial. It was on this footing that the

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152Pole, Pro defensione, fol. 90 (App. D, no. 6).
153Life of Fisher, section 174 (pp. 179-80).
common law did not require any particular number of witnesses to prove a fact."\textsuperscript{155} Bellamy recalls John Fortescue's supreme confidence in the jury system for eliciting the truth, in contrast to witnesses, for it operates "by the oath of honest men worthy of credit, neighbors, whom the parties have no cause to challenge, and no cause to distrust their verdict."\textsuperscript{156} Fortescue was writing in 1471, and even two generations later, in More's time, the idea was still strong that the members of juries had local knowledge and themselves served as impartial witnesses. In Fisher's trial, we recall, the jurors were to be chosen from among the inhabitants of the Tower, who would be likely to have local knowledge. Sir John Baker, in his introduction to Spelman's reports, says that "it could still be argued that the Jury was supposed to proceed upon its own knowledge if there was no evidence or if the evidence was incomplete. But he also points out that Thomas More "stated quite explicitly in 1533 that jurors were not to be regarded as witnesses, but as judges of fact."\textsuperscript{157}

Baker is citing the \textit{Debellation}, at the point where More rebukes Christopher St. German for supposing that More might have been referring to juries when he spoke of witnesses. He says: "I never took the twelve men for witnesses in my life. For why should I call them witnesses, whose verdict the judge taketh for a sure sentence concerning the fact without any examination of the circumstances whereby they know or be led to believe their verdict to be true?"\textsuperscript{158}

More here goes to the heart of the matter, which, I repeat, holds just as true for juries now as it did then. Juries make up their mind any way they wish, and do not have to give an accounting of how they came to their decision. It still does not matter whether the evidence presented in a case would pass muster before some other kind of tribunal. They are free to decide according to emotion or prejudice or intimidation.

d) More Found Guilty on the Whole Indictment

In More's case, the accepted wisdom nowadays is, as I have stated, Derrett's view that the Jury deliberated only on the last part of the Indictment, regarding More's conversation with Richard Rich. For my part, I think it probable that the whole

\textsuperscript{155}Baker, \textit{Oxford History}, p. 361
\textsuperscript{156}John Fortescue, \textit{De laudibus legum Angliae}, chap. 32, ed. and tr. S. B. Chrimes (Cambridge 1942), pp. 76-77.
\textsuperscript{158}More, \textit{Debellation}, chap. 16, p. 149.
Indictment was presented to them, and that they heard the Prosecutor's arguments in support of it and More's arguments against it.

Sir John Baker notes that when More was convicted under the Statute for denying the King's title of Supreme Head of the Church, "the chief complaint was of evasive answers under interrogation rather than spontaneous open denial."\(^{159}\) But it was entirely up to the Jury to decide whether and how he had violated the Statute and committed high treason: whether for refusing to give his opinion; for colluding with Bishop Fisher; and/or for speaking positively to Richard Rich against the power of Parliament to grant or affirm the King's title. They decided that he was guilty of one or all of these charges, and no accounting for their decision was forthcoming.

9. Post-Verdict Events: Alternative Versions
   a) First Alternative: Exonerating Conscience (Guildhall)

The activity described by the eye-witness account represented in the Guildhall Report, recorded just after the trial, is as follows. After the Jury announced its verdict, the Chancellor immediately pronounced sentence against More, as required by the Statute. Thereupon, More, taking the verdict and sentence as final, seized the opportunity to finally reveal his opinion concerning the Statutes upon which he had been convicted. He said, "Since I have been adjudged to death, whether rightly or not, God knows, let me speak freely to you concerning your Statute, for the exoneration of my conscience." During years of study on the subject, he had never found any authority to assert that a non-ordained person could be the head of an ecclesiastical order. To Audeley's taunt that he was making himself better than all of the bishops and nobles and commons of England, he replied that for every Bishop on their side he could easily find a hundred, including saints, to agree with him, as well as the testimony of all of the general councils of the Church. Norfolk accused him of showing his malice, but More said, no, he was speaking to exonerate his conscience and not burden his soul, and he took God as witness

\(^{159}\)Baker, *Oxford History*, p. 586; cf. p. 417 (see Appendix E).
to his sincerity. Their Statute, he added, was wrongfully made, since it went against the Universal Church. He added that he was well aware that their underlying motive for condemning him to death was his opposition to the King’s second marriage. He concluded by praying that they would all be together in Heaven, like St. Paul and his one-time adversary St. Stephen, and he ended by praying for the King, asking God to send him salutary counsel.\textsuperscript{160}

b) Second Alternative: Warning Others Against the Statute (Pole)

According to Reginald Pole, More had refrained from giving his opinion about the Law declaring the King Supreme Head of the English Church in order not to harm his defense. But once he was found guilty, he spoke out in order to prevent Englishmen from accepting, out of ignorance or imprudence, what he now termed was a pestiferous Statute that was inimical to them. It was against all human and divine laws, and to assent to it would produce a worse effect upon them than the death that he would suffer for allegedly dissenting from it.\textsuperscript{161}

More then turned to his adversaries, and instead of denouncing them, prayed for them, imitating Christ on the Cross. He was now going to a place of peace, and he prayed that they too, after a change of heart (including, of course, repenting for their sin of condemning him), would come to the same place. Thus he equalled St. Stephen, in praying for those who were stoning him to death.\textsuperscript{162}

c) Third Alternative: Taking Exceptions to Void the Indictment (Roper)

According to the Roper account, More acted on his earlier promise to speak against the Indictment after an adverse verdict came in,\textsuperscript{163} but he had to interrupt the sentencing process to do so. For as soon as the verdict was announced, Audeley started to "proceed in Judgment against him," until More reminded him of standard procedure: "My Lord, when I was toward the law, the manner in such case was to ask the Prisoner why Judgment should not be given against him." Thereupon, the Chancellor, "staying his Judgment in which he had partly proceeded, demanded of him what he was able to say to

\textsuperscript{160}Guildhall Report, §§ 8-13.
\textsuperscript{161}Pole, \textit{Pro defensione}, fols. 92v-93 (App. D, no. 8).
\textsuperscript{162}Ibid., fol. 93 (no. 9).
\textsuperscript{163}Roper, \textit{Life}, p. 86.
the contrary." More thereupon "in this sort most humbly made answer."\textsuperscript{164} At the end of his statement, Roper tells us the purpose of his speaking: "Sir Thomas More, for the avoiding of the Indictment, had taken as many exceptions as he thought meet, and many more reasons than I can now remember alleged."\textsuperscript{165}

The main objection that More raised against the Indictment was that the Act of Parliament upon which it was based was repugnant to the laws of God and the Church. One small part of the Church could not legitimately make a law contrary to the laws of the Church as a whole. It was also contrary to the laws of England still in effect, specifically, the Magna Carta provision that said that the English Church was to remain free. The Church in England could no more refuse obedience to the See of Rome than a child to its natural father. Chancellor Audeley reminded him that this view of his opposed that of all the learned men of England, including bishops and members of the universities. More replied that the clergy of the past and the clergy outside England were on his side. He concluded, "And therefore am I not bound, my Lord, to conform my conscience to the counsel of one realm against the general counsel of Christendom."\textsuperscript{166}

A month earlier, on April 28, Richard Reynolds, after being arraigned on similar charges and pleading Not guilty, gave a similar speech,\textsuperscript{167} after being asked by Audeley "why he persisted in an opinion condemned by the judgment of so many lords and bishops and of the whole realm in Parliament." He answered "that he had intended to keep silence, like Our Lord; but, in discharge of his own conscience and those of others, he would say that he had all the rest of Christendom in favor of his view, besides the testimony of general councils and Fathers of the Church; and he was sure that the greater part of England at heart agreed with him." This was said, however, \textit{before} his trial. He was ordered to say no more, and he replied, "Well, then, judge me according to your law." A jury was summoned for the next day, with the results described by Rastell above.

\textsuperscript{164}Ibid., p. 92.
\textsuperscript{165}Ibid., p. 95.
\textsuperscript{166}\textit{Roper, Life}, pp. 94-95.
\textsuperscript{167}For this account here I am quoting James Gairdner's summary in his entry on Richard Reynolds in the original \textit{DNB}. Gairdner gives the literal report of his speech, from a document in the Vatican Archives, in \textit{Letters and Papers} 8 no. 661 (pp. 247-48).
On June 17, John Fisher too made a similar speech at his trial, but this time it was in the presence of the Jury, after the Commissioners had in effect declared him guilty of treason under the Statute in spite of any plea of lack of malice on his part. Here is Rastell’s account:

Upon this point, and only by this witness of the King's own messenger sent to the Bishop, were the twelve men charged to find the holy learned Bishop guilty of treason. But before the inquest of twelve men went from the bar to agree upon their verdict, there was laid to the Bishop's charge, by some of his Judges, high pride and great presumption, that he and a few others did dissent and vary, in this matter of the King's Supremacy, from the whole number of the Bishops, Lords, learned men, and Commons, gathered together in the Parliament; with divers other things. Unto all which he answered in effect as the holy Fathers Carthusians and Doctor Reynolds had done; wherein he showed himself excellently and profoundly learned, of great constancy, and of a marvelous godly courage; and declared the whole matter so learnedly, and therewith so godly, that it made many of them there present, and some of his Judges also, so inwardly to lament, that their eyes burst out with tears to see such a great, famous cleric and virtuous Bishop to be condemned to so cruel death by such impious laws and by such an unlawful and detestable witness, contrary to all human honesty and fidelity and the word and promise of the King himself.\textsuperscript{168}

After More’s speech, and after the other exceptions and reasons that Roper cannot remember (presumably from the reports of his informants all those years ago), he says that Audeley, "loath to have the burden of that Judgment wholly to depend upon himself, there openly asked the advice of the Lord FitzJames, then Chief Justice of the King's Bench, and joined in commission with him, whether this Indictment were sufficient or not." FitzJames, "like a wise man," answered: "My lords all, by St. Julian, I must needs confess that, if the Act of Parliament be not unlawful, then is not the Indictment in my conscience insufficient." The rest of the Commissioners took this as an affirmation of the validity of the Indictment, and Audeley proceeded to pass sentence.\textsuperscript{169}

\textsuperscript{169} Roper, \textit{Life}, pp. 95-96.
Roper says that even after More was sentenced (to the horrible death stipulated for high treason), "the Commissioners yet further courteously offered him, if he had any thing else to allege for his defense, to grant him favorable audience." More had nothing more to say to reverse his condemnation, but said instead that he would pray for them, hoping that one day they would meet merrily in heaven, like St. Stephen and St. Paul, even though Paul had consented to Stephen's death.\textsuperscript{170}

We see, then, that whereas the Guildhall Report puts all of More's remarks after sentencing, Roper places only the reference to Saints Stephen and Paul after the Sentence, and only after More is given yet another opportunity, this time by all of the Commissioners as a body, to offer further arguments in his defense.

d) Adjudicating the Alternative Endings

Which of these three accounts should be given the greater credence? As noted, it can be argued that the Guildhall Report represents direct and immediate eyewitness testimony, while Pole's narrative is arguably based on the report of an independent eyewitness, whereas Roper's account is admittedly indirect and non–immediate. As Roper says at the end, "Thus much touching Sir Thomas More's arraignment, being not thereat present myself, have I by the credible report, partly of the right worshipful Sir Anthony Seint-Leger, Knight, and partly of Richard Heywood and John Webbe, Gentlemen, with others of good credit, at the hearing thereof present themselves, as far as my poor wit and memory would serve me, here truly rehearsed unto you."\textsuperscript{171}

We can be sure that More did speak at some point about one or both of the Statutes concerning the Supremacy, since one of the Commissioners, Sir John Spelman, says so in his report of the trial: "The said More stood firmly upon the Statute of 26 Henry VIII, for he said that the Parliament could not make the King Supreme Head."\textsuperscript{172}

But this does not tell us the purpose for which More spoke, to reveal and exonerate his

\textsuperscript{170}Ibid., p. 96.
\textsuperscript{171}Ibid., pp. 96-97. Note that Roper uses "arraignment" in the unusual sense of "trial." There may be that meaning in John Shirley's \textit{Death of the King of Scots} (1456), cited in the \textit{MED}, s.v. "arreinen": "This same Earl of Athetelles was indicted, arraigned, and damned." Cf. s.v. "arreinement": "Sir Robert Grame standing there at the where he was tofore indicted of treason, . . . upon his arraignment said plainly that they had no law to do him to death."
\textsuperscript{172}Spelman's \textit{Reports}, 1:58: "Le dit More tient fortment sur le Statut de 26 Henri VIII, qu'il dit que le Parlement ne point faier le Roy Supreme Chiefe."
conscience, to warn others against acceding to it, or to argue against the validity of the Indictment.

Duncan Derrett, who does not take Pole's narrative into consideration at this point, confidently asserts that Roper's version is the authentic account, and his opinion has held sway ever since. He says, "It was normal practice to await a verdict, and, if it was unfavorable, to attack the Indictment on law, alleging that it was 'insufficient' to found a sentence. The heart of More's defense lies in the very complex motion in arrest of judgment."

("Arrest" means "stopping," a sense used nowadays only in the phrase "cardiac arrest.")

