St. Thomas More, Lawyer

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Instructor in Law, Catholic University, School of Law. The writer of the above article wishes to acknowledge with appreciation the splendid cooperation which he has received from Walter B. Kennedy, of the Fordham Law School.

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ON MAY 19TH, 1935, Thomas More was canonized in Vatican City with full ceremonial by the Catholic Church, in the presence of a vast throng of both laity and clergy. Canonization might have been

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1. The process involved in the canonization of the English Martyrs is described by Rt. Rev. Smith, C.R.L., The Processes of Beatification and Canonization, The English Martyrs (1929) 55. At p. 43, he points out that canonization implies papal infallibility, and is the final and definitive decision as to sanctity. See Canons 1999 to 2141, incl., of the Code of Canon Law (Codex Juris Canonici, 1918) with reference to the powers of the Congregation of Sacred Rites in the matter of canonization and beatification. The evidence required for beatification is mentioned in Canon 2116 and for canonization in Canons 2137, 2138. See Universe (May 10, 1935) 22, where it is stated that in the case of Thomas More, the Sacred Congregation referred to the indictments in the Public Records Office, London, and accordingly decided that Sir Thomas was not condemned on a political charge, but that he was put to death for not admitting that Henry VIII was the Supreme Head of the English Church, under Statute, 26 Henry VIII, c. 1, and part of the Act, 26 Henry VIII, c. 13 (1534).

There was great rejoicing throughout the Catholic world over the canonization of Sir Thomas More. Various celebrations were held, such as the national celebration by the Society of our Lady of Good Counsel (of Catholic Lawyers who gratuitously advise the poor) on May 5th, 1935, in England (see Universe [Feb. 22, 1935] 23) and the meeting held by the Guild of Catholic Lawyers of New York on May 20th, at the Waldorf Astoria. See A Lawyer Canonized—Lord Chancellor More's Remarkable Career (1935) 21 A.B.A.J. 330. John Fisher, Bishop of Rochester and Cardinal, was canonized with Thomas More, together with the other Catholics who were put to death in that period because of their refusal to give up their faith. See Universe (May 24, 1935) 29; a papal medal was struck by the Vatican mint in honor of the canonization of John Cardinal Fisher and Sir Thomas More.


by Papal Bull, unaccompanied by splendor, but the alternative method, which included Rome's age-old pageantry, was chosen to elevate Thomas More to the glory of Sainthood, to symbolize the supreme significance of the occasion. This momentous act, by which he was definitively enrolled in the category of the departed who, the Church is assured, enjoy the Beatific Vision of Divinity, and by which recognition throughout the whole Church was accorded his sanctity, was the culmination of the honor of his beatification by Pope Leo XIII, which took place on December 29th, 1886, i.e., an intermediate declaration of sanctity.

Many are the implications to which these recent sacred rites of canonization at St. Peter's give rise; first, religious, such as the enduring continuity of a Church which can so time her actions that she is able to confer her holy honors exactly four hundred years after the happening of the event, in this instance, heroic martyrdom, which merited them; secondly, national, the fact that this was the first time that an Englishman has been canonized in approximately five centuries; thirdly, political, the Church's unalterable declaration that in her opinion Thomas More was not guilty of civil treason, when Henry VIII endeavored to make him take the oath acknowledging the royal religious supremacy, and he refused; and fourthly, personal, the revelation of the qualities of heart and mind in those whom the Catholic Church deems fit to be authoritatively called saints.

But what were the distinctive characteristics of St. Thomas More? What were the fruits of his life work? The answers to these questions will doubtless prove of very great interest to the legal profession throughout the world, and particularly to the English and American Bars, for it is universally recognized that he was a brilliant student of the law, a most successful practitioner, and a wise judge, who created a new era

4. Id. at 14. See Smith, op. cit. supra note 1, at 44, beatification is a less solemn declaration of sanctity. See Bridgett, Blessed Thomas More (1935) Introd. xxix-xxxii, for a translation of the "Decree of the Congregation of Sacred Rites confirming the honour given to the Blessed Martyrs, John Cardinal Fisher, Thomas More, and others put to death in England for the faith, from the year 1535 to 1583," upon the occasion of their beatification in 1886.
6. Universe (Feb. 15, 1935) 1; Universe (Feb. 22, 1935) 11. These were the first two Englishmen to be canonized since St. John of Bridlington received that honor five hundred and thirty-three years ago. See Bridgett, Blessed John Fisher (5th ed. 1929) 438, where it is suggested that the canonizations did not take place earlier because of prudence, namely, fear that bigotry might have been stirred up in England.
in the history of the English court of Chancery. But in the consideration of Sir Thomas More's legal and judicial contributions to learning and to society, it is to be remembered that there were many facets to the prism of his intelligence, for he was a many sided genius—scholar, philosopher, theologian, poet, wit, humanist, patron of the arts, diplomat, statesman, orator, saint.

