

St. Thomas More – A Lawyer's Life

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Though he is perhaps best remembered as a martyr for Catholicism and a Saint thereunto, Saint Thomas More is nonetheless one of the most influential lawyers of his time and highly placed in any list of the most influential lawyers of the English and Anglo-American legal system¹. More served as the first lawyer and one of the first laymen, rather than clergy, to fill the role of Lord Chancellor of England²; this change would become quasi-permanent in the later 17th century, when lawyers were appointed in an unbroken line from Lord Nottingham in 1673³ until the appointment of Christopher Grayling in 2012⁴. While more remembered in the mainstream for his martyrdom than his Chancellorship, among lawyers he is well known for his reforms of the judiciary, introduction of equitable remedies, and far reaching legal insight into the natural relationship between justice and equity⁵. He is simultaneously a perfectly normal 16th century attorney, and a completely unprecedented one.

Thomas More was born in London on 7 February 1478, the son of Sir John More⁶. John More was himself an attorney and judge⁷. The actual year is something as a conjecture as "...for a lawyer John More was remarkably inexact in his references to the natal year, and the date has been moved from 1477 to 1478 and back again."⁸ In his youth he worked in the household of the Archbishop of Canterbury, John Morton, who expressed from very early on his confidence in the young man's abilities⁹; in a departure from the course of English power in later centuries, this position was instead of studying at Eton¹⁰. Entering in to this service gave the future Lord Chancellor both an education and a political connection, as Archbishop Morton was reckoned to be the second most powerful man in the Kingdom after the King¹¹. And in all likelihood it was this connection which allowed him to enter Oxford College in 1492 "...most probably as one of the *colegii pueri* ('college boys') nominated by Archbishop Morton for a place at Canterbury College."¹²

His time at Oxford would be brief, and he would not graduate—he was at the great University for only two years before leaving to pursue legal studies at the New Inn in London¹³ and gained admission to Lincoln's Inn in 1496¹⁴. This represented a change of careers for More,

¹ Garrard Glenn, *St. Thomas More as Judge and Lawyer*, 10 Fordham L. Rev 187 (1941) ("No wonder, then, that our Saint has been the good companion of Mansfield, Blackstone, and Campbell...Indeed, he belongs to everyone who speaks the English tongue.") (Hereinafter 'Glenn').

² *Id.*, 190.

³ Phillip Pettit, *Equity and the Law of Trusts*, Oxford University Press 5 (2012).

⁴ Joshua Rozenberg, *Chris Grayling, Justice Secretary: Non-Lawyer and 'On the Up' Politician*, the Guardian (4 September 2012). <https://www.theguardian.com/law/2012/sep/04/chris-grayling-justice-secretary-non-lawyer>

⁵ Glenn, *supra* at 1, 190.

⁶ Anniina Jokinen, *The Life of Sir Thomas More*, Luminarium (2012).

<http://www.luminarium.org/renlit/morebio.htm> (Hereinafter 'Jokinen').

⁷ *Id.*

⁸ Peter Ackroyd, *The Life of Thomas More*, Random House (2012) (Hereinafter 'Ackroyd').

⁹ Jokinen, *supra* at 6.

¹⁰ Ackroyd, *supra* at 8, 29.

¹¹ *Id.*

¹² *Id.*, 38.

¹³ *Id.*

¹⁴ Jokinen, *supra* at 6.

although not an uncommon one. At the time, and until the 20th Century, the four Inns of Court and their associated Inns of Chancery were responsible for legal education and professional regulation¹⁵. Admission to one of the served as admission to the bar—at the Inns of Chancery to argue before chancery courts as solicitors, and then to progress to the Inns of Court to argue as Barristers¹⁶. The education at the Inns of Court was considered to be either no less than or not much less than that at Oxford or Cambridge:

“I would give you to understand, that though our *Inns of Court* there be no degrees which bear those title; yet there is in them conferred a degree, or rather an *Honorary Estate*, no less celebrated than that of Doctor...”¹⁷

Even though young men could enter legal training directly, it was also not uncommon to go from University to the Inn, as in the case of the near contemporaneous Chief Justice of the Common Pleas Sir Edmund Anderson¹⁸. While at New Inn and then Lincoln’s Inn More studied the English Common Law, where before at Oxford he would have been trained in at least the basics of civil (i.e. Roman, or Continental) and ecclesiastical law¹⁹.

More did not follow his father in to full legal practice or the degree of Serjeant at Law, even after being admitted as a Barrister in 1501²⁰. Presaging his eventual martyrdom, he felt called to the religious life, and studied as a Carthusian Monk²¹; a very earlier biographer noted that More “gave himselfe to devotion and prayer in the Charterhouse of London, religiously lyvinge there, without vowe, about iiii yeares.”²² Even the noted Desiderius Erasmus, a friend and biographer, noted his sincere devotion to his religious faith²³. More and Erasmus would later work together on translations, traded a volume of correspondence, and Erasmus dedicated his book *Encomum Moriae, or Praise of Folly* to More in 1509²⁴.