However, apart from what Roper has More say in his account of the trial, there is no documentation that such an appeal was normal practice, or even existed at all as a possibility, in a criminal trial, not to mention a treason trial, in More's time or later in the sixteenth century. Granted, such an action, to be termed an "allegation" rather than a "motion," was starting to be used in civil trials at least a decade and a half before More's trial. We can see this in Spelman's reports. The body of cases which he deals with dates from about 1502 to about 1540, and, of course, everything is in Law-French rather than in English. The phrase appears in English only much later: the OED gives one seventeenth-century citation (from 1660), and others from the eighteenth century onwards. Here is the entry from Blackstone's Commentary (1768): "Whatever is alleged in arrest of judgment must be such matter as would upon demurrer have been sufficient to overturn the action or plea."

Spelman's earliest reference is in a case from 1521, in which we read: "Le consell le Senior allege ceo en arrest de jugement, pur ceo que le manas ne fuit trie"; that is, "The Lord's counsel alleged in arrest of judgment that the menacing had not been tried." In reply, the Court "adjudged" (ajuge) the menace to be immaterial. Then, Spelman says, "Auter excepcion fuit pris"; that is, "Another exception was taken."

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173 Derrett, "Trial," p. 70.
174 The next citation, from 1772, uses "move" rather than "allege": "If the paper be not criminal . . . he may move the Court in arrest of judgment." But this is not yet the modern-day idiom of "moving that" the Court do something.
In other words, the allegation in arrest of judgment was simply an "exception," the standard Law-French term for "objection," which was also the standard term both in Latin and English,\footnote{On exceptions and demurrers in criminal cases, see Baker, *Oxford History*, pp. 523-25, and see also Baker's "Criminal Courts and Procedure," p. 284. The exception in arrest of judgment was safer than a demurrer (upon which the law was still unsettled in Blackstone's time).} and, as we have seen, it is the term that Roper uses.

Spelman mentions allegations en arrest de jugement in only five other cases.\footnote{They are: Action on the Case no. 3, 1523 (vol. 1, pp. 3-4); no. 5, 1532 (pp. 4-6); no. 8, 1535 (pp. 7-8); Information on the Statute no. 1, 1522 (p. 154); and Pledges no. 1, 1530 (p. 173). A plea in arrest of judgment by reason of a jeofail (error in pleading) is to be found in a 1532 Common Bench case in J. H. Baker, ed., *Reports of Cases from the Time of King Henry VIII*, 2 vols., Selden Society 120-21 (London 2003-04), 2:265. Earlier uses of this terminology appears in J. H. Baker, ed., *Reports of Cases by John Caryll*, 2 vols., Selden Society 115-16 (London 1999-2000), 1:264 (1494), a demurrer on the plea in arrest of judgment; and 2:504 (1506), matter alleged in arrest of judgment.} Baker knows from another source (a Year Book) that there was an attempt to arrest judgment in one further case, but Spelman says nothing about it in his report, which leads Baker to conclude that "it is quite possible that there are more such motions in his reports than are so identified."\footnote{Baker, *Spelman's Reports*, 2:158; the case in which Spelman neglects to mention the allegation to arrest judgment is *Potkyn's Case*, Feoffements no. 3, 1522, 1:136-37.} As Derrett notes (ruefully, we may assume), Spelman does not mention any such "motion" in his report of More's trial.

The upshot is that we do not know which of the versions of the trial to believe, whether More spoke against the Statute to quash the Indictment (Roper), or simply to relieve his conscience (Guildhall), perhaps with the motivation of not misleading others into thinking that it was morally acceptable to approve of the King's title of Supreme Head of the English Church (Pole).

10. Sir John Baker on More's Trial

Let us assume, however, for the sake of discussion, that the Roper presentation, which does seem very plausible, is the accurate one, and that More did attempt to void the Indictment and thereby arrest the judgment against him, and that the Commissioners acted as Roper says they did. Did the Commissioners treat him fairly?

More once told Roper that judges favored the jury system because "they see that they may by the verdict of the jury cast off all quarrels from themselves upon them [that is, the members of the jury], which they account their chief defense."\footnote{Roper, *Life*, p. 45} That is, as Sir
John Baker says, relying on juries protected judges when they knowingly gave wrong judgments. He quotes Christopher St. German, More's recent opponent, as saying that judges would "sometimes give judgment against their own knowledge, and also against the truth, and yet no default to be in them, as it is in all trials." If, then, it was not the place of the judges to reverse the jury's decision on the facts, it was in their realm of duty to listen to legal objections.

We must remember that there was no provision for appeals in this court system, as Parmiter notes. In a comparable situation, if a Papal commission of judges-delegate had been set up to try an issue, an aggrieved or convicted party could appeal to the Papal Curia for a review and possibly another trial. In England, before a Commission of Oyer and Terminer, a convicted person could, at most, make objections only to the Commissioners themselves.

Baker seems uncertain as to whether the Commissioners in the More trial could have acted in another way. In 1535, he says, there may have been a choice about accepting More's argument (to arrest judgment), but, he says, "one can state confidently that no court today" would do so. This may be true, baldly speaking, but there are mechanisms today for dealing with objections about unjust laws, as there are in the United States, when allegations of unconstitutionality are raised. Baker ends by saying that "judicial review was not an established feature of the legal system" in More's time, and that the judges, though they were clearly embarrassed by More's question, were simply "recognizing the legal sovereignty of Parliament." Baker's assessment is that, whether or not More received proper treatment at his trial, he was definitely treated unfairly because of actions of Parliament and King. He says, "The uneasiness which

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180Baker, Reports of Spelman, 2:43, citing St. German's Little Treatise Concerning Writs of Subpoena, ca. 1531, ed. Francis Hargrave, A Collection of Tracts Relative to the Law of England (London 1787), pp. 332-55, at 353. A newer edition is by John Guy, Christopher St. German on Chancery and Statute, Selden Soc. Sup. Ser. no. 6 (London 1985), pp. 106-26, this excerpt being from chap. 10, p. 124. St. German, however, is not speaking of jury trials specifically. The last part of his comment reads in full: "as it is in all trials except death of man, where they may not give judgment against their own knowledge." This would indicate that in all felony and treason trials, which of course are held before a jury, judges are not free to rest content with a jury verdict they know to be against their own certain knowledge.

181Parmiter, "Indictment," p. 166.

182Baker, Spelman's Reports, 2:139-40.

183Ibid., p. 140.
everyone feels about More's conviction stems from the obnoxious character of a statute which virtually forced a man to incriminate himself on a matter of conscience.\footnote{Ibid., p. 139.}

Baker repeats this assessment in his most recent consideration of the trial, in his volume of the \textit{Oxford History of the Laws of England}, and he goes on to say: "The only contemporary standard by which the fairness of a prosecution could be measured was that of the ecclesiastical courts, which was admittedly not a high standard; but it is evident that the procedures of the secular law in this intolerant age were decidedly more favorable to the accused than those which More (when in power) had thought appropriate for the eradication of those whose consciences were at odds with his own."\footnote{Baker, \textit{Oxford History}, pp. 417-18.}

Baker's jaundiced view of the nature and operation of ecclesiastical trials for heresy in England is not well founded; it stems, it would seem, from his acceptance of the government propaganda of the time, notably as embodied in \textit{A Treatise Concerning the Division Between the Spirituallty and Temporality} by Christopher St. German (but published anonymously), to which More responded in his \textit{Apology} (1533).\footnote{The Apology of Sir Thomas More, ed. J. B. Trapp, \textit{Complete Works} 9 (New Haven 1979), with St. German’s \textit{Treatise Concerning the Division} in Appendix A, pp. 173-212.} More challenged the author, whom he refers to as "Sir John Somesay," to come up with even one instance of unfair treatment of suspected heretics, and it is a challenge could be renewed today. St. German failed to offer any example of such unfairness in his rejoinder, \textit{A Dialogue Betwixt Salem and Byzance}, as More showed in his response, \textit{The Debellation of Salem and Byzance}.\footnote{Thomas More, \textit{The Debellation of Salem and Byzance}, ed. John Guy, Ralph Keen, Clarence H. Miller, and Ruth McGugan, \textit{Complete Works} 10 (New Haven 1987), with St. German's \textit{Dialogue} in Appendix B, pp. 323-92. (My own modernization of these titles uses "Byzance.")} I have analyzed this debate elsewhere.\footnote{H. A. Kelly, "Thomas More on Inquisitorial Due Process," \textit{English Historical Review} 123 (2008).}

In my view, More would clearly have avoided conviction in a court that abided by inquisitorial due process, which required actual proof by at least two witnesses or adequate documentary instruments. More readily admitted that the ecclesiastical procedures could be abused by unfair judges, but he said that the same was true of any other judicial process, and, I submit, it was particularly true of the jury system, especially as it existed in More's time.
As for More's denial that any such abuse had ever to taken place in England, to his knowledge, and his challenge to St. German to cite cases of abuse, I have done a search myself, and I can find little to support the anti-clerical claims. Although there are cases in which suspects were required to state their views on orthodox and heterodox propositions (a procedure, which even though contrary to due process as set forth in canon law, had a Papal mandate behind it), there appears to be no instance in which anyone was prosecuted by having such responses alleged as confessed crimes (which would indeed have been in accord with the inquisitorial rules). Rather, all convictions were the result of testimony by two or more witnesses, or by confessions to properly charged offenses (of actual crimes committed in the past, not presently held opinions). Thus, Baker should qualify his assumption that More favored punishing persons for their consciences.

I will argue below against Baker's conclusion that Parliament was more to blame than the Judges in More's conviction.

11. Conclusions

The trial that Thomas More received was a typical trial-by-jury. Specifically, there was, as always, no accountability for the decision of the Jury.

By objective standards, the Jury was wrong to find him guilty of violating the Statute of Treason concerning Supremacy upon which he was convicted, but they could not have been expected, given the realities of the pressures upon them, to do anything else. If any verdict could be said to have been implicitly "directed," this was it. Far greater responsibility for this miscarriage of justice rested upon the Commissioners, primarily upon those who helped to formulate the Indictment, but ultimately upon all of them, for not speaking out against it at the trial. The Justices of the King's Bench and of Common Pleas, even before they were assigned to the Commission of Oyer and Terminer, were at fault insofar as they participated in preparing the Indictment or not protesting against it, and all of the Commissioners were guilty of injustice in letting the conviction stand. More was not in fact guilty of violating the Statute. He did not

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Ibid., part 3, "Examples of Past Trials."
 maliciously strive by words or deeds to deprive Henry VIII of his title of Supreme Head of the Church in England.

Sir John Baker blames Parliament for passing the Statute in the first place, but the blame needs to be placed mainly upon Henry VIII and his chief factor, Thomas Cromwell, and upon everyone else who for fear or favor fell into line behind them. Baker refers, as we have seen, to "the obnoxious character of a statute which virtually forced a man to condemn himself on a matter of conscience." This is indeed what King and Secretary wished for, and this is how the modified and ratified Statute was implemented, but the Commons, to their credit, resisted as far as they could. The Statute, as passed, did not require one to voice one's conscience on the King's new title. It did not make private talk a matter of high treason, unless actual statements could be proved, and even then only when malicious intent could also be proved. It would have been clearly obvious to everyone, Jurors and Judges alike, that More did everything he could to avoid giving his opinion on the King's title. His arguments against putting a malicious interpretation upon any of his actions, or upon his silences, should have been accepted. It was also obvious, of course, that he did not approve of the title; but he did nothing to oppose it.

The King and his Secretary interpreted More's refusal to approve the title, when requested, to be the equivalent of a malicious attempt to deprive him of it, and this is the way the Indictment read. The same interpretation was placed on More's and Fisher's other attempts to avoid falling under the Statute. According to Derrett, the Judges accepted More's explanations concerning these parts of the Indictment—which the Judges had presumably helped to draw up—and dismissed them from contention, leaving only the conversation with Rich. Even if this were true, it is clear from the recounting of this conversation in the Indictment itself (based on Rich's original twisted report of his conversation with More) that More was continuing his efforts to avoid falling under the Statute. These efforts should have led automatically to the conclusion that he was not attempting, out of malice or otherwise, to deprive the King of his title.

However, I do not believe that the Judges dismissed any part of the Indictment. Spelman's testimony that More was convicted on the conspiracy charge as well as the direct-depriving charge is proof of that. But the Judges should have dismissed all of the
charges, since the alleged actions, as stated, did not come close to violating the Statute, because there was no justification offered for the constantly reiterated "surcharge" of malice.

Derrett and Baker basically accept the Roper scenario. According to Rich, More told him that Parliament did not have the power to declare Henry Supreme Head. More denied having said this; but then he argued that, even if he had said so, no malice could be proved, and therefore the Statute would not have been violated. Nevertheless, the Jury convicted him on this point. Then (the Derrett-Baker script goes) More tried to get the charge dismissed by the Judges because, in actual fact, Parliament did not have the power to declare Henry Supreme Head. Even though he had not said so to Rich, he was now telling the Judges that this had been his belief all along, and he offered reasons for it, and he requested them to strike down the law and vacate the verdict. Baker considers this "the only legal difficulty in the case,"\(^{190}\) and believes that the Judges did not disgrace themselves by refusing to answer it.