While St. Ives of Tréguier is also a patron saint of the legal profession, rightly admired and revered, and fittingly memorialized by the American

7. See BRIDGETT, op. cit. supra note 4, at 11-18. Sir Thomas was a great scholar, proficient in Latin and Greek, a student of French, arithmetic, mathematics, history, rhetoric, and music. He could play the viol and the flute. See BROWNE, A Catholic of the Renaissance, THE FAME OF BLESSED THOMAS MORE (1929) 83 et seq.; MAITLAND, ENGLISH LAW AND THE RENAISSANCE (1901) 29 et seq.

8. Sir Thomas had distinctive views on education. Thus he believed in the education of women, and looked upon learning as a means to virtue.

9. See 2 CAMPBELL, LIVES OF THE LORD CHANCELLORS (1874) 6, quoting Colet, who wrote "there was but one wit in England, and that was young Thomas More." See also BRIDGETT, op. cit. supra note 4, at 434, where in describing the events of the day of the martyrdom the following anecdote is related: "The scaffold, . . . was very unsteady, and putting his feet on the ladder, he said merrily to the lieutenant: 'I pray thee see me safe up, and for my coming down let me shift for myself.'"

10. See BRIDGETT, op. cit. supra note 4, at 67-77, 180-206. Sir Thomas negotiated many treaties, both commercial and political. Most of his diplomatic missions were carried on in Bruges, Calais, and Cambrai. He was absent on some of these commissions many months at a time. See 2 CAMPBELL, op. cit. supra note 9, at 25. In 1520, Sir Thomas was with Henry VIII at the meeting of the Field of the Cloth of Gold, between Henry VIII and Francis I.

11. See BRIDGETT, op. cit. supra note 4, at 180, 181, 188 et seq. Thomas More was knighted probably in the summer of 1521.

12. 2 CAMPBELL, op. cit. supra note 9, at 82, 83. When the Emperor Charles V went to England in 1522, Thomas More delivered the welcoming address in Latin. He was invariably appointed to answer the Latin address to the King by the orators at Oxford and Cambridge. It was St. Thomas who delivered the congratulatory address when Henry met the King of France. Id. at 23.

13. The canonization of Thomas More, a layman, has been praised in all quarters. His domestic life has always been a model of perfection. He married his first wife in 1505, Joan or Jane Colt or Colte. By his first wife, Sir Thomas had three daughters, Margaret, Elizabeth, and Cecilia, and a son John. Margaret was his favorite daughter. She married William Roper. He married his second wife, Alice Middleton, a few months after the death of his first wife, in 1510 or 1511, to provide a home for his children. His daughters, their husbands, and children continued to live with Thomas More in one household. Erasmus, in a letter to Budé, has given a picture of the beautiful family life of Sir Thomas. The correspondence between Thomas More and his daughter Margaret, which was long carried on, reveals his paternal tenderness. See BRIDGETT, op. cit. supra note 4, at 53, 54, 113-152; 2 CAMPBELL, op. cit. supra note 9, at 8, 15 et seq.; CHAMBERS, THOMAS MORE (1935) 175-191; 5 HOLDSWORTH, HISTORY OF ENGLISH LAW (1927) 223.
still St. Thomas More must be regarded as intellectually closer to the Anglo-American lawyer, for he labored in the domain of the English Common Law and Equity, rather than in that of the Roman and Canonical systems. How highly proper, in fact imperative, it is, therefore, that the abiding greatness and imperishable fame of St. Thomas More, Lawyer, be proclaimed at this time, so that he may everywhere be loved and honored by the present day disciples of that deathless juristic economy which he so nobly adorned.

I

The legal career of St. Thomas More may be described as a series of extraordinary and amazing successes from the day that he went to the Inns in London, until he reached the Woolsack. This is all the more difficult to understand when it is realized that law was not the profession which he would have selected if he had been entirely free in the matter. But it was the calling which his father, Sir John More, later a judge of the Common Pleas, and eventually of the King's Bench, wished him to pursue. Sir Thomas would have preferred to remain at Oxford, whither he had gone at the age of fourteen, studying there for about two years, and to devote himself to humanistic and classical studies.

