

## The Trial of Thomas More: July 1, 1535

More's trial is one of the most famous since the trial of Socrates. Unlike Socrates, however, More was an experienced judge and lawyer who had prepared himself for his final trial over several years. At this trial, he was determined to bring all of his experience and training to bear—to defend not only himself and his family, but also his country, his church, the English tradition of law, and the future of Christendom. His keen sense of history assured him that his trial, like that of Socrates, would not be forgotten. Despite the opposition of his king, of all the bishops then in England (except the imprisoned Bishop Fisher), of his entire family, and of most of his friends, More stood fast in his convictions. He knew that, along with these people, the rest of history was waiting to hear his defense.

More's opponents had spent a great deal of time and effort in preparing this trial. It had taken sixteen months, two difficult sessions of Parliament, and considerable manipulation to bring him to court. Finally, on July 1, 1535, he appeared before fifteen judges and twelve jurors. Despite the impressive numbers, however, this trial was not to be impartial. The judges included Lord Chancellor Audley, Royal Secretary Cromwell, and the Duke of Norfolk, as well as an uncle, a brother, and the father of Anne Boleyn—all of whom had strong interests in convicting More. The jury of twelve was no less partial; this high-profile trial would not have been called at all unless success was assured. <sup>3</sup> Henry had already experienced the shame and inconvenience of being thwarted by true trials of law; his new ministers were determined that their leonine sovereign should not suffer such inconvenience while they served.

According to the custom of the times, More did not have counsel or a written account of the charges against him. And prison life had taken its toll on his health. Nevertheless, he conducted his own defense with extraordinary adeptness, though he had so little strength that he had to sit rather than stand.

Before the actual trial began, the Duke of Norfolk offered him the King's pardon if he would repent and revoke his "willful, obstinate opinion." <sup>3</sup> More graciously declined the offer and simply expressed his hope that God would grant him the grace to maintain his "good, honest, and upright mind ... even to the last hour and extreme moment" of his life. <sup>4</sup> He prayed in this way because he was well aware of human frailty, and because he had long ago learned to distrust his own abilities in favor of God's.

The government charged More with four counts of treason: that he had maliciously refused on May 7, 1535, to accept the King's supremacy over the Church in England; that he had conspired against the King by writing treasonous letters to Fisher; that he had stirred up sedition by describing the Act of Supremacy as a two-edged sword (that is, a law that if dis-obeyed would mean bodily death, and if obeyed would mean spiritual death); and that he had "maliciously, traitorously, and diabolically" denied Parliament's power to declare the king to be head of the Church in England.

More argued against the first three charges with relative ease, showing that no offense was

involved in any of them. In the first place, silence is not a crime; in fact, according to English precedent, silence means consent. <sup>5</sup> Secondly, none of his letters to Fisher had touched upon matters of state. Besides, since none of those letters existed any longer, and since no one else but Fisher had read them, where was the evidence of treasonous activity? Thirdly, More denied ever having said that the Act of Supremacy was a two-edged sword. When, on June 3, he had been asked his opinion about this formulation, he had answered hypothetically and without malice. He had said that *if* the statute was like a two-edged sword forcing a person to make a choice between physical and spiritual life, then the statute might at a later time be considered illegitimate. How could such a hypothetical statement be considered malicious?

More also argued that he had committed no offense related to the fourth count. The judges rejected this fourth argument, but apparently concurred with the previous three. In any case, the trial focused only upon this last count of treason.

The charge was based entirely on a single conversation, between Sir Thomas More and Solicitor General Richard Rich, which had taken place on June 12, 1535. Rich had been sent to More's prison cell to remove his writing materials and books. <sup>6</sup> At that time, according to Rich's testimony, More had explicitly denied Parliament's authority to make Henry the supreme head of the Church in England.

More strenuously denied having said anything of the kind. In fact, he stated flatly that Rich was committing perjury. To counter this libelous testimony, More took the most solemn step possible: he took an oath, calling God to be his witness. He said:

“If I were a man, my lords, who did not reverence an oath, I need not, as is well known, stand here as an accused person in this place, at this time, or in this case. And if this oath of yours, Master Rich, be true, then I pray that I never see God in the face, which I would not say, were, it otherwise, to win the whole world.... In good faith, Master Rich, I am sorrier for your perjury than for my own peril. <sup>7</sup>”

Next, as any other accomplished lawyer would have done, More demonstrated Rich's lack of credibility as a witness.

“And you shall understand that neither I nor any other man to my knowledge ever took you to be a man of credit in any matter of importance that I or any other would at any time deign to communicate with you. And I, as you know, for no small while have been acquainted with you and your conversation. I have known you from your youth since we have dwelled in one parish together. There, as you yourself can tell (I am sorry you compel me to say so), you were esteemed to be very light of tongue, a great dicer, and of no commendable fame. And so in your house at the Temple, where has been your chief bringing up, were you likewise accounted.” <sup>8</sup>

More appealed to the good sense of the judges and members of the jury, and then made a particularly clever appeal to those judges who had interrogated him earlier in the Tower.