I, on the contrary, am inclined to follow the basic outline of the Guildhall Report and Sir John Spelman's summary. More was accused of violating the Statutes concerning Henry as Supreme Head by maliciously seeking to deprive him of his title (which would include the part of the charge connected with Richard Rich), and conspiring with Bishop Fisher in the same treason. More denied that his refusal to give his opinion about the Statutes violated them, especially since nothing he did could be construed as malice towards the King. He was found guilty by the Jury, whereupon he decided to finally declare his conscience on the Statutes.

Baker agrees with Derrett that More's discourse on Parliament's exceeding its powers was a vain attempt to "arrest judgment," a new procedure that can be found only in a few civil cases before the time of More's trial. There is no evidence, apart from Roper's hearsay account, that the procedure was available in criminal cases, specifically treason, and no example has been cited from the sixteenth century as a whole.

The legal question that the Judges should have addressed was not whether the Statutes declaring and enforcing Henry's Headship were "constitutional" or not, but rather whether the actions cited in the Indictment fell under the Statutes. The Judges avoided

\(^{190}\)Baker, Spelman's Reports, 2:139.
their responsibility by leaving the full burden upon the unlearned Jury, who were forced to decide that there was malice even though no malice had been demonstrated. Rather, innocuous acts were construed as malicious without further ado. Or, according to Pole's account, the Judges declared vociferously in the hearing of the Jury that More's very refusal to declare his mind on the Statute constituted an act of malice in itself.

Here is how Baker describes the distorted enforcement of the Supremacy Acts perpetrated by the government and acceded to by the Courts: "Now the mere private expression of opinion [or even an error in a coat of arms] could be treason. The Commons are said to have insisted on the qualifying adverb 'maliciously,' but it proved a worthless safeguard in practice. Within seven months Prior Houghton of the Charterhouse, Bishop Fisher, and Sir Thomas More were convicted under this statute for denying the king's title of supreme head of the Church in England. Moreover, the expression of opinion did not have to be public: in the case of More, the chief complaint was of evasive answers under interrogation rather than spontaneous open denial." 191

This was a conviction against the letter of the law, a miscarriage of justice that the Judges should have prevented (not to mention not encouraged).

The question of More's purpose in speaking against the Statutes after the Guilty verdict came in, whether it was to exonerate his conscience, or give guidance to others, or to void the Indictment, turns out to be not very important. One could answer that all three purposes were intended, but that the first two were more important than the third (voiding the Indictment), since it had no hope of success. Therefore, any effort to "arrest judgment" was not seriously intended. This is, in fact, Derrett's own understanding of the maneuver, as he makes clear in his 1964 Moreana article, written after his 1964 English Historical Review article on the trial. He believes that More was guilty of saying what Rich claimed he said, in spite of his vehement denial at his trial; it was, after all, what he really believed, and, if he was tricked into revealing his views, he should have been clever enough to avoid the trap; More denied that he had denied Parliament's power, and that he had compared the Statute to a two-edged sword, and the Jury disbelieved him. 192

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192 Derrett, "The 'New' Document" (see n. 3 above), pp. 10-11.
But then Derrett conjectures that More deliberately courted disaster; he kept his discourse hypothetical, but he must have known, as Cromwell certainly did, that such a hypothetical discussion would be good enough to convict him; More had certainly committed a crime within the Act of Treason, and the Jury was right to disbelieve his denials; More must have known the risk he was taking; his motive was far higher than any disburdening of his conscience; rather he spoke as a patriot, and "placed his country's constitutional health above his own convenience." "At the risk of his own life More was prepared to have yet another attempt to show where the government's view of the constitution was faulty; if they could profit from this discovery and amend the statutes accordingly it would be to the profit of the nation." It should be quite obvious that, in Derrett's view, More's Judges were not expected to step forward and amend the constitution in accepting his "motion." Rather he was speaking for the future.

E. E. Reynolds's reaction to Derrett's *Moreana* account is simple: "After many years studying the life and works of Thomas More, I believe that when, at his trial, he denied having said the words reported by Rich, he was speaking the truth. Dr. Derrett doubts this." Two years later, in 1966, Brian Byron published an article in *Moreana* with a plausible explanation of what More had really told Rich: that the English Parliament had power to make Rich King, but not Pope. Rich then falsely reported that More had denied Parliament's power to declare Henry Head of the English Church. Derrett did not cite Byron's article or respond to his argument in his 1977 revision.

My own judgment on the trial is that the Judges could not have been reasonably expected to declare the Act of Parliament illegal, but they did have the obligation to enforce it as Parliament intended it to be enforced, not as Henry VIII and Thomas Cromwell wanted it enforced. More succeeded, I believe, in his attempt to remain silent about the King's Supremacy, and therefore he did not come close to uttering words that, if spoken maliciously, could be declared to fall under the Act.

But the Judges should have admitted More's further argument: that even though his efforts to avoid giving his opinion on the Act were a deliberate evasion (which he admitted), and even if he had discussed the matter with Fisher, and even if he had said the

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193 Ibd., pp. 16-18.
194 Reynolds, comments to Derrett's article, p. 22.
words ascribed to him by Rich (which he denied), he did not do so maliciously; and that no attempt was made to prove malice on his part. The Judges were at fault for not ruling in his favor on this point. Instead they ruled that the qualification of malice as a necessary constitution of the treason under the Act, which Parliament had insisted on, was of no force. Or, to follow Pole's scenario, they ruled that any manifestation of refusal of the title was automatically malicious, and required no further proof. This was a clear violation of their duty to enforce the law, and a manifestation of malice on their part. The chief blame lies with King and Secretary, and secondarily with the Commissioned Judges, and only residually with the members of the Jury.

We can be sure that an extremely detailed account of More's trial was contained in the vast *Life of More* by Master Justice Rastell, which has long gone missing, except for a few chapters dealing with Bishop Fisher. Many of the questions raised by the fragmentary reports or More's trial that do survive and are available to us will be answered as soon as anyone can discover the whereabouts of Rastell's complete book and bring it to light. Meanwhile, we can only be guided by our own lights.
APPENDICES

Appendix A

More's Indictment

Edited by Elsie Vaughan Hitchcock, Harpsfield's Life of More (London 1932), pp. 267-76.

(§1) Grand jurors of Middlesex County on 28 June 1535 present as follows:

Middelsexa: Juratores presentant pro Domino Rege quod:
[Alternate version]

Middlesex: Jurors present for the Lord King that:
[Alternate version]
Middlesex: Inquest taken in the Town of Westminster, in the said County, before the aforesaid John FitzJames, Knight, John Baldwin, Knight, Richard Lister, Knight, John Port, Knight, John Spelman, Knight, Walter Luke, Knight, and Anthony FitzHerbert, Knight, Justices, etc., on the said Monday next after the Feast of St. John the Baptist, by the oath of Thomas Taylor, Robert Grant, William Russell, Henry Croke, Robert Bowden, Eustace Ripley, Christopher Proctor, Henry Gaffeney, John Grove, William Grimbilby, John Apswell, John Miller, John Wilkinson, Thomas Colt, William Stevenson, Walter Phelipps, Jurors. Who say on their oath:

(§2) Since, by the Act of Supremacy, 26 H8 (Nov. 1534) c. 1, the King was accepted as Supreme Head of the Church in England;

Cum per quendam Actum in Parlamento Domini nostri Regis nunc (apud Londonium tercio die mensis Novembris, anno regni sui vicesimo primo inchoato, et abinde eodem tercio die Novembris usque ad Villam Westmonasteriensem in Comitatu Middelsexae prorogato, et postea, per diversas prorogaciones, usque ad et in tercium diem Novembris, anno regni sui vicesimo sexto continuato, et tunc apud

Whereas, by an Act issued in the Parliament of our present Lord King held in London on November 3 at the beginning of the 21st year of his reign [1529], and thence on the same November 3 prorogued to the City of Westminster in Middlesex County, and later by successive prorogations continued up to November 3 in the 26th year of his reign [1534], and on that date, in the said City of Westminster,
dictam Villam Westmonasteriensem tento),
editum, inter cetera auctoritate ejusdem
Parliamenti inactitatum sit, quod idem
Dominus Rex, heredes et successores sui,
hujus regni Reges accepti, acceptati, et
reputati, erunt unicum Supremum Caput in
Terra Anglicanae Ecclesiae, habebuntque
tandum et unitum Imperiali
Coronae hujus Regni tam titulum et stilum
inde, quam omnia honores, dignitates,
praeeminentias, jurisdicciones, privilegia,
auctoritates, immunitates, comoda, et
commoditates dictae dignitati Supremi
Capitis ejusdem Ecclesiae incumbencia et
pertinencia, prout in eodem Actu, inter alia,
plenius continetur;

(§3) And since, by the Act of Treason Concerning the Supremacy, 26 H8 (Nov. 1534) c. 13, it was made high treason to deprive the King of his titles:

Cumque per quemdam alterum Actum, in
dicto Parliamento dicto anno vicesimo
sexto tento, editum, inter cetera inactitatum
sit quod si aliqua persona aut aliqua
personae, post primum diem Februarii tunc
proximum sequentis, maliciose optaverit,
voulerit, seu desideraverit per verba vel
scripta, aut arte imaginaverit, inventaverit,
practicaverit, sive attemptaverit aliquod
damnum corporale fiendum aut
committendum regalisimae personae
Domini Regis, Reginae, aut eorum
hereditibus apparentibus, vel ad deprivandos
eos, aut eorum aliquem, de dignitate, titulo,
seu nomine regalium statuum suorum,
quod tunc quaelibet talis persona et
personae sic offendentes in aliquo
praemissorum post dictum primum diem
Februarii, atque eorum auxiliatores,
consentores, consiliarii, et abettatores, inde
legitime convicti existentes, secundum
leges et consuetudines hujus Regni
adjudicabuntur prodidores; et quod
quaelibet talis offensa in aliquo
praemissorum quae committeretur aut
fieri, post dictum primum diem Februarii,
reputabitur, acceptabitur, et adjudicabitur
alta prodicio; et offensores in eisdem ac
among other things was enacted by the
authority of the same Parliament that the
same Lord King and his heirs and
successors who are accepted, ratified, and
held to be Kings of this Kingdom, will be
the sole Supreme Head on Earth of the
English Church, and they will have and
enjoy both the title and style of this
Kingdom annexed and united to the
Imperial Crown, as well as all honors,
dignities, preeminentias, jurisdicciones, privilegia,
authorites, immunities, benefits,
and commodities incumbent and pertaining
to the said dignity of Supreme Head of the
same Church, as is more fully contained,
among other things, in the same Act.
eorum auxiliatores, consentores, consiliarii, et abettatores, legitime convicti existentes de aliqua tali offensa qualis praedicitur habebunt et pacientur tales poenas mortis et alias poenalitates quales limitatae sunt et consuetae in casibus altae prodicionis, prout in dicto altero Actu manifeste patet;

(§4) Nevertheless, Thomas More on 7 May 1535, seduced by diabolical instigation, maliciously attempted to deprive King Henry of his title of Supreme Head when, before Thomas Cromwell and others, upon being asked whether he approved of the King as Supreme Head, he maliciously remained silent and refused to give a direct answer;


Nevertheless one Thomas More, late of Chelsea in the County of Middlesex, Knight, not having God before his eyes but seduced by diabolical instigation, on May 7 of the 27th year of the reign of the said Lord King, sufficiently aware of the aforesaid Statutes, falsely, treasonously, and maliciously, in the Tower of London in the said County, imagining, inventing, wishing, and desiring, against the duty of his allegiance, to deprive the said serene Lord our King of a dignity, title, and name of his royal condition, namely, his dignity, title, and name of Supreme Head on Earth of the English Church, on the said May 7 in the said Tower of London in the aforesaid County, in the presence of Thomas Cromwell, Esquire, First Secretary of the Lord King, Thomas Bedill, Cleric, John Tregonill, Doctor of Laws, Counselors of the said Lord King, and before divers other persons, loyal subjects of the same Lord King, being examined and interrogated by mandate of the same Lord King as to whether he received, accepted, and held the same Lord King to be Supreme Head on Earth of the English Church, and wished to receive, accept, and hold him such, according to the form and effect of the aforesaid Statute first recited, the same Thomas then and there maliciously remained completely silent and refused to give a direct response to that question, and he spoke these following English words, namely, "I will not meddle with any such matters, for I am fully
subditis adtunc et ibidem edicebat, videlicet, "I will not meddle with any such matters, for I am fully determined to serve God and to think upon His Passion and my passage out of this world";

(§5) And on 12 May, More maliciously wrote to Bishop John Fisher, consenting to Fisher's denial of the Supremacy, telling him of his own silence, and calling the Act a two-edged sword;

And afterwards, namely, on the 12th day of the said month of May in the aforesaid 27th year, the aforesaid Thomas More, knowing that one John Fisher, Cleric, was then, and for a long time before, incarcerated in the said Tower of London for various misprisions perpetrated by the said John against the said Lord our King's royal majesty, and had been examined by the said true subjects of the Lord King concerning his reception, acceptance, and holding of the same Lord King as aforesaid, and that the same John falsely, treasonously, and maliciously expressly refused to receive, accept, and hold that the foresaid Lord King was Supreme Head on Earth of the English Church, and the same Thomas More, thinking that he himself and the foresaid John Fisher would likely be examined and interrogated then again on the foregoing, continuing his aforesaid malice, falsely, maliciously, and treasonously wrote various letters on the said 12th day of May in the said Tower of London in the said County of Middlesex, and directed them to the foresaid John Fisher then being in the said Tower of London, and through one George Gold on the same day and year and in the same place transmitted them and had them delivered; through which letters the foresaid Thomas More falsely, maliciously, and treasonously counseled the aforesaid John Fisher in his said false treason, and consented to it, and, through the same letters, intimating to the same John the said silence which the same Thomas More, as stated above, maintained when questioned,
verbis scriptis revelans, et, insuper, per eadem literas false, proditorie, et maliciose scribens et asserens haec verba Anglicana, videlicet, "The Act of Parliament"—dictum Actum posterius recitatum innuens—"is like a swerde with two edgis, for if a man answere one wey it will confounde his soule, and if he answere the other wey it will confounde his body";