16. See Bridgett, op. cit. supra note 4, at 4. Thomas More's father became a Sergeant-at-law in 1503, a judge in the Court of Common Pleas in 1517, and was transferred to the King's Bench, probably in 1520.
17. Bridgett, op. cit. supra note 4, at 9, 10, 11; Campbell, op. cit. supra note 9, at 4, 5. A difference of opinion exists as to the date of Thomas More's birth. Thus O'Hagan places it during the year 1480, but Chambers and Bridgett claim it took place on February 6, 1478. He was the eldest son of John More and Agnes Graunger (or Granger). He received his rudimentary education in St. Anthony's School, in Threadneedle Street, London, conducted by Nicholas Holt. Later he was transferred to the household of Cardinal Morton, Archbishop of Canterbury, when he was either thirteen or fifteen years old, to be there tutored.
18. See Bridgett, op. cit. supra note 4, at 10, 11, 44, 45; Campbell, op. cit. supra note 9, at 4; Chambers, op. cit. supra note 13, at 64, 65, 66; Holdsworth, op. cit. supra note 13, at 29; Last Letters of Sir Thomas More (Campbell's ed. 1924) xii. At Oxford, Thomas More made friends with such famous scholars as Linacre and Grocyn. He also knew Colet and others who were interested in the new humanistic movement of that period, and who had studied upon the Continent. His father endeavored to develop habits of frugality in Thomas More while at Oxford, by giving him only a limited allowance. Sir Thomas studied at Canterbury Hall, which was transferred to the foundation of Christ Church.
He was induced to enter New Inn, one of the Inns of Chancery, connected with Lincoln's Inn, in 1494, and later Lincoln's Inn, an Inn of Court in 1496, largely in virtue of unquestioning filial obedience and reverence. He continued his legal career, becoming outer barrister and bencher. He was appointed reader or lecturer at Furnivall's Inn, an Inn of Chancery, by the governors of Lincoln's Inn, for the autumn term of 1511, and he was afterwards reappointed to read there during the Lent term, in 1516.

That Thomas More had the necessary talents and aptitude for law was soon evident. His practice as a barrister was both lucrative and distinguished. It is indeed fortunate for the law of England that he was influenced to use his gifts in the legal realm, as it appears that Sir Thomas might have been equally renowned in almost any branch of learning. Actually he never entirely forsook the humanities, showing his keen interest in them by the composition of verse and prose, in both English and Latin, and by the writing of controversial tracts on religious and philosophical questions, during the midst of an extremely busy

19. 2 Campbell, op. cit. supra note 9, at 40. This filial devotion continued all through Thomas More's lifetime, even when he became Chancellor.

20. 2 Campbell, op. cit. supra note 9, at 7. When St. Thomas became a barrister he was still uncertain whether he wished to become a monk. He was attracted by the Carthusians and the Franciscan fathers. In fact, he often joined in the spiritual exercises at the Charter House in London. His austerities, such as his hair shirt, still preserved, have become legendary.

21. Bridgett, op. cit. supra note 4, at 20, 21, 65; 2 Campbell, op. cit. supra note 9, at 6; Chambers, op. cit. supra note 13, at 66 et seq.; Maitland, op. cit. supra note 7 at 5, 37.

22. His income as a barrister has been variously estimated. He participated as counsel in all the important lawsuits of his day. See Bridgett, op. cit. supra note 4, at 66; his income has been computed at about £400 per year or about $25,000 at the present time. See 2 Campbell, op. cit. supra note 9, at 13; his annual income has been estimated as high as $50,000. See (1935) 21 A.B.A.J. 330.

23. See Bridgett, op. cit. supra note 4, at 14 et seq., 83-111; 2 Campbell, op. cit. supra note 9, at 77-84; Chambers, op. cit. supra note 13, at 19-23; Jarrett, A National Bulwark against Tyranny, THE FAKE OF BLESSED THOMAS MORE (1929) 114, 115; O'Connell, Lyra Martyrum (1934) 19-48. The prose English writings of Thomas More were the best of his time. He did much to improve the quality of English literature. His reputation in that field has been said to rest upon Utopia. His Latin epigrams are also famous. His religious poetry was the best of his verse. His literary life has forever been linked up with that of his good friend Erasmus, the author of the Praise of Folly. St. Thomas was of the opinion that the new humanism, however, should be adjusted to fit in with past traditions. He proved himself an historian by his composition of Richard III. See Chambers, Sir Thomas More's Fame among his Countrymen, THE FAKE OF BLESSED THOMAS MORE (1929) 21.

24. Thomas More gave a series of lectures on St. Augustine's City of God, at the Church of St. Lawrence, in the Old Jewry, sometime between 1499 and 1503; see 2 Campbell, op. cit. supra note 9, at 6.
legal career. *Utopia* is unquestionably his best known literary work.

Sir Thomas was both a Common and a Roman lawyer, and a jurist, versed in scholastic jurisprudence, maritime and international laws. The study of Roman Law on a wide scale was inevitable, as soon as he became involved, as counsel, in suits which hinged upon points of international and admiralty laws. His mastery of these two legal subjects was illustrated by his superb defense of the papal right to a ship which had stopped at Southampton, and which Henry VIII had contended should be forfeited to the Crown. It was his victory in this Star Chamber case which attracted the attention of Henry VIII, and which led to his becoming a member of the Royal Court.

Pre-eminent distinction awaited St. Thomas in the broader field of public law and politics. Thus he was elected a member of Parliament, in 1504, when he was but twenty-six years of age, fighting for the rights of the common people against the unreasonable requests for money which Henry VII was then making. Eventually, he became speaker of the House of Commons, namely, in 1523, and he again used all his resources to resist autocratic assumption of unconstitutional powers by unscrupulous ministers of State. In 1510, he filled the position of under-sheriff of the City of London, a very important post at that time, and continued there until 1519, when he was called to the Royal Court. He was made a member of the Privy Council, which was both a deliberative and judicial body. He became under-treasurer of the Exchequer, in 1521, and later Chancellor of the Duchy of Lancaster. At the age of fifty-one, he was appointed Lord High Chancellor, upon the recommendation of his immediate predecessor, Cardinal Wolsey, serving in that capacity from October, 1529, to May, 1532.