“Can it therefore seem likely to your honorable lordships that I would, in so weighty a cause, so unadvisedly overshoot myself as to trust Master Rich, a man by me always reputed for one of

very little truth,... that I would utter to him 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 [of Supremacy] was 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 from His Grace's own person to the Tower unto me for no other purpose? Can this in your judgments, my lords, seem likely to be true?"

After demonstrating Rich's lack of credibility, More went on to show that even if he had made the alleged remarks, those remarks could not be termed malicious.

"And yet, if I had so done indeed, my lords, as Master Rich has sworn, seeing it was spoken only in familiar, private conversation, without affirming anything, but only putting forth cases without other unpleasant circumstances, it cannot justly be taken to be spoken maliciously, and where there is no malice, there can be no offense."

The word "malice," More explained to the jurors, has a very precise meaning in the context of law. In the statute in question it would be equivalent to the "term 'forcible'... in the statute of forcible entries, by which statute, if a man entered peaceably and did not put out his adversary forcibly, it is no offense. But if he put him out forcibly, then by that statute it is an offense, and so shall he be punished by this term 'forcibly.'" <sup>9</sup>

More then went on to establish the credibility of his own character. He reminded them that the King had shown him singular favor and trust for over twenty years, from the day he first entered the King's service to the last day he served as Lord Chancellor of the realm. Even after an intense scrutiny of his entire career, no fault had been found. Henry himself had publicly expressed his trust in More, and his gratitude towards him. How could the "slandorous surmise" of Rich's untrustworthy testimony stand up against this long and unmarred record of loyal public service?

Once Rich realized how soundly More had discredited his testimony, he called Sir Richard Southwell and Master Thomas Palmer to be witnesses to what he had said. Both of these men had gone to the Tower with Rich on June 12 and were present during the conversation in question. Neither would have any part in Rich's perjury, however. Palmer "said that he was so busy putting Sir Thomas More's books in a sack that he took no heed of their talk." <sup>10</sup> Southwell gave an excuse that was even more lame than Palmer's; he claimed that "because he was appointed only to look to the conveyance of his books, he gave no ear" to their conversation. <sup>11</sup>

The total lack of viable evidence against More proved to be totally irrelevant. The jury took only fifteen minutes to render its verdict: "Guilty."

Yet More was not about to admit defeat. Well he knew that the thickets of the law could provide a good deal of protection against blatant injustice—as long as the thickets were allowed to stand.

Just at the point when Lord Chancellor Audley began to pass sentence, More introduced an ingenious legal maneuver that forced his learned and highly experienced judges to question the legality of what they were doing. He made a direct, courageous appeal to the conscience of each

of these fifteen judges. This he accomplished by calling for an arrest of judgment. <sup>12</sup> By introducing this motion, he compelled his judges to confront the question of the legitimacy of the law they were using to condemn him—the very law that Henry and Cromwell were using to bring about their revolutionary coup d’etat. By introducing this motion, he was also reminding his judges to consider the personal responsibility each of them had as a guardian of England’s law.

The climax of this famous courtroom drama had now arrived.

Interrupting Audley, More calmly stated: “My lord, when I was toward the law, the manner in such a case was to ask the prisoner before judgment why judgment should not be given against him.”<sup>13</sup>

Audley was undoubtedly anxious about the role he was now playing in the condemnation of an old friend and honored colleague. This unease may well explain the departure he had made from established procedure. But that anxiety would have been even greater had he known what More was about to do.

Aware that his words would echo throughout England, throughout Europe, and throughout subsequent history, Sir Thomas More now brought into full play all of the rhetorical power and legal expertise that a lifetime of training had placed at his disposal. Challenging the very ground on which Audley and the rest of the judges intended to condemn him, he said:

“Inasmuch, my lord, as this indictment is grounded upon an Act of Parliament directly repugnant to the laws of God and His Holy Church, the supreme government of which, or of any part thereof, may no temporal prince presume by any law to take upon him, as rightfully belonging to the See of Rome, a spiritual 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 guaranteed, it is therefore in law among Christian men insufficient to charge any Christian man.”<sup>14</sup>

To prove this claim, he explained that “this realm, being but one member and small part of the Church, might not make a particular law [that was] disagreeable with the general law of Christ’s Universal Catholic Church any 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.”<sup>15</sup>

Specifically, More showed that provisions in the Act of Succession and the Act of Treasons went against many other “laws and statutes of our own land” that had not been repealed. Pre-eminent among these was the Magna Carta, the first clause of which states that “the English Church shall be free, and shall have its rights undiminished and its liberties unimpaired.” After citing other such laws, More then cited scriptural texts proving that no layman could be head of the Church.