§6 And on 26 May, More wrote again to Fisher, warning him not to use these words, lest there appear to be a confederacy between them;

Postmodumque praefatus Thomas More, metuens ne contingeret praefatum Johannem Fisher in ejus responso, supraitterata examinacione ipsius Johannis fienda, praedicta verba, per ipsum Thomam eidem Johanni Fissher, ut praefertur, scripta Consiliariis dicti Domini Regis eloqui, idem Thomas More, apud Turrim praedictam, vicesimo sexto die Maji anno vicesimo septimo supradicto, per ejus alias literas scriptas et praefato Johanni Fissher directas, et apud Turrim praedictam deliberatas, eundem Johannem Fissher false, maliciose, et proditorie desiderabat, quatenus idem Johannes resposum suum secundum ejus proprium animum faceret, et cum aliquo tali responso quale idem Thomas praefato Johanni Fissher antea scrisisset nullatenus intromitteret, ne forsans dictis Consiliariis Domini Regis occasionem putandi praebet quod aliqualis erat inter eosdem Thomam et Johannem confoederacio;

§7 Nevertheless, on 3 June Fisher remained silent on the question and called the Act a two-edged sword;

Attamen, ex dictis literis praefati Thomae More prius scriptis et dicto Johanni Fissher ut praemittitur porrectis et deliberatis, ita insecutum est, videlicet, idem Johannes Fissher, per dictas literas praefati Thomae More false, maliciose, et proditorie doctus et instructus, et exinde quodammodo animatus, postea, videlicet, tercio die Junii, anno and revealing to him in written words his response of refusal in the spoken English words written above, and, moreover, through the same letters falsely, treasonously, and maliciously writing and asserting these English words, namely, "The Act of Parliament"—meaning the said Act recited above in the second place—"is like a sword with two edges, for if a man answer one way it will confound his soul, and if he answer the other say it will confound his body";

And later, the aforesaid Thomas More, fearing lest it happen that the aforesaid John Fisher in his response, when the renewed examination of the said John was made, would say to the Counselors of the said Lord King the aforesaid words written to the same John by the said Thomas, as stated above, the same Thomas More on the 26th day of May in abovesaid 27th year, through other letters of his directed to the aforesaid John Fisher and delivered in the foresaid Tower, falsely, maliciously, and treasonously desired the same John Fisher that the same John make his response according to his own mind, and in no way put forth any such response as the same Thomas had before written to the aforesaid John Fisher, lest perhaps he give occasion to the said Counsellors of the Lord King for thinking that there was some conspiracy between the same Thomas and John;

However, from the said letters of the foresaid Thomas More previously written, as stated above, and directed and delivered to the said John Fisher, it followed thus, that the same John Fisher, falsely, maliciously, and treasonously taught and instructed by the said letters of the foresaid Thomas More, and thence in a certain way
And likewise on 3 June, More maliciously persevered in his silence;

And the aforesaid Thomas More, also on the said June 3 of the aforesaid 27th year, in the foresaid Tower, again questioned about the foregoing by the said noble and venerable subjects and Counsellors of the Lord King, persevered in his said silence, and was unwilling to give a direct response to the foregoing;
with two edges; for, if a man say that the same Lawes be good, then it is dangerous to the soule; and if he say contrary to the seid Statute, then it is dethe to the body. Wherfore I will make therunto noon other answere, because I will not be occasion of the shortting of my life."

(§10) Moreover, in order to conceal their treason, More and Fisher burned each letter as soon as it had been read.

And in addition, the foresaid Jurors say that the aforesaid Thomas More and John Fisher, both the one and the other of them, to conceal their above-stated false and nefarious treasonous proposal, immediately after reading the letters written and delivered by each to the other, burned them.

(§11) On 12 June, More told Richard Rich that subjects could not be obligated by an act of Parliament making the King Supreme Head.

(a) And, after each and all of these aforesaid things were done and said, as stated above, on the 12th day of June of the said 27th year, Richard Rich, the General Solicitor of the said Lord King, came to the foresaid Thomas More in the said Tower of London, and a conversation concerning various things touching on the aforesaid matters was held then and there between the same Thomas More and Richard Rich, whereupon the same Richard Rich charitably urged the aforesaid Thomas More that he be willing to conform himself to the above-written Acts and Laws. To this, the same Thomas said, responding to the aforesaid Richard Rich, "Your conscience will save you, and my conscience will save me."

(b) And the said Richard Rich, then and there protesting that he had no commission or mandate to talk or converse with the said Thomas More about this matter, asked him, if it were enacted by the authority of Parliament that he himself, that is, Richard Rich, were king, and that it would be treason if anyone denied it, what would be
prodicio esset, qualis esset offensa in praefato Thoma More si idem Thomas diceret quod praefatus Ricardus Ryche erat rex? Pro certo, uterius dicebat idem Ricardus, in consciencia ejus quod nulla esset offensa, sed quod idem Thomas More obligatus erat sic dicere, et eundem Ricardum acceptare, pro eo quod consensus praefati Thomae More per actum Parliamenti erat obligatus. Ad quod praefatus Thomas More, adtunc et ibidem respondendo, dicebat, quod ipse offenderet si diceret non, quia obligatus esset per actum, pro eo quod consensus suum ad id praebere potuit. Sed dicebat quod idem casus erit casus levis.

(c) Quamobrem idem Thomas adtunc et ibidem praefato Ricardo Riche dicebat quod ipse alium casum sublimiorem proponere vellet, sic dicens, "Posito quod per Parliamentum inactitatum foret quod Deus non esset Deus, et quod si quis impugnare vellet actum illum, foret prodicio; si interrogaretur quaestio a vobis, Ricarde Riche, 'velitis dicere quod Deus non erat Deus,' accordante Statuto, et si sic diceritis, non offenderetis?"

(d) Ad quod idem Ricardus, respondens praefato Thomae More, adtunc et ibidem dicebat, "Immo, pro certe; quia impossible est fiendum quod Deus non esset Deus. Et quia casus vester adeo sublimis existit, proponam vobis hunc casum mediocrem, videlicet: Novistis quia Dominus noster Rex constitutus est Supremum Caput in Terra Ecclesiae Anglicanae; et quare non deberetis vos, Magister More, eum sic affirmare et acceptare, tam sic quam in casu praemisso quae ego praefectus eram rex? In quo casu conceditis quod obligaremini sic me affirmare et acceptare regem."

(e) Ad quod praefatus Thomas More false, proditorie, et maliciose in dictis ejus proditione et malicia perseverans, praedictumque ejus proditorium et maliciosum propositum et appetitum praeferre et defendere the offense in the said Thomas More if the same Thomas said that the said Richard Rich was king? Certainly (the same Richard Rich continued further), there would be no offense in his conscience, but rather the said Thomas More was obliged to say so and accept the same Richard, because the consent of the said Thomas More was obligated by the act of Parliament. The said Thomas More then and there responded and said that he would indeed commit an offense if he denied it, since he was able to give his consent to it. But he said that this case will be a trivial case.

(c) Therefore, the same Thomas then and there said to the aforesaid Richard Rich that he would propose a more lofty case, saying thus: "Let us say that it was enacted by Parliament that God was not God, and that if anyone wished to impugn that act, it would be treason; if the question were put to you, Richard Rich, 'Do you wish to say that God is not God,' in accord with the Statute, and you said yes, would you not commit an offense?"

(d) To which the same Richard, responding to the aforesaid Thomas More, then and there said, "Yes, certainly, because it is impossible to bring it about that God be not God. And because your case is on such a high level, I will propose to you this middle-level case: You know that our Lord King has been constituted as Supreme Head on Earth of the English Church; and why should not you, Master More, affirm and accept him as such in this case, just as in the foregoing case in which I was selected to be king? In that case you concede that you would be obligated to affirm and accept me as king."

(e) To this the said Thomas More falsely, treasonously, and maliciously, persevering in his said treachery and malice in his treason and malice, and desiring to put forth and defend his aforesaid treasonous

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volens, praefato Ricardo Riche adtunc et ibidem sic respondebat, videlicet, quod casus illi non erant consimiles, quia rex per Parliamentum fieri potest, et per Parliamentum deprivari potest, ad quem actum quilibet subditus, ad Parliamentum existens, suum praebat consensum. Sed ad primacie casum, subditus non potest obligari, quia consensum suum ab eo ad Parliamentum praebere non potest. Et quamquam rex sic acceptus sit in Anglia, plurimae tamen partes exterae idem non affirmant."

§12 Thus the Jurors say that Thomas More maliciously contrived to deprive the King of his title of Supreme Head.


and malicious proposal and appetite, responded to the aforesaid Richard Rich that those cases are not like, because a king can be made by Parliament, and can be deprived by Parliament, to which act any subject being at the Parliament may give his consent; but to the case of a primacy, the subject cannot be bound, because he cannot give his consent from him in Parliament. And although the king were generally accepted as such in England, yet most outer parts do not affirm it.

And thus the aforesaid Jurors say that the aforesaid Thomas More falsely, traitorously, and maliciously by craft schemed, contrived, practiced, and attempted to fundamentally deprive the said serene Lord our King of the said dignity, title, and name of his aforesaid royal status, namely, of his dignity, title, and name of Supreme Head on Earth of the English Church, to the manifest contempt of the same Lord King and derogation of his royal Crown, against the form and effect of the aforesaid Statutes, and against the peace of the selfsame Lord King.
Appendix B

Guildhall Report


§ 1) (a) More is charged

Thomas Morus, nuper Regni Britannici Cancellarius, post carceris detentionem quindecim mensium, Calendis Julii anno millesimo quingentesimo tricesimo quinto, ad Magistratus ac Judices ordinatos per Regem fuit adductus. Quo praesente accusationes in ipsum publice recitatae sunt.

(b) Norfolk offers a pardon

Continuo Dux Nortfordiae illum hujusmodi verbis allocutus est: "Vides, More, te quidem hac ex parte in Regiam Majestatem graviter deliquisse. Nichilominus tamen de ipsius clementia et benignitate confidimus, si poenitere volueris tuamque hanc temerariam opinionem, cui pertinacissime adhaesisti, in melium commutare, te delicti remissionem facile ab illo consecuturum."

(c) More points out his physical weakness

Cui Morus: "Magnifici viri, maximas vobis gratias habeo, de perquam erga me benevolentia. Verum istud solum Deum Optimum Maximum oro, ut ipsius adjutus ope, in hac recta mea opinione ad mortem usque perseverare valeam. Quantum autem ad accusationes quibus oneror attinet, vereor ne vel ingenium vel memoria vel verba ad explicationem [non] sufficiant, cum non solum impeditat articulorum prolixitas et magnitudo, [verum]¹⁹⁵ etiam diuturna in carcere detentio, necnon aegritudo debilitasque corporis quibus nunc sum affectus."

Thomas More, recently Chancellor of the Kingdom of Britain, after being confined in prison for fifteen months, on July 1, 1535, was brought before the Magistrates and Judges appointed by the King. When he was present, the accusations against him were publicly recited.

Immediately, the Duke of Norfolk spoke to him such words as these: "More, you see that you have gravely offended against the Royal Majesty in this matter. Nevertheless, we have confidence in his clemency and bounty that if you should be willing to repent and change for the better this rash opinion of yours, which you have so pertinaciously adhered to, you will easily gain forgiveness of your fault from him."

To this More replied: "Noble sirs, my very great thanks to you for your exceeding benevolence to me. But I ask only this of the great good God, that by His help I may be able to persevere in my right opinion until death. But as for what concerns the accusations with which I am charged, I fear that neither my mental ability, nor memory, nor words will suffice to explain them, because I am impeded not only by the prolixity and extensiveness of the articles, but also by my long detention in prison and the illness and bodily weakness that now afflict me."

¹⁹⁵ NQ; G unde
§ 2) (a) More responds to the Indictment, the first part concerning the King's marriage

Tum jussu Magistratus allata est sella, in qua cum resedisset, hunc in modum prosecutus est: "Quantum ad priorem partem accusationis pertinet, quae habet me, quo magis animi mei contra Regem malevolentiam ostenderem, in contentione de secundo ejus matrimonio perpetuo obstetisse, serenissimae ejus Majestati, nichil habeo aliud respondere nisi quod antea dixi, videlicet quicquid in ea materia dixi, id me ur gente conscientia dixisse. Nec enim debemam nec volebam [quidem] Principem meum celare veritatem. Quod nisi fecisset, hostem me illi, non fidelem ministrum exhibuissem. Ob quod peccatum, si tamen peccatum dici decet, adjudicatus sum perpetuis carceribus, quibus jam totis quindecim mensibus sum detentus, bonis meis praeterea fisco addictus.