25. See Bridgett, *op. cit. supra* note 4, at 72, 101, 107; Knox, *The Charge of Religious Intolerance*, *The Fame of Blessed Thomas More* (1929) 42, 43, 44. *Utopia* was written in Latin. See 4 Holdsworth, *op. cit. supra* note 13, at 12. In *Utopia*, Ralph Hythloday, a Portuguese traveller, purports to describe his adventures in Utopia (Greek: nowhere), relating a story of wonderful institutions. In effect, *Utopia* was a satire upon the faults of society as it then existed. There is much disagreement among the authorities whether all the views therein expressed are the opinions of Thomas More. The work was published first in 1516, at Louvain.

27. Bridgett, *op. cit. supra* note 4, at 37, 41, 42.
28. *Id.* at 191 et seq.
30. Bridgett, *op. cit. supra* note 4, at 165 et seq.
31. *Id.* at 189.
32. *Id.* at 196.
The appointment of Sir Thomas More as Lord High Chancellor is proof positive of his outstanding and incomparable abilities as a legalist. Up to this time, practically all of the Chancellors had been clergymen.

Ecclesiastics were necessarily better trained in Roman and Canon laws, and especially in ethics and morals. In that age, the Chancellor had to be a person with a finely developed sense of equity, as equity jurisprudence was still without objective rule, dependent upon the subjectivism of the Chancellor, and sharply differentiated from the stiff Common Law. Since Thomas More was a layman, without rank of great nobility, it is indeed remarkable that he should be chosen to succeed the famous, and once all-powerful, prelate, Cardinal Wolsey. Of course, only the legal authority, not the political, or administrative, formerly exercised by Cardinal Wolsey, was entrusted to Sir Thomas, but as a gifted jurist, he must have instinctively favored this separation of governmental powers. Thus St. Thomas enjoys the unique honor of heading the long line of English lay Chancellors of the modern lawyer type.

Professor Holdsworth credits St. Thomas with the creation of a new epoch in the history of Equity. As a Common lawyer, Thomas More was naturally sympathetic to the Common Law. He accordingly established better relations between the Common Law and Equity courts. Every possible means was utilized by him to amalgamate Equity and Law. He is said to have anticipated the nineteenth century Judicature Act, in so far as he tried to equitize the law. He used the injunctive authority with studied caution and restraint, although when justice was in the balance, he was inflexible in his determination that Equity should correct the Law. In addition, he socially exercised his personal influence with the contemporaneous Common Law judges, showing them the reasonableness of his decrees, and endeavoring to gain their good will.

The appointment of Sir Thomas to the Woolsack in the first part of the sixteenth century was so psychologically perfect, due to the interaction of juristic, religious, and political factors, that peace between the two great tribunals continued until well toward the end of that century.

34. 2 Campbell, op. cit. supra note 9, at 32, 33, n. 1.
35. See Sargent, Thomas More (1933) 201 et seq.
36. 4 Holdsworth, op. cit. supra note 13, at 277.
37. 5 Holdsworth, op. cit. supra note 13, at 222.
39. 2 Campbell, op. cit. supra note 9, at 38, 39; Chambers, op. cit. supra note 13, at 272 et seq.
40. Chambers, op. cit. supra note 13, at 272 et seq.
41. 5 Holdsworth, op. cit. supra note 13, at 224.
The influence of Lord Chancellor More was felt in reference to substantive and procedural legal reforms. For example, he strove to remedy the defects and crudities of the English penal system of his day relative to the law of theft.\textsuperscript{42} His opposition to the increase of grazing land tallies with the ideals on this subject which he had earlier expressed in his famous work \textit{Utopia}.\textsuperscript{43} He was responsible for the passage of statutes which would do away with extortion in the probate of wills.\textsuperscript{44} He cleared the equity court calendar of unheard cases, some of which had been pending for twenty years.\textsuperscript{45} He personally inspected the bills in Chancery, to ascertain whether the plaintiff actually had a cause of action, before granting a subpoena. Lord Campbell has written that St. Thomas gave orders that “no subpoena should issue till a bill had been filed, signed by the attorney, and he himself having perused it, had granted a fiat for the commencement of the suit.”\textsuperscript{46} Sir Thomas discharged his judicial duties speedily\textsuperscript{47} and conscientiously. He avoided all appearances of favoritism and nepotism.\textsuperscript{48} He was most approachable,\textsuperscript{49} and while on the Woolsack, he maintained a democratic, yet dignified, bearing. His guide was the natural law, in the Thomistic sense, though he was exceptionally learned with respect to positive legal rule.