At this point Audley broke in to dispute his argument. How could More, alone, presume to challenge so stubbornly what “all the bishops, universities, and best learned of this realm” had agreed to support?”<sup>16</sup>

The response More now gave was one he had made several times before, but never with such rhetorical and dramatic force.

“If the number of bishops and universities should be so material as your lordship seems to think, then I see little cause, my lord, why that should make any change in my conscience. For I have no doubt that, though not in this realm, but of all those well learned bishops and virtuous men that are yet alive throughout Christendom, they are not fewer who are of my mind therein. But if I should speak of those who are already dead, of whom many are now holy saints in heaven, I am very sure it is the far greater part of them who, all the while they lived, thought in this case the way that I think now. And therefore am I not bound, my lord, to conform my conscience to the council of one realm against the General Council of Christendom.”<sup>17</sup>

So powerful were these and the other arguments that More made that Chancellor Audley was “loath to have the burden of that judgment wholly to depend on himself.” His conscience having indeed been touched, he “openly asked advice of the Lord Fitz-James, then Lord Chief Justice of the King’s Bench,... whether this indictment was sufficient or not.”<sup>18</sup>

Fitz-James and the rest of the judges looked at each other for some time.<sup>19</sup> Here was a moment of conscience that was undoubtedly acute. They knew that what More said was true; but they also knew that Henry, powerful lion that he was, would brook no opposition to his will.

Chief Justice Fitz-James finally broke the silence. With a clever quibble he took upon his shoulders the immense responsibility for what would occur. But the very ambiguity of his answer shows clearly that More had struck the core of his conscience. What he said was:

“My lords all ..., I must confess that if the Act of Parliament is not unlawful, then is not the indictment in my conscience insufficient.”<sup>20</sup>

One has to stop and reflect on the conditional clause and the double negative in this response to understand clearly what Fitz-James said. He did not say More was wrong in his legal opinion. Instead, he posed a hypothetical statement to his fellow judges: *If* this Act of Parliament is lawful, then the indictment is sufficient according to his conscience. Yet this statement wholly avoids More’s challenge. More argued that this Act of Parliament was not lawful, because it stood in conflict with the entire weight of tradition and with the most revered laws of the realm .

With the help of Fitz-James’ ambiguous justification, however, Audley overcame the scruple of his own conscience and proceeded to complete his assigned task. He “said to the rest of the lords, ‘Lo, my lords, you hear what my Lord Chief Justice says,’ and so immediately gave judgment against him.”<sup>21</sup>

If Fitz-James or any other of the judges had been another John Markham,<sup>22</sup> King Henry’s tyranny could have been checked, or at least deprived of legal justification. Once again, however, tyranny succeeded not through war, but through law.<sup>23</sup> It succeeded not through the force of evil, but through the simple negligence of those who considered themselves good.

--Gerard Wegemer, *Portrait of Courage*

<sup>1</sup> From Gerard B. Wegemer's *Portrait of Courage* (Scepter, 1995), pp. 210-217.

<sup>2</sup> At least one of the jurors, John Parnell, had a longtime grudge against More because of the adverse decree he had handed down against him (Harfsfield, Reynolds edition, p. 153; Derrett, "The Trial of Sir Thomas More," p. 455).

<sup>3</sup> Harpsfield, Reynolds edition, p. 155.

<sup>4</sup> Harpsfield, Reynolds edition, p. 155.

<sup>5</sup> Harpsfield, Reynolds edition, p. 157

<sup>6</sup> Roper, pp. 41-42.

<sup>7</sup> Roper, p. 43.

<sup>8</sup> Roper, p. 43.

<sup>9</sup> Roper, p. 44.

<sup>10</sup> Roper, pp. 44-45.

<sup>11</sup> Roper, p. 45.

<sup>12</sup> See J. Duncan M. Derrett's perceptive analysis of this legal maneuver in "The Trial of Sir Thomas More," *English Historical Review* 79 (1964), pp. 468-475.

<sup>13</sup> Roper, p. 45.

<sup>14</sup> Roper, p. 45.

<sup>15</sup> Roper, p. 45.

<sup>16</sup> Roper, p. 46.

<sup>17</sup> Roper, p. 46.

<sup>18</sup> Roper, p. 46.

<sup>19</sup> Derrett, "The Trial of Sir Thomas More," p. 474

<sup>20</sup> Roper, p. 46.

<sup>21</sup> Roper, p. 47

<sup>22</sup> See *CW* 2, p. 70, and the accompanying note. This chief justice emerges in More's assessment as one of the great English heroes. Markham sacrificed his career as chief justice by thwarting the attempts of King Edward IV to manipulate the law.

<sup>23</sup> See *CW* 2, p. 6.