(b) More cites the first charge concerning silence about the King's Supremacy

"Solum ad praecipuum caput accusationis respondeo. Dicitis me commeruisse poenam quam inflixit Statutum in postremo Procerum Conventu factum, ex quo ego in custodia fui detentus, eo quod malicioso, falso, ac infido animo laeserim Regiam Majestatem et nomen et titulos et honorem et dignitatem quae illi praedicto Conventu seu Concilio consensu omnium fuerunt attributa, quo ille receptus est post Jesum Christum in Supremum Caput Ecclesiae Anglicanae; atque ante omnia quod mihi objicitis me nichil aliud voluisse respondere Secretario Regis et Regiae Majestatis honorabili Consilio, quam me interrogabat quaenam esset mea de illo Decreto sententia, quam, ex quo jam essem mundo mortuos, me hujusmodi rebus non occupare animum, sed tantum meditari de Passione Domini Jesu Christi.

(c) More says that such silence is no offense

"Ad quod clare respondeo vobis, hujusmodi Then a chair was brought by order of one of the Magistrates, and, when he had seated himself in it, More continued as follows: "As for what pertains to the first part of the accusation, which has it that, to show the greatest possible malice of my mind against the King, I was a constant opponent in the contention over his second marriage, I have nothing to say other than what I have said before; and that is, that whatever I spoke in that matter, I did it at the urging of my conscience. For it did not behove me, nor did I wish it, to conceal the truth from my Prince. If I had not acted so, I would have been an enemy to him, not a faithful servant. Now for this sin, if it is proper to call it a sin, I was adjudged to perpetual imprisonment, in which I have now been detained for fifteen months, and my goods besides confiscated.

"I reply only to the main heading of the accusation. You say that I have merited the penalty inflicted by the Statute passed in the last Parliament of our Leaders, for which I was now held in custody, for the reason that, with malicious, false, and faithless mind, I injured the Royal Majesty and name and titles and honor and dignity which they in the aforesaid Parliament or Council attributed to the King, by which he is considered to be Supreme Head after Jesus Christ of the English Church; and, above all, that you object to me that I wished to answer nothing to the Secretary of the King and to the honorable Council of the Royal Majesty, when he asked me what my opinion was about that Statute, other than that, because I was now dead to the world, I did not occupy myself with such things but only meditated on the Passion of Our Lord Jesus Christ.

"To which I clearly respond to you that it is not

196 NQ.
197 NQ: G autem
198 G quae
silentio me morti adjudicari non licere, quum quidem neque vestrum Decretum neque quicquid legum in toto orbe quemquam jure supplicio afficere potest, nisi quis vel dicto vel facto crimen admiserit, cum silentio nulla poena legibus sit constituta."

§3) Attorney General Hales says such silence shows disapproval

Tum Regius Procurator, suscipiens sermonem, "Hujusmodi," inquit, "silentium certum aliquod indicium erat, nec obscura significatio, malignae alicujus cogitationis contra ipsum Decretum, propter quod quod singuli subjecti, ut fideles suo Principi, interrogati [in] sententiam super illo Decreto, obligantur aperte et sine dissimulatione respondere ipsum esse bonum ac sanctum."

§4) More: silence shows approval

Tum Morus, "At si," inquit, "verum est quod jus commune ait, 'Qui tacet, consentire videtur,' meum istud silentium plus approbat vestrum Statutum quam infirmavit. Quousque vero fidelis quisque tenetur et obligatur respondere, et cetera: respondeo, multo magis ad officium boni viri et fidelis subditi pertinere, ut suae conscientiae ac perpetuae saluti consulat, et rectae rationis praescriptum sequatur, quam ullius alterius rei habeat rationem, propter quod hujusmodi conscientia qualis est mea suo Principi nullam praebet offensionem neque seditionem excitat [--illud vobis asseverans, nulli mortalium meam conscientiam fuisse apertam]."

§5) More replies to the second accusation, concerning letters to Fisher

"Quod autem in secunda parte accusor contravenisse Decreto et in ejus abolitionem esse machinatus, scriptis ad Episcopum Roffensem octonis litteris quibus illum contra vestrum Decreto armaverim: etiam atque etiam optarim lawful for me to be judged to death for such silence on my part, because neither your Statute nor anything in the laws of the whole world can rightly afflict anyone with punishment, unless one has committed a crime in word or deed, since laws have constituted no penalty for silence."

Then the Royal Proctor started to speak, saying, "Such silence was a sure indication and a not obscure sign of evil thoughts about the Statute, because all subjects, being faithful to their Prince, when interrogated on their view concerning the Statute, are obliged to respond openly, and without dissimulation, that it is good and holy."

Then More replied, "But if it is true what universal law says, 'One who keeps silent seems to consent,' then that silence of mine gave approval to that Statute of yours more than it weakened it. But as for all the faithful being bound and obliged to make response, etc., I answer that there is a much greater obligation on the part of a good man and faithful subject to consult his own conscience and eternal salvation, and to follow the prescriptions of reason, than to take account of any other thing, especially since the kind of conscience that I have offers no offense to its Prince and stirs up no sedition [--asserting this to you, that my conscience had not been opened to any mortal]."

"As for what I am accused of in the second part, that I contravened the Statute and worked for its abolition in writings to the Bishop of Rochester, by means of eight letters in which I fortified him against your Statute: again and again I

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199 G quicquid est
200 G possunt
201 NQ: G sequamur
202 NQ: G illius
203 The bracketed words are in NQ.
illas literas publice fuisse recitatas. Sed quum, sicut vos dicitis, concrematae sunt per eundem Episcopum, ipse vobis ultra ipsarum argumenta commemorabo. In quibusdam tractabantur res familiares, sicut nostra vetus consuetudo et amicitia postulabat. Una ex illis responsum habebat ad ipsius epistolam, qua scire desiderabat quonam modo respondissem in carcere quum primum examinarer super dicto Decreto. Cui respondi me meam exonerasse conscientiam et rationem esse secutum, idque ut et ipse ageret admonebam. Haec fuit, ita mihi Deus sit propitius, meuarum literarum sententia, nec ob illa debit per Decretum vestrum quicquam morte dignum censeri."

§6) More replies to the third accusation, on collusion with Fisher ("two-edged sword")

"Quod vero ad tertium articulum attinet, qui continet me quum a Senatu examinarer respondisse vestrum Decretum simile esse gladio ancipiti, ut qui obtemperaret periclitaretur de salute animae, qui adversaretur amitteret vitam; ac eadem respondisse (sicut dicitis) Episcopum Roffensem, ex quo appareat hoc inter nos de composito agi, utroque eodem modo respondente: ad eam partem accusationis respondeo me non simpliciter sed sub conditione esse locutum, videlicet, si esset aliquod decretum simile gladio ancipiti, quonammodo quisquam hominum sibi possit cavere ne in alterutram aciem incurrat? Porro quid responderit Episcopus Roffensis equidem ignoro, et fieri potest ut eodem modo responderit, sed illo quod esse factum ex utra conspiratione, sed potius ex ingenii disciplinarumque similitudine processit. Hoc autem pro certissimo credito me numquam contra Decretum vestrum maliciose vel dixisse aut fecisse. Interim tamen fieri potuit ut multa de me ad concitandum mihi odium ad Regis Majestatem depravate ac maliciose sint prolata."

"As for what pertains to the third article, which says that when I was interrogated by the Council I responded that your Statute is like a two-edged sword, so that one who obeyed it imperiled the salvation of his soul, while one who opposed it would lose his life; and that the Bishop of Rochester (you say), responded in the same way, from which it should appear that this was done by agreement between us, both of us responding in the same way: to this part of the accusation I respond that I was not speaking straightforwardly but only conditionally; that is, if there should be some statute that was like a two-edged sword, how could any person take care against coming up against one edge or the other? But what the Bishop of Rochester responded, I do not know. It may be that he responded in the same way, but it was not done through any conspiracy, but rather it occurred because of our similar minds and education. But believe me most assuredly on this point, that I never said or did anything maliciously against your Statute. In the meantime, however, it could be that many things have been viciously and maliciously spoken about me to arouse hatred against me on the part of His Royal Majesty."
§7) The Jury is summoned and sent to deliberate, returning a Guilty verdict

This said, immediately twelve men were called by the Public Minister, after the custom of the British Nation, to whom were given the chapters of accusation, to deliberate and judge whether More had maliciously sinned against the Statute.

And they, sitting about a quarter of an hour, after deliberation was had among them, when they returned to the sight of the Princes and Judges Delegate, on being asked what they thought about the accused party, responded, "Guilty," which in British speech means, "He is to be condemned," or, "He is deserving of death."

§8) After sentence, More reveals his mind

Soon the Chancellor pronounced the sentence according to the formula of the recent Statute. When all was finished, More arose to speak, saying: "Since I have been adjudged to death, whether rightly or wrongly, God knows, for the exonerating of my conscience I would willingly say some words to you concerning your Statute. I affirm that I have spent all my study during the whole of the last seven years, and I have never found an approved doctor to hold that any layman is the head of an ecclesiastical order."

§9) The Chancellor cites opinion against More

At this point the Chancellor interrupted his speech and said, "Do you wish to be more prudent and religious than all the Bishops, the whole Nobility, and all of the People who are subjects of the King and his Kingdom?"

§10) More cites greater opinion on his side

More replied to him, "For one Bishop who agrees with you, I have easily a hundred, including some who are among the Saints. And for your one Council [i.e., Parliament] and your Statute (what it is worth the Great Good God knows), on my side are all the General Councils celebrated during the last thousand years. And for one Kingdom, the Kingdom of France and all other Kingdoms of the Christian World..."
§11) Norfolk charges malice

§12) More impugns the Statute as invalid
"Praeterea illudque addo, vestrum Decretum perperam esse factum, quoniam ex professo jurastis contra Ecclesiam, quae in toto Orbe Christiano est una sola integra et indivisa. Ac vos soli nullam habetis potestatem statuendi quicquam absque reliquorum Christianorum consensu, quod sit contra unitatem et concordiam Religionis Christianae.

"Sed non ignoro cur me morti adjudicaveritis. Illa unica causa est quod nolui superioribus annis consentire in secundum Regis matrimonium."

§13) More prays for his Judges
"Sed tamen magna mihi spes est in Divina clementia ac bonitate, quemadmodum Sanctus Paulus legitur persecutus Divum Stephanum, qui tamen nunc unanimes in coelo agunt, sic nos omnes quamquam in hac vita dissentiamus, tamen in alia cum perfecta charitate consensuros. Oro itaque Deum Optimum Maximum ut Regem tueatur, conservet, ac salvum faciat ac illi salubre consilium suppeditet."

§14) More's Encounter with Margaret
Cum vero jam peracto judicio Morus in carcerem denuo abduceretur, priusquam ad carcerem esset pervenuts, una filiarum ejus nomine Margaretae per medium satellitum ac stipatorum turbam ruens, flagrans immodico desiderio parentis, nulla habita ratione nec sui nec loci publici nec circumstancium, vix tandem ad patrem perrupit, ibique collum ejus amplexa miserando fletu agree with me."

Then the Duke of Norfolk spoke up and said, "More, now you are plainly revealing your mind's stubborn malice." But More replied, "What I say, I say because necessity compels me, for I wish to exonerate my conscience and not weigh down my soul. I call on God, the searcher of hearts, as witness."

"In addition, I add this, that your Statute was wrongly made, because you deliberately swore your oaths against the Church, which alone is whole and undivided through the whole Christian World. And you alone have no power to enact anything, without the consent of all other Christians, which is contrary to the unity and concord of the Christian Religion.

"But I am not unaware of the reason for which you have adjudged me to death. The one single cause is that I have been unwilling over the past years to consent to the second marriage of the King.

"But still I have great hope in the Divine clemency and goodness that, as we read that St. Paul persecuted Blessed Stephen, but they are now together in heaven, so all of us, though we disagree in this life, will nevertheless agree in another life with perfect charity. I therefore pray the Great Good God to guard the King, conserve him, and make him safe, and send him salutary counsel."

Now when the trial was over and More was being led back to prison, before he had arrived at the prison, one of his daughters, named Margaret, rushing through the midst of the crowd of guards and soldiers, burning with great desire for her parent, taking no care for herself or the public place or those standing by, she barely broke through at last to her father,
suum extremum dolorem est testata. Cumque illum jam aliquanto temporis intervallo arctissime stringeret, dolore omnem viam vocis praecludente, pater permissu satellitum eam hoc modo est consolat[us]: "Margareta, esto animo fortis, nec te excrucies amplius; ita visum est Deo. Jamdudum nosti animi mei archana omnia."

Inde patre ferme decem vel duodecim passibus ab ducto rursus occurrit iterum collum patris amplexa. Ibi Morus, nullis emissis lachrimis, nulla vultus aut animi perturbatione, hoc tamen dixit, "Vale, et Deum pro salute animae meae deprecare."

§15) More is beheaded

[ Pri] die \(^{208}\) Nonarum Julii fuit capite truncatus in magno campo qui est ante [Turrim] Regiam, ac pa uca priusquam obtruncaretur loquebatur, tantummodo rogans circumstantem multitudinem ut pro eo in hac vita depre caretur, ipse vicissim in alia vita intercederet pro illis.