Many are the legends of his judicial wisdom, and of his resourcefulness as a lawyer. Thus, there is the amusing tale of the boastful pedant in Bruges who had offered to debate with anyone about anything. Sir Thomas accepted the challenge, and proposed to discuss the question \textit{an averia capta in withernamia sunt irreplegiabilia}, i.e., whether cattle taken in withernam be irrepleviable . . . withernam being a “writ to make reprisals on one who had wrongfully distrained another man’s cattle, and driven them out of the county.” The challenger, needless to say, not being informed in the mysteries of the English Common Law, was unable

\begin{footnotes}
42. 2 \textsc{Campbell}, \textit{op. cit. supra} note 9, at 80, 81; \textsc{O’Hagan}, \textit{op. cit. supra} note 33, at 8.
43. \textsc{O’Hagan}, \textit{op. cit. supra} note 33, at 8, 9.
44. 2 \textsc{Campbell}, \textit{op. cit. supra} note 9, at 36.
45. \textit{Ibid.}
46. Id. at 37.
47. 5 \textsc{Holdsworth}, \textit{op. cit. supra} note 13, at 223; \textsc{Sargent}, \textit{op. cit. supra} note 35, at 202 \textit{et seq.} The following rhyme is often mentioned:

\begin{verbatim}
"When More some time had Chancellor been
No more suits did remain,
The same shall never more be seen
Till More be there again."
\end{verbatim}

See 2 \textsc{Campbell}, \textit{op. cit. supra} note 9, at 37, 38.
48. See \textsc{Russell}, \textit{A Great Lord-Chancellor, THE FAME OF BLESSED THOMAS MORE} (1929) 72.
49. 5 \textsc{Holdsworth}, \textit{op. cit. supra} note 13, at 223. See 2 \textsc{Campbell}, \textit{op. cit. supra} note 9, at 37.
\end{footnotes}
to debate the question. There is also the story of the dog, which had been lost by a beggar woman, and which had come into the possession of Thomas More's wife. The matter of ownership was decided by having the two women station themselves at opposite ends of the hall, and call the dog. The animal went to the beggar woman, who was declared to be the rightful owner. Sir Thomas then purchased the dog from her, and gave it to Mrs. More, much to the delight of all parties concerned. All through his professional career, he often gave his legal services gratuitously, in the cause of widows, orphans, and paupers. In the words of Erasmus, St. Thomas was a "holy and righteous judge." It is regrettable that the reports of his decisions do not seem to be available, but his effectiveness and soundness as a judge have been widely acclaimed. He tempered righteousness with equity and tolerance.

The situation which existed in England during the period in which Sir Thomas was Chancellor, with respect to the part played by the Court of Chancery in the suppression of heresy, has been clarified by Professor Chambers. He writes: "In the very rare cases in which the death sentence was inflicted on an obstinate heretic, the civil power actually carried out the sentence, but the sheriff or other officer had nothing to do with condemnation or acquittal. As a layman, More could not have tried or sentenced heretics." (Italics supplied.)

To employ the language of Lord Campbell: "We ought rather to wonder at his (namely, Sir Thomas') moderation, in an age when the leaders of each sect thought they were bound in duty to Heaven to persecute the votaries of every other." Any personal dislike which Sir Thomas may have felt toward heresy was probably due to the possibility that it might lead to civil sedition, and to the violation of law and the public peace, since Church and State were then united, but in so far as it did not have this effect, in so far, therefore, as it resulted in good faith, from the promptings of conscience, without efforts to create disorder, St. Thomas More was most tolerant. This is well demonstrated by his conduct toward his son-in-law, William Roper, who temporarily left the Catholic Church, and by the tolerance of the views which he has expressed in his *Utopia*.

50. BRIDGITT, *op. cit.* supra note 4, at 190, 191.
51. See 2 CAMPBELL, *op. cit.* supra note 9, at 41, 42.
52. BRIDGITT, *op. cit.* supra note 4, at 143.
53. CHAMBERS, *op. cit.* supra note 13, at 267, 268.
54. 2 CAMPBELL, *op. cit.* supra note 9, at 41; RUSSELL, *A Great Lord-Chancellor, The
55. CHAMBERS, *op. cit.* supra note 13, at 275.
56. 2 CAMPBELL, *op. cit.* supra note 9, at 44.
57. CHAMBERS, *op. cit.* supra note 13, at 274-282.
Since he was ultimately called upon to perform acts which interfered with the integrity of his conscience, St. Thomas More resigned the Great Seal, in May, 1532. His behavior at the conclusion of his professional career was in striking contrast with the manner in which Cardinal Wolsey left the Woolsack, for unlike the latter, Sir Thomas retired voluntarily, on his own initiative, and bore the loss of rank with resignation and even cheerfulness. After his resignation from the Chancellorship, he successfully refuted before the Privy Council trumped up charges of bribery and corruption while in office.