Despite his dedication to religion, and the lifelong habits that he picked up while in the Carthusian monastery²⁵, More left the Charterhouse and entered Parliament in 1504 and promptly angered King Henry VII by opposing an appropriation²⁶; this resulted in his father being imprisoned and More withdrawing from public life to secure his freedom²⁷. Around this time, he also married Jane Colt, the daughter of a well-connected near neighbor²⁸. Due to his

¹⁵ Encyclopaedia Britannica, *Inns of Court*, <https://www.britannica.com/topic/Inns-of-Court>.

¹⁶ Francis Watt, Dunbar Barton, and Charles Benham, *The Story of the Inns of Court*, Houghton Mifflin (1928).

¹⁷ John Fortescue, *De Laudibus Legum Angliae*, (1470).

¹⁸ University of Cambridge, *A Cambridge Alumni Database*, <http://venn.lib.cam.ac.uk/cgi-bin/search-2018.pl?sur=&suro=w&fir=&firo=c&cit=&cito=c&c=all&z=all&tex=ANDR549E&sye=&eye=&col=all&maxcount=50>

¹⁹ Ackroyd, *supra* at 8, 59.

²⁰ Jokinen, *supra* at 6.

²¹ *Id.*

²² Ackroyd, *supra* at 8, 96.

²³ *Id.*

²⁴ Jokinen, *supra* at 6.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Ackroyd, *supra* at 8, 118.

angering of the King, More withdrew from private life for several years that included both his first marriage and Erasmus' book, but with the King's death he was able to return to public life in 1510²⁹. He very quickly came in to the orbit of King Henry VIII, and the next roughly decade of his life saw very quick advancement: A 1515 delegation to Flanders to negotiate disputes about wool trading, helping to quell a 1517 uprising, appointment to the Privy Council in 1518³⁰, accompanying the King to the Field of Cloth and Gold in 1520³¹, and Knighthood in 1521³².

During this time More also nurtured his talents as a writer and philosopher. It is likely that his experience with King Henry VII—where his father was imprisoned and he was forced to withdraw from public life—influenced his view of despotism and autocracy³³. It is also likely that the coming of the new King, and the possible freedom from that uneven rule (Henry VII once allowed his pet monkey to destroy papers in front of court³⁴) that gave him such a positive view of Henry VIII—proclaiming to Erasmus "...that under the rule of this great prince 'Ridet aether, exultat terra: omnia lactis, omnia mellis' ('the heavens laugh and the earth rejoices, all is milk and honey')." ³⁵

And the rule of that great Prince continued to see More rise in favor and station. He assisted Henry in writing his *Defence of the Seven Sacraments*³⁶, for which Henry was later granted the style of *Fidei Defensor* by Pope Leo X³⁷. Under the patronage of the King, More became Speaker of the House of Commons in 1523, Chancellor of the Duchy of Lancaster in 1525, and Lord Chancellor of England in 1529 after the fall from grace of Thomas, Cardinal Wolsey³⁸.

As Lord Chancellor, More served as the head of the English judiciary and as *prolocutor* of the House of Lords³⁹. This tie between the House of Lords and the Lord Chancellor is in part because the Lords served as the court of final appeal for England (thence Great Britain, and thence the United Kingdom) until the establishment of the Supreme Court of the United Kingdom⁴⁰. It was in this capacity that More acted as a judicial reformer in Tudor England:

"It was ordered by this rule, "that no subpoena should issue till a bill had been filed, signed by the attorney; and he (the Lord Chancellor) himself having perused it, had granted a fiat for the commencement of the suit." ⁶ To us of today this sounds archaic, but to the men of that time it meant a great deal. It did away with the graft of minor officials, who demanded a subsidy before process could issue; and it meant, too, that henceforth a suit in the court was to be a real

²⁹ Jokinen, *supra* at 6.

³⁰ *Id.*

³¹ *Id.* See also Anniina Jokinen, *Field of Cloth and Gold*, Luminarium (2018)

³² *Id.*

³³ Ackroyd, *supra* at 8, 129.

³⁴ *Id.*, 130.

³⁵ *Id.*, at 131.

³⁶ Jokinen, *supra* at 6.

³⁷ Encyclopaedia Britannica, *Defender of the Faith*, <https://www.britannica.com/topic/defender-of-the-faith>.

³⁸ Jokinen, *supra* at 6.

³⁹ Encyclopaedia Britannica, *Lord Chancellor*, <https://www.britannica.com/topic/lord-chancellor>.