§16) His last prayer

Postremo illos sedulo hortabatur, orabatque ut Deum pro Rege deprecarentur, ut illi velit largiri rectum consilium et mentem bonam, palam protestans ac denuncians se mori ejus fidelem ministrum, in primis tamen Dei Omnipotentis.

and there, embracing his neck with pitiable weeping she bore witness to her extreme grief. And after she held onto him tightly for some time, with sorrow completely overcoming her voice, her father with the guards' permission consoled her thus: "Margaret, be of strong spirit, and do not torment yourself further; this is God's will. You have long known all the secrets of my mind." Then, when her father had scarcely been taken away another ten or twelve steps, she again fell upon him and once more threw her arms around her father's neck. Thereupon More, shedding no tears, and showing no distress of countenance or mind, said only this: "Farewell, and pray to God for the salvation of my soul."

On the day [before] the Nones of July his head was struck off in the great field before the Royal [Tower], and he spoke a few words before he was beheaded, simply asking the crowd standing around to pray for him in this life and he in turn would intercede for them in another life.

Finally he strongly exhorted them and urged them to pray to God for the King, that He would grant him right counsel and good mind; openly protesting and declaring that he died a faithful minister to him, but first of all to God Almighty.

\(^{208}\) G die. The day of the Nones would be July 7; the beheading took place on the previous day.
Appendix C

Spelman's Report


Et puis _die Jovis_, le primer jour de July [1535], Sir Thomas More, Chivaler (que fuit devaunt Chauncelour de Engleter, et apres fuit dischargé de meme l'office), fuit arrainé devaunt le dit Sir Thomas Awdely, Chauncelour, et Comissionerz, de treson, de ceo que il fuit aidant, councilour, et abettour al dit Evesque, et auxi que il faulement, maliciousment, et traitorously desirant, voilant, et imaginant, inventa, practa, et attempta a deprive le Roy de son dignité, nome, et title de Supreme Chiefe en Terre de l'Esglise d'Engleter.

And then on Thursday, the first day of July, Sir Thomas More, Knight (who had earlier been Chancellor of England and was afterwards discharged from the same office) was arraigned before the said Sir Thomas Audeley, Chancellor, and the [other] Commissioners, for treason, in that he was an aider, counselor, and abettor to the said Bishop [Fisher], and also that he falsely, maliciously, and traitorously desiring, willing, and scheming, contrived, practiced, and attempted to deprive the King of his dignity, name, and title of Supreme Head on Earth of the Church of England.

[He was] found guilty, and the said Chancellor gave judgment. And the said More stood firmly upon the Statute of 26 Henry VIII, for he said that the Parliament could not make the King Supreme Head, etc. He was beheaded at Tower Hill.
Appendix D

Pole's Account


1) De iniquissima Domini Thomae Mori condemnatione

[89] Quodsi caetera deessent, annon vel Mori unius condemnatione luce clarius totum illud tenebrosum judicium, cui ipse profecto Tenebrarum Princeps praeuit, patefaceret? In Episcopum enim et Cardinalem Roffensem (*Roffensis Cardinalis creatus fuit quum esset in carcere*), quamvis iniquissime etiam is condemnatus est, tamen aliquid habebant etsi injustum quod objicerent, quod speciem justitiae aliquam et jucdicii formam prae se ferret, quod is aperte, sicut episcopum decebat, Legi ipsorum adversaretur. In Morum vero, nec justam nec injustam causam, nihil plane quod vel speciem aliquam praebet illius quae more saltem atque exemplo fieret damnationis, reperire poterant; cujus unica responsio audita, omnia illis praeciderat, quaecumque vel fingere contra eum possent.

2) Forma judicii

Sed explicemus parumper formam praeclari illius jucdicii quo est Morus condemnatus, ut melius intelligi ac perspici queat quis illi jucdici praefuerit. Sic igitur accusatio est instituta. Citabatur ad causam capitis eo in loco dicendam Morus in quo paulo ante judex summa cum potestate et incredibili totius Regni gratulatione sederat (*Morus, Summus Angliae Cancellarius*). [There follows an account of the high esteem in which he was held when

1) The Shameful Condemnation of Sir Thomas More

[cf. 217] Even in the absence of these other events, would not More's condemnation alone reveal in the clearest light the total darkness of this judgment [against the monks], at which the very Prince of Darkness presided? Though the Bishop and Cardinal of Rochester (*the Bishop of Rochester was created Cardinal when he was in prison*) was condemned most wickedly, they had something against him, even though unjust, that would have some appearance of justice and form of due process, because he was openly opposed to their Law, as was proper for a bishop. Against More, however, they could find neither a just nor an unjust charge, nothing at all, that would give even some appearance of any sort of condemnation justified by previous custom or example. Even things that they were able to invent against him were cut off from them when his one reply was heard.

2) The Form of the Trial

For a moment, however, let us explain the form of that renowned trial in which More was condemned, so that one might better understand who it was who presided over that trial [i.e., Satan]. The accusation, then, began in this manner. More was summoned to respond to a capital charge in the very place where just a short time previously he had sat as judge with the highest authority and the extraordinary good wishes of all the realm (*More was the*
functioning as Chancellor.]
Hic vero talis vir cum esset reus eo in loco, apud qualem judicem causam dicebat? Age dum non mea ulla oratio, sed acta ipsa ejus judicij declarent.

3) Accusatio longa et perplexa intenditur in Morum
Recitabatur contra reum longa et perplexa accusatio, in qua quaecumque contra sceleratissimum hominem dici possent, quaecunque in prodiotrem patriae et legum omnium eversorem, conferebantur in eum, qui et ipse semper innocentissime vixerat et leges sanctissime observandas curaverat. Laesae majestatis crimine [89v] accusabatur is qui et Regis et Regni ipsius majestatem minui solus ex suo ordine passus non erat. Sed ne videlicet ad omnia quae proponebantur respondere posset, ut ita suspicio aliqua criminis in eo constitueretur, iccirco longis verborum et sententiarum ambagibus accusatio contexta erat, quasi hoc plane consilii habuissent ut si eum ferire non possent, saltem ut tanquam feram retibus, sic hominem innocentissimum longissimo criminum ambitu, ne qua elabi posset, circumveniret.

Itaque talis et tam prolixa oratio fuit, ut Morus ipse, quo nemo memoria magis valuit, attitissime cum audisset, palam testaretur se vix tertiam partem eorum quae sibi objicerentur memoria comprehendere potuisse. Se tamen ad pauc, vel potius ad illud unum quod caput totius accusationis esset, de novo Consilii Decreto, quod argueretur non approbare, responsurum. Illud enim demum Senatus Decretum ills erat ex quo sibi posse viderentur crimen in eum laesae majestatis comparare; neque quicquam praeterea habeant quod

High Chancellor of England). [. . .]  
[cf. 218] Now such a man as this, when he appeared in this place as defendant, before what sort of judge did he plead his cause? Attend now while not my words but the very acts of his trial make this clear. 3) A Long and Intricate Accusation Is Laid Against More
A long and intricate accusation was read aloud against the defendant. In this accusation, whatever might be said against a most criminal man, whatever might be said against a traitor to his native land and against a man who had overthrown all laws, was charged against him, though he had always lived most innocently and had taken constant care that the laws were most religiously observed by all. He who alone of all his rank would not permit the majesty of the King or his Realm to be diminished, was accused of the crime of lese majesty. But, in order that he might not reply to all the things that were presented, that thus some suspicion of crime might be established against him, this accusation was woven into lengthy and ambiguous words and sentences. They thus clearly had a scheme whereby, if they were not able to strike him down, as with a wild beast, they would use nets: they would surround this innocent man with their lengthy circumlocution of crimes, to prevent him from escaping.

Thus the language was such, and of so great a length, that More himself, whose memory surpassed all others, even though he listened most attentively, openly testified that he was scarcely able to remember a third of the things that were objected against him. He said, nevertheless, that he would reply to a few of them, or rather to that one thing that was the chief point of the whole accusation, namely, that he was charged with not approving the new Decree of the Council. It was, finally, this Decree of Parliament
probabiliter ei objicerent.

4) Responsio Mori

Ad hoc vero ille ita respondit, ut diceret eam Legem, qualiscunque esset, postea esse latam quam ipse perpetui carceris, in quo reliquum vitae degeret, poena, et fortunarum omnium proscriptione, affectus esset. Itaque, sive illa justa, sive injusta Lex esset, primum, nihil eam ad se pertinere, qui et occidisse civiliter, ut jura dicerent, videretur, nec jam respondere de legibus debere quibus ipse amplius non utteretur. Deinde, ut maxime etiam ad se pertineret, se tamen nec facto ullo nec dicto suo commisisses, ut illam improbare videretur; breviter, jure condemnari ea Lege non posse, contra quam nihil a se factum dictumve objici posset.

Ad hanc responsionem cum illi egregii judices primum silerent (nihil enim in promptu habebant quod opponerent, neque enim sane Morus, quid ea de re sentiret, cu quam exposuerat), tum alter alterum respiceret, omnes haerere, aestuare omnes coeperunt. Longa enim illa et tot perplexa nodis accusatio nihil profecerat. Videbatur homo innocens, quem tanquam feram undique conclusisse se putaverant, retia effugisse. Tandem vero, omnes in Advocatum Regis oculos convertere. Ad eum enim praecepique pertinere censebant, ut curaret, ne tam opima praeda e manibus elaberetur.

5) Silentium Moro objicitur criminis loco

Atque hic aliquando, cum se nonnihil collegisset, plenus illo Spiritu quo that seemed to them to make it possible to charge him with the crime of lese majesty. For they had nothing else with which to charge him with any degree of probability.

4) More's Response

To this, however, More replied thus. He said that the Law, whatever it might be, was passed after he had been committed to the punishment of perpetual prison, where he would spend the rest of his life, and after all his possessions had been confiscated. [cf. 219] Therefore, first of all, whether the Law were just or unjust, it did not seem to pertain to him, who was "civilly dead," as the laws would say, nor should he make any reply concerning legislation that he himself would no longer use. Second—and this pertained to him especially—he had never committed anything, by any deed or spoken word of his, to indicate that he disapproved of that Law. In brief, he could not justly be condemned by that Law, against which nothing done or said by him could be charged against him.

To this response those eminent judges first remained silent. They had nothing ready to oppose to his words in reply, for More had never explained to anyone what his thinking was on the matter. Then one looked at another, all remaining fixedly where they were, and finally they all grew enraged. For that long and intricate accusation, with all its perplexities, had accomplished nothing. The innocent man whom they thought they had surrounded like a wild beast seemed to have escaped from their net. But at last they all turned their eyes toward the King's Advocate. They thought it was his special business to take care lest this precious prey should escape from their hands.

5) Silence Is Charged Against More as a Crime

Thereupon the Royal Advocate, after he had collected himself somewhat, being
6) More's Silence Is Held Against Him as Proof of a Malicious Mind

And this too was added by the ingenious Advocate, that that silence was sign of an evil mind. This word was received in such a way by the other seated judges that they believed that this judicial process, which seemed almost to have collapsed, could be reconstituted by this word alone. Even though no one had any [cf. 220] charge to make, they nevertheless all cried out together, "Malice, malice!" They proposed no deed or speech as proof of malice, but only silence. And in this way once again, like a wild beast almost escaped from the snares, the innocent man seemed to be entrapped in the accusation.

But More replied to this by saying that no one could be condemned for impugning a law by being silent, for silence was an indication of a mind that assented to a law

Sed jam duodecim viri qui patriae more vitae ac necis potestatem in judicando habent advocabantur. Qui cum vocem malitiae quae per totum judicium personuerat defixam in auribus animisque haberent, nulla interposita mora, ut mirum esset tam cito convenire potuisse, statim pronuntiarunt, vocabulo Anglico, "Gyltie"—quod perinde valet ut si dicas Hebraeo loquendi more, "Filius est mortis." 209 "Crucifige, crucifige!"

209 As in 2 Samuel 12.5: "Filius mortis est vir qui fecit hoc" ("The man that hath done this is a child of death"). See Germain Marc'hadour's review of Dwyer, Moreana 14 (May 1967) 99-102.

7) Apostrophe ad Angliam, completens laudem Mori . . . [90-92v]

8) Morus postquam condemnatus esset sententiam suam de nova Lege protulit

[92v] Tunc enim primum sententiam suam patefecit de Lege qua Rex fuerat Ecclesiae Caput constitutus, id quod nunquam ante fecerat, ea scilicet mente ne, cum nihil proficere posset, occasionem adversariis suis (tuis vero hostibus, [O Anglia,]) ulterius in se saeviendi daret. Tum autem tui curam gerens, ne imprudens atque ignara pestiferae contra te ipsam Legi suffragareris, ita locutus est, ut cum legibus eam et divinis et humanis omnibus pugnare diceret, magisque perniciosam iis qui ipsi assentirentur [93] fore denuntiaret, quam sibi fuisset, qui quia dissensisse argueretur, capitali sententia affectus esset.

8) After Being Condemned to Death, More Revealed His Opinion of the New Law

[cf. 226] Then he first revealed his opinion concerning the Law by which the King had been appointed Head of the Church. He had not done this previously, for the purpose of not giving his [cf. 227] adversaries—who were also your enemies, [O England]—an opportunity for further lashing out against him, since it could not aid his defense. But then, at that point, being mindful of your care, lest you should imprudently and ignorantly favor this pestiferous Law that was against your own self, he spoke out. He declared this Law to be in contradiction to all human and divine laws. He asserted that it would be more pernicious to those who assented to it than it had been to himself, who was condemned to capital punishment because rather than of one that opposed it, and he confirmed it by citing the widespread adage of legal scholars, commonly expressed thus, "One who remains silent is seen to consent." However, he was paid no heed.