The above is a resumé of some of the outstanding legal points in the life of St. Thomas. Had he not been sucked into the whirlpool which pulled England away from its ancient spiritual moorings, he would have been known to posterity as one of the greatest of England's Chancellors, and would ever have been a towering figure in the panorama of English legal history. But it was the period from 1532 to 1535, i.e., the interval from the time he left public life until he was beheaded, by order of Henry VIII, which has added an even greater lustre and glamor to his name, now transcending the limits of jurisprudence, has converted his immortality, otherwise confined to the praise of the English legal historian, into a universal heritage, and has focused upon him the attention of the whole world.

II

Not only was Thomas More professionally a great lawyer, but his trial and his conduct which preceded it reveal even more strikingly his judicial mentality. There were three major legal questions which arose between Sir Thomas and Henry VIII: first, whether the Church had the authority to determine in any given case whether she had the right to dispense from the impediment of affinity; secondly, whether Parliament had the right to regulate the Royal Succession, and thirdly, whether Parliament had the right to transfer the supreme religious authority in England from the Pope to Henry VIII. The conclusions which St. Thomas formed in respect to these matters were reached only after a careful weighing of the evidence on both sides, calm reasoning, and deliberate decision, fol-

58. Bridgett, op. cit. supra note 4, at 123.
59. Id. at 240.
60. O'Hagan, op. cit. supra note 33, at 17, 18.
61. Russell, op. cit. supra note 54, at 73 et seq.
62. Chambers, Sir Thomas More's Fame among his Countrymen, The Fame of Blessed Thomas More (1929) 12, states that the Karl Marx-Engels Institute of the Central Executive Committee of the Union of Soviet Republics claims St. Thomas as a great Communist.
owed by inflexibility of will in refusing to deviate from the judgments which his conscience had dictated. He took this firm position fully realizing that Henry was so unshakably determined by temperament that he would go to any extreme to achieve his purposes.  

That Sir Thomas would take a position of non-interference in the affairs of Henry VIII was manifested just as soon as the King had first broached the subject of the invalidity of the papal dispensation which had enabled Henry to marry his first wife, Catherine of Aragon, his brother's widow. This occurred in September, 1527. Henry raised the question presumably as a matter of conscience, but actually in the light of what later transpired, so that he might be free to marry Anne Boleyn. The astuteness of Sir Thomas in this situation is brought out by his suspension of judgment on the plea that he was not a theologian, or a canonical lawyer.

Sir Thomas endeavored to maintain this policy of non-interference through the trying days which followed. History paints a picture of a great legal mind, doing its utmost to serve the temporal sovereign loyally, striving to avoid the least shadow of civil sedition, performing his ministerial tasks impersonally, yet doubtless conscious that events were marching forward with the inevitableness of a Greek tragedy, under the lash of the King, to a point where an irrevocable choice would have to be made between King and conscience. Henry VIII assumed the title of the Supreme Head of the Anglican Church, on February 11th, 1531, but with the clause, "so far as the law of Christ allows." At that time, Sir Thomas was Lord Chancellor. As a jurist, he realized that this clause might be so interpreted as to protect his moral freedom. Consequently, he continued in office, loyal to the Sovereign. While he was yet Chancellor, i.e., on March 30th, 1531, he addressed the House of Commons, by way of an introduction to the reading of legal opinions purporting to show that Henry's first marriage was invalid. Here again, the legal mind was at work, distinguishing between a ministerial and a private capacity. On March 30th, 1534, Parliament passed a statute, which made the issue of Henry by Anne Boleyn the lawful successors to the Crown. Thus far also was Sir Thomas ready to go. As a lawyer, he was

63. BRIDGITT, op. cit. supra note 4, at 198 quotes Thomas More as saying "If my head would win him (Henry VIII) a castle in France (for then was there war betwixt us), it should not fail to go."
64. BRIDGITT, op. cit. supra note 4, at 225 et seq.
65. LAST LETTERS OF SIR THOMAS MORE (Campbell's ed. 1924) 85, 86.
66. BRIDGITT, op. cit. supra note 4, at 234.
67. Id. at 233.
68. 25 HENRY VIII, c. 22.
willing to admit the right of Parliament to regulate the matter of the Royal Succession, because he believed that it was constitutionally supreme in all temporal affairs, provided it did not attempt to legislate contrary to the laws of God or nature. He did not interpret his position in regard to this statute as leading to an admission of the invalidity of the papal dispensation by means of which Henry VIII had been permitted to marry his first wife, Catherine.

On April 13th, 1534, Sir Thomas was summoned to Lambeth, not to take the oath regulating the Royal Succession which had been ordered by Parliament, but one which had been unconstitutionally broadened by the commissioners so as to include a solemn promise "to bear faith and true obedience to the King, and the issue of his present marriage with Queen Anne, to acknowledge him the Head of the Church of England, and to renounce all obedience to the Bishop of Rome as having no more power than any other Bishop." Sir Thomas rejected that part of the oath which recognized Henry as Head of the Church of England, and was thereafter imprisoned in the Tower of London. He was quite aware of the illegality of these proceedings, for at the time of his imprisonment, no law had as yet been passed by Parliament making a refusal to acknowledge the King's religious supremacy actionable. He argued: "They that have committed me hither for refusing this oath, not agreeable with their statute, are not by their own law able to justify mine imprisonment."