⁴⁰ Encyclopaedia Britannica, *House of Lords*, <https://www.britannica.com/topic/House-of-Lords>.

suit, with no irresponsible person using equity process for purposes of blackmail. At one stroke, then, St. Thomas More converted the Chancery into a court of justice; an impersonal tribunal open to all, but not to be used for improper purposes.”⁴¹

He was no less a reformer in areas regarding debts and bonds under the courts of equity. At the time it was the settled law that if a man should default on a loan or mortgage that he could lose his land or property and owe up to twice the amount he owed due to a penalty if the loan was in the form of a bond.: “The penal sum of the bond, and the mortgage of land, were aimed to cut off the unlucky debtor who defaulted on the due day.”⁴² More fought against this, and laid down equitable principles regarding how much can be recovered that are still largely in practice today⁴³.

As Lord Chancellor, More was also a ranking official on certain church matters⁴⁴. In this capacity he vigorously opposed the Protestant Reformation as it made its way across the continent. As a faithful Catholic and man who wanted to keep England, as he put it, “A good catholyke realme”⁴⁵. The punishment for heresy was burning, and while More did not begin the campaign of burning at the stake, he certainly took part in it⁴⁶. Partisan historians would portray his Chancellorship as being a particularly brutal time, but the evidence suggests that there were not actually much more usage of this punishment during his chancellorship than in previous years⁴⁷; yet it is also noteworthy how vehement a defender of Catholicism he was.

And what an interesting position he was in, as he grew more and more staunch in his opposition to heresy. He was a layman defending the Church with the vehemence of a Bishop, and this brought him increasingly in to circles with other clergy rather than with King and Court⁴⁸. He was appointed to ecclesiastical commissions opposing heretical books, including a renunciation on his former view of translating the Bible into the vernacular, and was given letters of “confraternity” by leading clerics⁴⁹.

It is perhaps in this lens that More was set on the path that led to his downfall. His staunch defense of Catholicism left him outside the King’s inner circle as England turned from Catholicism to the Protestantism that More had so vigilantly burned out before. On 16 May 1532, More resigned from the office of Lord Chancellor by returning the Great Seal to Henry VIII⁵⁰. This resignation was full of fiction on both sides—More claimed it was for ill health⁵¹ while it was likely in horror at the collapse of the Church⁵²; while Henry claimed to be not upset

⁴¹ Glenn, *supra* at 1, 191.

⁴² *Id.*, 192.

⁴³ *Id.*, 193 (“Of course, our law of today is removed from these barbarities.”)

⁴⁴ Encyclopaedia Britannica, *Lord Chancellor*, *supra* at 39.

⁴⁵ Ackroyd, *supra* at 8, 301.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*, 297.

⁴⁹ *Id.*, 296-297.

⁵⁰ *Id.*, 313.

⁵¹ Jokinen, *supra* at 6.

⁵² Ackroyd, *supra* at 8, 300.

(“You will find me a good and gracious lord unto you in any suit which should concern your honour or pertain unto your profit,”) while not bestowing any of the usual honors for such service on More⁵³. In all likelihood neither was happy, nor looking forward to the future confrontations we know with the perspective of history were inevitable. More’s Chancellorship had perhaps been untenable from the beginning, given it came on the heels of Cardinal Wolsey’s failure to secure the King’s ‘great matter’ and Henry’s desire for More to succeed in it⁵⁴.

More’s fall from grace would prove equally swift to Wolsey’s, although without the Cardinal’s mercy of passing from ill health after being arrested rather than being executed⁵⁵. More did not attend the coronation of Anne Boleyn in 1533, and was accused of treason in complicity with a nun opposed to Henry in 1534; he would have been attainted for treason had his benefactors in the House of Lords not protected him⁵⁶. But they could not protect him later that year when he refused to swear the Oath of Supremacy, and was convicted of treason⁵⁷. On 6 July 1535 he was executed by beheading alongside the Bishop of Rochester⁵⁸. His final words to the crowd were that he had been “the King’s good servant, but God’s first,” and his final act was to pray Psalm 51: “Have mercy on me, O God, according to thy lovingkindness.”⁵⁹

Thomas More rose from an upper middle-class background to be one of the most powerful men in England, a meteoric rise equaled only by the equally swift fall. He is remembered primarily for his opposition to Protestantism (or heresy as he saw it) and the brutality of his opposition, and his falling out with Henry VIII and martyrdom for his faith. He was canonized in the 19th Century and canonized in the 20th⁶⁰. He is not even the Patron Saint of Lawyers⁶¹; but his work as Lord Chancellor in the reformation of the judiciary, the introduction of equitable outcomes, and the professionalization of what would eventually be the modern UK’s Department of Justice are among his most lasting contributions—both to the world at large, and to those in the legal profession who remember him.

⁵³ *Id.*, 301-302.

⁵⁴ *Id.*

⁵⁵ Anniina Jokinen, *Cardinal Thomas Wolsey*, Luminarium (2007).

⁵⁶ Joniken, *supra* at 6.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Ackroyd, *supra* at 8, 406.

⁶⁰ Joniken, *supra* at 6.

⁶¹ That honor goes to St. Ives. *See, e.g.*, John H. Wigmore, *St. Ives, Patron Saint of Lawyers*, 5 Fordham L. Rev. 401 (1936).