But now the twelve men, who according to the custom of our country have the power of life and death in trials, were called forward. And these men, since they had the word "Malice," which had sounded throughout the whole courtroom, fixed in their ears and minds, made no delay—in fact, it was a wonder that they could convene so quickly. They immediately made their pronouncement, in English, "Guilty." This has the same effect as if one were to say in the Jewish manner of speaking, "He is a child of death." "Crucify him, crucify him!"
9) More, Condemned, Prays for His Enemies

When he had made this explanation, he turned to his adversaries. But what attack of words did he employ against them? He spoke in the same way as the one who was led as a lamb to the slaughter. He spoke in the same way as the very Son of God who accepted the infirmity of our flesh and suffered Himself to be offered as a saving victim for the salvation of the world, since he prayed for those who were in like manner the authors of his most terrible and unjust death. For thus More, dying for your salvation, O Native Land, did not pray for disasters upon his enemies any more than he would upon his friends. He said that here indeed was a place of discord, dissension, and tumult, but that he was now going to where the root of all strife and dissension had been removed, where love, peace, concord and tranquillity would live in all. To which place he hoped that they too, with minds changed for the better, would come. He prayed from his heart that this might come to pass. Oh, kind heart! Oh, gentleness always to be praised! What greater sign of equanimity did he [Stephen] give, who prayed for those who were casting stones at him?
Appendix E

Roper's Account


[1] Account of the Encounter with Richard Rich (narrated as happening before the trial, but later characterized as based on Rich's testimony at the trial)

[p. 84] Shortly hereupon [after two official interrogations in the Tower], Master Rich, afterwards Lord Rich, then newly made the King's Solicitor, Sir Richard Southwell, and one Master Palmer, servant to the Secretary, were sent to Sir Thomas More into the Tower, to fetch away his books from him. And while Sir Richard Southwell and Master Palmer were busy in the trussing up of his books, Master Rich, pretending friendly talk with him, among other things, of a set course, as it seemed, said thus unto him:

[p. 85] "Forasmuch as it is well known, Master More, that you are a man both wise and well learned as well in the laws of the Realm as otherwise, I pray you therefore, sir, let me be so bold as of good will to put unto you this case. Admit there were, sir," quoth he, "an act of Parliament that all the Realm should take me for king. Would not you, Master More, take me for king?"

"Yes, sir," quoth Sir Thomas More, "that would I."

"I put case further," quoth Master Rich, "that there were an act of Parliament that all the Realm should take me for Pope. Would not you then, Master More, take me for Pope?"

"For answer, sir," quoth Sir Thomas More, "to your first case: the Parliament may well, Master Rich, meddle with the state of temporal princes. But to make answer to your other case, I will put you this case: suppose the Parliament would make a law that God should not be God. Would you then, Master Rich, say that God were not God?"

[p. 86] "No, sir," quoth he, "that would I not, sith no Parliament may make any such law."

"No more," said Sir Thomas More, as Master Rich reported of him, "could the Parliament make the King Supreme Head of the Church."

[2] Indictment

Upon whose only report was Sir Thomas More indiected of treason upon the Statute whereby it was made treason to deny the King to be Supreme Head of the Church. Into which indictment were put these heinous words, "maliciously, tratorously, and diabolically."

[3] Answer to the Indictment

When Sir Thomas More was brought from the Tower to Westminster Hall to answer the Indictment, and at the King's Bench bar before the Judges thereupon arraigned, he openly told them that he would upon that Indictment have abidden in law, but that he thereby should have been driven to confess of himself the matter indeed, [which] was, the denial of the King's Supremacy, which, he protested, was untrue.
Wherefore he thereto pleaded Not guilty; and so reserved unto himself advantage to be taken of the body of the matter, after verdict, to a-void that Indictment. And moreover added that if those only odious terms, "maliciously, traitorously, and diabolically" were put out of the [p. 87] Indictment, he saw therein nothing justly to charge him.


And for proof to the Jury that Sir Thomas More was guilty of this treason, Master Rich was called forth to give evidence unto them upon his oath, as he did.

[5] **More addresses the Judges (Lords) as a man who takes oaths seriously**

Against whom thus sworn, Sir Thomas More began in this wise to say: "If I were a man, my Lords, that did not regard an oath, I needed not, as it is well known, in this place, at this time, nor in this case, to stand here as an accused person."

[6] **More tells Rich his oath is not true**

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

[7] **More gives his own account of his conversation with Rich to the Court (Judges and Jury)**

Then recited he to the Court the discourse of all their communication in the Tower, according to the truth.

[8] **More addresses Rich on his bad character**

And said: "In good faith, Master Rich, I am sorrier for your perjury than for my own peril. And you shall understand that neither I nor no man else to my knowledge ever took you to be a man of such credit as in any matter of importance, aye, or any other, would at any time vouchsafe to communicate with you. And I, as [p. 88] you know, for no small while have been acquainted with you and your conversation, who have known you from your youth hitherto. For we long dwelled both in one parish together, where, as yourself can tell (I am sorry you compel me so to say), you were esteemed very light of your tongue, a great dicer, and of no commendable fame. And so in your house at the Temple, where hath been your chief bringing up, were you likewise accounted.

[9] **More addresses the Judges (Honorable Lordships) on the unlikelihood of his revealing his mind to Rich**

"Can it therefore seem likely unto Your Honorable Lordships that I would, in so weighty a cause, so unadvisedly overshoot myself as to trust Master Rich, a man of me always reputed for one of so little truth, as Your Lordships have heard, so far above My Sovereign Lord the King, or any of his noble Councilors, that I would unto him utter the secrets of my conscience touching the King's Supremacy, the special point and only mark at my hands so long sought for? A thing which I never did, nor never would, after the Statute thereof made, reveal, either to the King's Highness himself, or to any of his honorable Councilors, as it is not unknown to Your Honors at sundry several times sent

210 "I, or any other": this could mean, "[that] I or any other [man]..."
from His Grace's own person unto the [p. 89] Tower unto me for none other purpose. Can this in your judgments, My Lords, seem likely to be true?

[10] More pleads his lack of malice, in any case

"And yet, if I had so done in deed, My Lords, as Master Rich hath sworn, seeing it was spoken but in familiar secret talk, nothing affirming, and only in putting of cases, without other displeasant circumstances, it cannot justly be taken to be spoken maliciously. And where there is no malice, there can be no offense. And over this I can never think, My Lords, that so many worthy Bishops, so many honorable personages, and so many other worshipful, virtuous, wise, and well-learned men as at the making of that Law were in the Parliament assembled, ever meant to have any man punished by death in whom there could be found no malice, taking malitia for malevolentia. For if malitia be generally taken for 'sin,' no man is there then that can thereof excuse himself; quia, 'Si dixerimus quod peccatum non habemus, nosmetipsos seducimus, et veritas in nobis non est' [1 John 1.8: 'If we should say that we do not have sin, we deceive ourselves, and the truth is not in us']. And only this word 'maliciously' is in the Statute [p. 90] material, as this term 'forcible' is in the Statute of Forcible Entries. By which Statute, if a man enter peaceably and put not his adversary out forcibly, it is no offense. But if he put him out forcibly, then by the Statute it is an offense, and so shall he be punished by this term 'forcibly.'

[11] More cites his previous relations with the King as showing lack of grounds for malice

"Besides this, the manifold goodness of the King's Highness himself, that hath been so many ways my singular good Lord and gracious Sovereign, that hath so dearly loved and trusted me, even at my very first coming into his noble service with the dignity of his honorable Privy Council vouchsafing to admit me, and to offices of great credit and worship most liberally advance me, and finally with that weighty room of His Grace's High Chancellor—the like whereof he never did to temporal man before—next to his own Royal Person the highest officer in this noble Realm, so far above my merits or qualities able and meet therefore, of his incomparable benignity honored and exalted me, by the space of twenty years and more showing his continual favor towards me, and (until at my own poor suit, it pleased his Highness, giving me license, with [p. 91] His Majesty's favor, to bestow the residue of my life for the provision of my soul in the service of God, of his especial goodness thereof to discharge and unburden me), most benignly heaped honors continually more and more upon me. All this His Highness's goodness, I say, so long thus bountifully extended towards me, were, in my mind, My Lords, matter sufficient to convince this slanderous surmise by this man so wrongfully imagined against me."

[12] Rich has Southwell and Palmer testify on his behalf

[p. 91] Master Rich, seeing himself so disproved, and his credit so foully defaced, caused Sir Richard Southwell and Master Palmer, that at the time of their communication were in the chamber, to be sworn what words had passed between them. Whereupon Master Palmer, upon his deposition, said that he was so busy about the trussing up of Sir Thomas More's books in a sack, that he took no heed to their talk. Sir Richard Southwell
likewise, upon his deposition, said that because he was appointed only to look unto the conveyance of his books, he gave no ear unto them.


After this were there many other reasons, not now in my remembrance, by Sir Thomas More in his own defense alleged, to the discredit of Master Rich's aforesaid evidence, and proof of the clearness of his own conscience. All which notwithstanding, the Jury found him guilty.

[14] More interrupts the Sentence

And incontinent upon their verdict, the Lord Chancellor, for that matter Chief Commissioner, beginning to proceed in Judgment against him, Sir Thomas More said to him, "My Lord, when I was toward the Law, the manner in such case was to ask the Prisoner before Judgment why Judgment should not be given against him." Whereupon the Lord Chancellor, staying his Judgment wherein he had partly proceeded, demanded of him what he was able to say to the contrary.

[15] More speaks against the Statute upon which the Indictment was grounded

Who then in this sort most humbly made answer: "Forasmuch, My Lords," quoth he, "this Indictment is grounded upon an Act of Parliament directly repugnant to the Laws of God and His Holy Church, the supreme government of which, or of any part whereof, may no temporal prince presume by any law to take upon him, as rightfully belonging to the See of Rome, a spiritual preeminence by the mouth of Our Savior Himself, personally present upon the earth, only to St. Peter and his successors, Bishops of the same See, by special prerogative granted; it is therefore in law amongst Christian men insufficient to charge any Christian man." And for proof thereof, like as, among divers other reasons and authorities, he declared that this Realm, being but one member and small part of the Church, might not make a particular law disagreeable with the General Law of Christ's Universal Catholic Church, no more than the City of London, being but one poor member in respect of the whole Realm, might make a law against an act of Parliament to bind the whole Realm. So farther showed he that it was contrary both to the Laws and Statutes of our own Land yet unrepealed, as they might evidently perceive in Magna Charta: 'Quod Ecclesia Anglicana libera sit et habeat omnia jura integra et libertates suas illaesas'; and also contrary to that sacred oath which the King's Highness himself and every other Christian Prince always with great solemnity received at their Coronations; alleging moreover that no more might this Realm of England refuse obedience to the See of Rome than might the child refuse obedience to his own natural father. For, as St. Paul said of the Corinthians, "I have regenerated you, my children in Christ." So might St. Gregory, Pope of Rome, of whom, by St. Austin, his messenger, we first received the Christian Faith, of us Englishmen truly say: "You are my children, because I have given to you everlasting salvation, a far higher and better inheritance than any carnal father can leave to his child, and by regeneration made you my spiritual children in Christ."
[16] Chancellor Audeley cites the English Bishops and scholars against More

There was it by the Lord Chancellor thereunto answered, that, seeing all the Bishops, Universities, and best learned of this Realm had to this Act agreed, it was much marveled that he alone against them all would so stiffly stick thereat, and so vehemently argue thereagainst.

[17] More claims greater support

To that Sir Thomas More replied, saying, "If the number of Bishops and Universities be so material as Your Lordship seemeth to take it, then see I little cause, My Lord, why that thing in my conscience should make any change. For I nothing doubt but that, though not in this Realm, yet in Christendom about, of these well learned Bishops and virtuous men that [p. 95] are yet alive, they be not the fewer part that be of my mind therein. But if I should speak of those which already be dead, of whom many be now holy Saints in Heaven, I am very sure it is the far greater part of them that, all the while they lived, thought in this case that way that I think now. And therefore am I not bound, My Lord, to conform my conscience to the counsel of one Realm against the general counsel of Christendom."

[18] Audeley consults with Chief Justice FitzJames on More's exceptions to quash the Indictment

Now when Sir Thomas More, for the avoiding of the Indictment, had taken as many exceptions as he thought meet, and many more reasons than I can now remember alleged, the Lord Chancellor, loath to have the burden of that Judgment wholly to depend upon himself, there openly asked the advice of the Lord FitzJames, then Lord chief Justice of the King's Bench, and joined in Commission with him, whether this Indictment were sufficient or not. Who, like a wise man, answered: "My Lords all, by St. Julian"—that was ever his oath—"I must needs confess that, if the Act of Parliament be not unlawful, then is not the Indictment, in my conscience, insufficient."