Parliament on November 4th, 1534, passed an Act of Attainder against More, for misprision of treason, upon the charge that he would not take the oath of supremacy, with the result that he was to suffer the forfeiture of his property, and life imprisonment. But this act was also apparently illegal, as Parliament had not yet passed the Act of Supremacy, which was the basis of the charge. It was not until November 18th, 1534, that the Act of Supremacy was actually enacted by Parliament. By this Act, the King was made Head of the Church of England, and an oath was required on the part of all subjects, recognizing his supremacy, and making its malicious denial, by word or in writing, high treason.

The reaction of Thomas More toward the contention that Henry was able to make himself absolute in matters religious measured up fully to the highest standards of the judicial mind and conduct. He did not precipitously refuse to subscribe to the express and implied doctrines

69. 2 Campbell, op. cit. supra note 9, at 58 et seq.
70. Referred to by Bridget, op. cit. supra note 4, at 361.
71. See 2 Campbell, op. cit. supra note 9, at 63.
72. See 26 Henry VIII, cc. 1, 2, 13, 22, 23.
contained in this Act. Indeed, at one time he was inclined to believe in the supremacy of General Ecclesiastical Councils over the Pope in spiritual matters, and to conclude that papal supremacy was the product of human agreement, not of divine institution, but later his researches and reason convinced him that papal supremacy in spiritual affairs was divinely ordained. He had scrupulously applied all his talents to discover what was to him the truth. The spiritual supremacy of the papacy was, in his opinion, proved by the Scriptures, the writings of the fathers of the Church, both Latin and Greek, and from the definition of the General Council of Florence. Was not this in line with the judicial temper which respects precedents? Historically, he believed that Christianity in England was introduced from Rome, and that this resulted in a status of dependence upon Rome. He also believed that the unity of Christendom, so essential in his mind for the efficient perpetuation of the ideals of Christianity, would otherwise be violated, with religious anarchy resulting. Besides, “after seven years’ study, he never could find that a layman could be the head of the Church.” These were his opinions on the matter of the royal spiritual supremacy, but he remained silent until the proper moment had arrived.

The refusal to take the oath prescribed by the Act of Supremacy meant misprision of treason, but denial of the King’s religious absolutism would result in capital punishment for treason. The Lord Chancellor, the Dukes of Suffolk and Norfolk, Thomas Cromwell, and other members of the Privy Council several times went to the Tower where St. Thomas was incarcerated, to persuade him to take the oath, or else to obtain the necessary evidence against him. Rich, the Solicitor General, was also sent to inveigle Sir Thomas into a positive denial of the Supremacy, but the latter was so clever as to outwit them all. St. Thomas More, Lawyer, knew his civil rights, and accordingly simply declined the taking of the oath, doing and saying nothing, however, against it. He merely refused to incriminate himself. It was necessary, therefore, to resort to obvious perjury to convict him of high treason, and thus to bring him within the shadow of the axman. This was done at a trial of Sir

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74. Ibid.

75. Bridgett, op. cit. supra note 4, at 343 et seq.

76. Id. at 344.

77. 2 Campbell, op. cit. supra note 9, at 71.

78. Id. at 64.

79. Id. at 64, 65.

80. That Rich perjured himself at the trial of Thomas More is the opinion of all the authorities, who generally refer to the following reply which Sir Thomas made to Rich.
Thomas, held on July 1st, 1535, before a special commission at Westminster Hall. But even before this tribunal, his conduct was more judicial than that of the judges who had been empowered to preside. His defense was on strictly legal grounds. It was clear, and well reasoned. He found it necessary to remind Lord Chancellor Audley, who had so forgotten his duties as to attempt to pass judgment of death upon St. Thomas, after a verdict of guilty by the jury, without giving the prisoner an opportunity to be heard, that this was an illegal procedure. He insisted upon his legal right to speak at that time, and obtained it.\textsuperscript{81} It was then, the proper time, legally speaking, after months of silence and self-restraint, that he gave his reasons why he was convinced that Henry VIII might not take unto himself the supreme ecclesiastical power in England. To quote Professor Chambers: "He appealed to the immunity promised to the Church in Magna Charta, to the King's coronation oath, and to the continuity of English Christianity."\textsuperscript{82} Finally, at this trial, the prediction made by Sir Thomas More that the word, "maliciously" in the Act of Supremacy would be interpreted to suit the caprice of the inquisitors was verified.\textsuperscript{83}

Thomas More died on July 6th, 1535, buoyed up by faith in his own reason and conscience, going to the block cheerfully and unafraid,\textsuperscript{84} after a long imprisonment, during which he beautifully expressed in prose and verse his humility and trust in God.\textsuperscript{85} Whether he was a martyr is a matter of dispute, dependent upon one's convictions as to the truth or falsity of the cause for which he died,\textsuperscript{86} but it is certain that he was not a political traitor. Admission of his unquestioned greatness as a lawyer necessitates the conclusion that he knew his civil rights under the English Constitution. He died professing loyalty to the Crown. As one of England's most gifted jurists, he passed sentence upon his own conduct, and, with complete honesty, satisfied his conscience that he was not guilty of civil sedition.

Sol\textsuperscript{2}ictor General, whose perjured testimony resulted in Thomas More's death: "If I were a man, my lords, who did not regard an oath, I needed not at this time in this place, as is well known to every one, to stand as an accused person; and if this oath, Mr. Rich, which you have taken be true, I pray I may never see God in the face, which I would not say, were it otherwise, to gain the whole world."

See \textsuperscript{5}HOLDSWORTH, \textit{op. cit. supra} note 13, at 225. Rich had falsely sworn that Sir Thomas had told him that Parliament could not make the King the Head of the Church.

\textsuperscript{81} 2 C\textsuperscript{A}MB\textsuperscript{P}E\textsuperscript{L}, \textit{op. cit. supra} note 9, at 70.
\textsuperscript{82} C\textsuperscript{H}A\textsuperscript{M}B\textsuperscript{E}\textsuperscript{R}\textsuperscript{S}, \textit{op. cit. supra} note 13, at 341.
\textsuperscript{83} \textit{Id.} at 330.
\textsuperscript{84} \textit{Id.} at 346-350.
\textsuperscript{85} See BRIDG\textsuperscript{E}\textsuperscript{T}, \textit{op. cit. supra} note 4, at 363-397.
\textsuperscript{86} See K\textsuperscript{N}OX, \textit{The Theology of Martyrdom, The ENGLISH MARTYRS} (1928) 1-18.
III

Sir Thomas More preferred death to changing his opinion concerning an abstract issue, relating to a juridical question, which involved moral principles. There was nothing emotional about his sacrifice. He was not championing a solemnly defined dogma, a sacrament, the rights of any particular pope, a political philosophy, a racial aspiration, or any of the usual causes for which men suffer death. He stood alone, maintaining his resolution to go to the block rather than perjure himself, despite the exhortations of his family and friends to the contrary, and notwithstanding his admitted sensitiveness to physical pain. He was ready to die in defense of a jurisdictional tenet, i.e., the incapacity of any person to deprive the papacy, as an institution, of its right to exercise supreme authority, in matters of faith and morals, not in affairs temporal. In particular, he challenged the right of one, like Henry VIII, who had admitted that papal jurisdictional supremacy by submitting his cause to it for adjudication, later to refuse to abide by the judgment of the court. When Sir Thomas was Lord Chancellor, he could not condone contempt of court, arising from the refusal of litigants to abide by his decrees, or from their subsequent denial of a jurisdiction to which they had appealed. He evidently saw a marked resemblance between this situation, and the rejection of the papal jurisdiction by Henry VIII, and its assumption by him.

The struggle between St. Thomas and Henry VIII over the power of Parliament to pass a binding law may be interpreted from a jurisprudential angle as a conflict between the neo-scholastic, or theophilosophical and analytical Schools. The fact that Parliament had passed a law providing for the royal religious supremacy was not a sufficient reason, in the opinion of Thomas More, why it should be of necessity binding. His legal philosophy postulated a higher wisdom, above positive law, so that the latter was not binding if it interfered with the former. That which contravened this higher law was contrary to the dictates of Thomas More's conscience. It is interesting to note that the twentieth century has witnessed the gradual decline of analytical jurisprudence, and either the renaissance of the neo-scholastic, or theophilosophical School, or else the prevalence of some type of jurisprudence which depends upon a super norm, controlling the direction and validity of the positive law, whether that ideal be social expediency, experimentation, or some aspect of a natural law. At least, the legal philosophy of the analytical School, which St. Thomas so definitely repudiated, but which

attained immense popularity in England during the centuries which followed, and upon which Henry VIII relied to sustain his religious legislation, seems to be declining there, and is passé elsewhere.

The constitutional issue of the Divine Right of Kings was also implied in the intellectual battle between Henry VIII and St. Thomas More. Here also the verdict of the twentieth century is in favor of Thomas More. It has come to be realized that the combination of the supreme temporal and ecclesiastical powers, plus the authority to enforce any and all laws therefrom resulting, by any means chosen, would be tantamount to oriental tyranny.

Let us as lawyers, therefore, regardless of our views as to the wisdom of the English Reformation, now pay homage to the glorious memory of a famous judge and advocate, for this is the year of his greatest honor. The legal profession of this country through its official organ, the American Bar Association, might do well to keep alive, in the minds of its members, his inspiring achievements by some suitable memorial, either in the United States or in Great Britain. May the hallowed light which has illumined the heroic figure of St. Thomas More these four hundred years shine brighter with each succeeding century, showing the way to a nobler destiny, and revealing a vision of sanctity.

"The King's Servant, but God's First."