[19] More is sentenced


[20] More declines to make further defense, and prays for his Judges

After which ended, the Commissioners yet further courteously offered him, if he had anything else to allege for his defense, to grant him favorable audience. Who answered: "More have I not to say, My Lords, but that, like as the Blessed Apostle St. Paul, as we read in the Acts of the Apostles, was present and consented to the death of St. Stephen, and kept their clothes that stoned him to death, and yet be they now both twain holy Saints in Heaven, and shall continue there friends for ever, so I verily trust and shall therefor right heartily pray, that though Your Lordships have now here in earth been Judges to my condemnation, we may yet hereafter in Heaven merrily all meet together, to our everlasting salvation."
[21] **Roper cites his sources**

Thus much touching Sir Thomas More's arraignment, being not thereat present myself, have I by the credible report, partly of the Right Worshipful Sir Anthony Seint-Leger, Knight, and partly of Richard Heywood and John Webb, Gentlemen, with others of good credit, [p. 97] at the hearing thereof present themselves, as far as my poor wit and memory would serve me, here truly rehearsed unto you.

[22] **More is led away from the bar**

Now after this arraignment, departed he from the bar to the Tower again, led by Sir William Kingston, a tall, strong, and comely knight, Constable of the Tower, and his very dear friend.
Appendix F

Sir John Baker's Assessments


[p. 138] ... The difficulty is to establish the effects of pressure [upon judges], and the extent, if any, to which it may be said to have influenced the law itself.

Most of the comment on this issue has centered upon the trials of Sir Thomas More and Queen Anne, trials which have brought a good deal of obloquy on the judges who were present. Lord Campbell considered the latter to have been accessories to murder by their passive approval of the proceedings [n. 4: Lives of the Chief Justices of England (1849), 1:168], while Professor Amos went so far as to reason that "men who could prostitute their learning, talents, and stations in committing murders, by legal sophistry, to please a king, would not hold the scales of justice even between party and party" [n. 5: A. Amos, Observations on the Statutes of the Reformation Parliament (1859), p. 137]. This grave charge is as difficult to disprove as it is to maintain. ...

[p. 139]...There is no reason to think that they [the judges] always leaned in favor of the Crown. In R. v. Lord Dacre [1534], for instance, they laid down the important principle that the court cannot communicate with the jury (or triers) in the absence of the accused. In More's case itself, the judges apparently agreed that a refusal to answer questions was not an overt act of treason [n. 4: citing J. M. Derrett's EHR 1964 article, pp. 459, 462, and adding: "It may have been a policy decision by the Attorney-General rather than a ruling of the court. Professor Derrett has just published a revised version of his paper," citing Selected Papers, 1977]. There are instances of judges repriming "political" prisoners after conviction because they considered the indictment of doubtful validity [n. 5: Elton, Policy and Police, p. 303], or because of technical deficiencies [n. 6: ibid., pp. 299-300, 305]. In the principal cases, however, the indictments were drawn with skill and careful consideration, so that the prisoner's case had to rest on the evidence. Spelman noted down the evidence in some of the cases, apparently in a spirit of credulity [n. 7: comment on Spelman's reaction to the evidence against Anne Boleyn]. This was a private note-book, not a political tract, and he had no axe to grind. If the judges thought the evidence credible, one ought not too hastily at this distance of time to assume that the jurors cared little for the truth. And if jurors did their work honestly one can hardly condemn the judges for not controlling them more effectively. Even packed juries sometimes acquitted [n. 8: Elton, pp. 314-17], and without a detailed study of jury panels no one is in a position to state that juries did not generally follow their consciences.

More's trial is arguably an exception, though when the records are viewed objectively and
the hagiography peeled aside it becomes more unclear whether Rich—however reprehensible his conduct—was actually lying. The uneasiness which everyone feels about More's conviction stems from the obnoxious character of a statute which virtually forced a man to incriminate himself on a matter of conscience. That was the work of Parliament, not the judges. The judges were, it is true, invited to declare the statute invalid, and this was the only legal difficulty in the case. More certainly embarrassed the judges by this question, and Fitzjames C.J. tried to evade it by saying that if the act was valid the indictment was sufficient [n. 9, citing Roper, Life, p. 95]. One can state confidently that no court today, nor even in [p. 140] Campbell's day, would accept More's argument. In 1535 there may have been a choice. But judicial review was not an established feature of the legal system, and by recognizing the legal sovereignty of Parliament the judges were hardly "prostituting their learning."

II


[p. 36] ... Sir Thomas More . . . at his trial challenged the validity of the legislation under which he was condemned [n. 190: "For what is known of the trial see J. D. M. Derrett," citing "Neglected Versions," BIHR 1960, and the 1964 EHR "Trial of Sir Thomas More"]. ...

[p. 414] ... The difficulty is to establish the effects of pressure [upon judges], and the extent (if any) to which it may be said to have influenced the law itself.

[p. 415] Most of the comment on this issue has centered upon the highly untypical state trials of Sir Thomas More and Queen Anne, trials which have brought a good deal of obloquy on the judges who were present. Professor Amos went so far as to comment that "men who could prostitute their learning, talents, and stations in committing murders, by legal sophistry, to please a king, would not hold the scales of justice even between party and party." This grave charge is as difficult to disprove as it is to maintain. ...

[p. 417] ... There is no reason to think that in pre-trial discussions the judges blindly favored the Crown. In 1534, they laid down the important principle that the court could not communicate with the jury, or peers triers, in the absence of the accused. And the following year, in More's case, they apparently agreed that a refusal to answer questions was not an overt act of treason [n. 38: citing Derrett's EHR 1964 article, pp. 459, 462, and adding: "It is not quite clear whether this was a ruling, or a concession by prosecuting counsel" (no ref. to Derrett's 1977 revision)]. There are instances of judges reprieving "political" prisoners after conviction because of doubts about the validity or technical propriety of their indictments [n. 39: citing Elton, Policy and Police, pp. 299-300, 303, 305]. In major cases, however, the indictments were drawn with great care and consideration, so that the defense had to be made upon the evidence rather than upon legal technicalities. And if a judge such as Spelman treated the evidence with a spirit of credulity, when jotting it down in a private notebook, we ought not too hastily to condemn jurors who found verdicts of guilty against prisoners charged with treason [n. 40: on contemporary credulity concerning the evidence against Anne Boleyn]. Even
packed juries sometimes acquitted [n. 41: Elton, pp. 314-17], and without a detailed study of jury panels no one is in a position to say how far juries were packed with men of known bias. In the case of More's trial, in which the conduct of the prosecution left much to be desired by the standards of today, it is not clear that the evidence was perjured. It would have been easy enough to hire rogues to put words into More's mouth, whereas every attempt was made to trap him into a genuine treasonable statement. The uneasiness which posterity has felt about More's conviction stems largely from the obnoxious character of a statute which virtually forced a man to condemn himself on a matter of conscience; but that was the work of Parliament, not the judges. Although the judges were invited to declare the statute invalid, in deciding that Parliament was sovereign they were hardly "prostituting their [p. 418] learning." The only contemporary standard by which the fairness of a prosecution could be measured was that of the ecclesiastical courts, which was admittedly not a high standard; but it is evident that the procedures of the secular law in this intolerant age were decidedly more favorable to the accused than those which More (when in power) had thought appropriate for the eradication of those whose consciences were at odds with his own [n. 42: citing More's Debellation, p. 104, "where More argued that if common-law standards of openness were extended to heresy proceedings, 'the streets were well likely to swarm full of heretics.'"]. In this and other state trials of the period the judges were certainly involved in a sanguinary process, but they seem on balance to have conducted the proceedings in accordance with contemporary standards of fairness.

[p. 586] ... "Treason by words along was not new [n. 37, giving examples]; indeed, Fyneux CJ had confirmed in 1521 that words could constitute the overt act proving a treasonable intention [n. 38: trial of the Duke of Buckingham]. But now [after the Act of Treason of Nov. 1534 concerning the Act of Supremacy] the mere private expression of opinion could be treason [n. 39: "or a heraldic error"]). The Commons are said to have insisted on the qualifying adverb "maliciously," but it proved a worthless safeguard in practice. Within seven months Prior Houghton of the Charterhouse, Bishop Fisher, and Sir Thomas More were convicted under this statute for denying the king's title of supreme head of the Church in England. Moreover, the expression of opinion did not have to be public: in the case of More, the chief complaint was of evasive answers under interrogation rather than spontaneous open denial.
Appendix G

Richard Rich's Report on Thomas More

I

TRANSCRIPTION OF THE CONVERSATION BETWEEN SIR THOMAS MORE AND SIR RICHARD RICH, 12 June 1535.


Key:
1) Missing paper: * * *
2) Faded ink: _______
3) Conjecture from partial or faded letters: abc

I distinguish between allographs (different forms of the same letters) thus:

a/a\A  b/B  c/C  d/d  e/e/E  f/F  g/g  h/h  i/y/I  m/M
n/N/N  p/P  r/r/R  s/f/S/z  t/T  u/v

In deciphering this text, I have been greatly aided by past efforts, beginning with the transcription by E. E. Reynolds, The Trial of St. Thomas More (New York 1964), pp. 166-167, and other readings by J. Duncan M. Derrett, "The 'New' Document on Thomas More's Trial," Moreana no. 3 (June 1964) 5-19, with comments of E. E. Reynolds, pp. 20-22; by Brian Byron, "The Fourth Count of More's Indictment," Moreana 10 (May 1966) 33-46, repr. in Byron's Loyalty in the Spirituality of St. Thomas More (Nieuwkoop 1974), pp. 157-65; and a further transcription by Reynolds, in The Field Is Won: The Life and Death of Saint Thomas More (London: Burns and Oates, 1968), pp. 385-86. In addition I have been greatly assisted by the specific readings and comments of Guy Albert Trudel, O.P., for which I am very grateful.

[f. 20 bottom (marked by Gairdner by "ii")]

1 * Theeffect of the * * ______ between Rychard Ry ************
2 * & the seyd Sir Thomas More in the prefence of ************
3 * Edward Walfyngham Rychard Southewell
4 * Palmer And Berleght

5 ********** yche charitably movyd the seyd Sir Thomas More to be conformable
6 ********** nd lawez as were made concernynG the cafe that he knew of
7 **** pon Condycion that yF the seyd More wold so be that he wold god

*
And what I fere wyll be very daungerous to yow is that ye say that god were not god. And yf ye say that god were not god, as thow ye wott, the parliament may gyve his consent, but to the cafe, ye may not. And the cafe may not gyve his consent to the cafe, for soth made myn booun. And he might gyve his consent, but to the cafe, ye may not. And the cafe may not gyve his consent to the cafe, for soth made myn booun.

Cafe of by, as thow ye wott, that ye say that god were not god, as thow ye wott, the parliament may gyve his consent, but to the cafe, ye may not. And the cafe may not gyve his consent to the cafe, for soth made myn booun. And he might gyve his consent, but to the cafe, ye may not. And the cafe may not gyve his consent to the cafe, for soth made myn booun.

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MODERNIZED VERSION

Lacunae conjecturally filled, based in part on the Indictment; respelled with modern punctuation

[f. 21. last 7 lines]


Richard Rich charitably moved the said Sir Thomas More to be conformable to statutes and laws as were made concerning the case that he knew of, upon condition that if the said More would so be, that he would, God willing, take it upon himself to intercede at the hands of Master Secretary and other of the King's Council on his behalf, because, as Master More must know well, it did him great pain to see him so beset, with sorrow upon his family and on himself. To whom the said More gave thanks, saying that "Your conscience should save you, and my conscience shall save me." Whereupon the said Richard Rich said to the said More, "Sir, for me to give you advice or counsel, being a man of great experience, learning, and wisdom, it were like as if a man would take a small vessel of water and cast it into Thames, because it should not be expedient. Sir, protesting with you that I have no commission or commandment to commune here with you of the matter ye wot of, nevertheless, with your favour I ask of you this case: if it were enacted by Parliament that I should be King, and wosoever said nay, it should be treason, what offence were it to you, if ye said that I were King? Forsooth, [in] my conscience, it were none offence, that ye were bound to say and to accept me, forsomuch as your consent was due when b[id, as it was]." Whereunto [the] said More said that he should offend if he were to refuse, for he should be bound by the act, because he might give his consent and approval. And he said further that the same case was a smaller case than him liked. He put another, higher, case, which was this: "Sir, I put case that it were now enacted by Parliament that God were not God, and if any repugni[i]t, that it should be treason. If the question were asked of you now, would ye say that God were not God, according to the Statute? And if ye did, did you offend? Yes, forsooth?" Whereunto the said Rich said that that act was not possible to be made, to make God un-God. "But, Sir, because your case is so greatly exalted, [I put] to you a middle case for you], that is, Sir, [you know our King] to be proclaimed as the Supreme Head of the Church of England on earth, why ought not you, Master More, him affirm and accept him so, as well as in the case that I were made King, [in] the which case ye agree that ye were bound so to affirm and accept me to be King? Wherunto the said More said that the cases were not like, because that a King
[many be made by Parliament and a King deprived by Parliament, to which act any
subject, being of the Parliament, may give his consent; but to the case
of a priacy, a subject cannot be bound because he cannot give his con[sen]
from him [in] the Parliament." Saying further that although the King were accepted
so] in England, yet most outer parts do not affirm the same. Whereunto the said
Rich said, "Well, Sir, God comfort you, for I see your mind will not change,
which I fear will be very dangerous to you, for I suppose your concealment to the
question that hath been asked of you is as high offence as other that hath denied
[it. And this Jesu send you better gr[ac]e."