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MORE'S SKILL

by Thomas L. Shaffer*

Robert Bolt chose a phrase from a sixteenth century poet named Robert Whittinton for the title of his modern play about Thomas More: "[A] man of an angel's wit and singular learning; I know not his fellow. For where is the man of that gentleness, lowliness, and affability? And as time requireth a man of marvellous mirth and pastimes; and sometimes of as sad gravity: a man for all seasons."¹

Bolt's title suggests that he took a gamble on the possibility that More would have modern, universal appeal. I have been interested in how that gamble worked out.² If you look at it from the other side—that is, not from More's personality but from the modern personalities that have found More to be a hero—you notice something interesting: We usually come up with the heroes we need. Our hero stories tell more about us than about our heroes. There is also evidence in the fact that the Roman Catholic Church did not do much about More until the late nineteenth century.³

Maybe because I came into the American legal profession at about the time Bolt's More came on the stage (1960), I have wondered why American *lawyers* like More so much. It is not routine, I think, that lawyers in America since the Kennedy Administration would be attracted to a remarkably narrow-minded, stubborn, and medieval Roman Catholic who often thought that he should have been a monk rather than a lawyer, and who had a singular and not lawyer-like disregard for common sense.⁴ We lawyers might ask the

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¹ Robert Whittinton, *Foreword* to ROBERT BOLT, *A MAN FOR ALL SEASONS* (First Vintage International, Vintage Books 1990) (1960).

² See THOMAS L. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* 189-206 (1981).

³ See William S. Peterson, *Thomas More: A Biography*, 15 *THE SMITHSONIAN* 218 (1984) (book review).

⁴ ROBERT BOLT, *A MAN FOR ALL SEASONS* 36 (First Vintage International,

question Bolt asked himself: "[W]hy do I take as my hero a man who brings about his own death because he can't put his hand on an old black book and tell an ordinary lie?"⁵

Bolt chose More because Bolt needed a hero for the twentieth century. A "hero of selfhood[.]" Bolt said, was what he wanted.⁶ "[W]hat the world needed[.]" he said, "was for one man to be true to himself,"⁷ someone who had "a sense of selfhood without resort to magic."⁸ Bolt's play is resolutely tendentious on this point: Bolt's More is a twentieth century existentialist hero, "an adamantine . . . self[.]"⁹ someone who could have been invented by Jean-Paul Sartre.

I do not think Bolt sold More as a hero of selfhood, but he did sell More as a hero for our times. I wonder at the success of Bolt's story, given the failure of his theology. Perhaps there is more to More than Bolt, in his philosophy, dreamt of.

I came into the Roman Catholic Church in 1951. At that time More was Blessed Thomas; Pope Leo XIII made him a hero, in 1886, because More had defied the Protestants.¹⁰ English Christianity is Anglican; Roman Catholics are a curious minority in Britain, as we know from "Brideshead Revisited." More was a fallen champion for the true faith. He had the appeal to Catholics that General Robert E. Lee had in the South: He was the noble symbol of a defeated culture. The Anglicans had Westminster Abbey and Canterbury Cathedral, against all reason and justice, but we Romans had Blessed Thomas.

Seven years later, when I came to law school at Notre Dame, there was—and is now—a statue of More in a niche over the main door of the law building. Sometimes the prayers with which we started classes had tagged on at the end, "St. Thomas More, pray for us." My wife and I chose Thomas More as the confirmation name for our oldest son. But this was a different More than the fallen champion.

Vintage Books 1990) (1960). The Common Man says More's "willful indifference to realities which were obvious to quite ordinary contemporaries" suggests saintliness. *Id.*

⁵ *Id.* at xiii.

⁶ *Id.* at xiv.

⁷ *Id.* at xviii.

⁸ *Id.* at xiv.

⁹ *Id.* at xii.

¹⁰ RICHARD MARIUS, THOMAS MORE: A BIOGRAPHY 303-04 (1984).

This was the unofficial patron saint of *lawyers*.¹¹ The official patron saint of lawyers is a medieval legal-aid lawyer named St. Ives.¹² More proved that it was possible to be a good Catholic and a lawyer at the same time. More proved that a lawyer could get into heaven, even though it took martyrdom to do it. More's recent biographer, Richard Marius, says, "He died for the liberties of the Catholic Church."¹³

Three years later I went to practice in a large law firm in Indianapolis. The firm had not had a Catholic lawyer before; they came to Notre Dame to get one, and they got me. I was a curiosity. My wife Nancy and I had more children than was decent, and we lived in an Irish ghetto. I had chosen the Catholic Church, and had done so before I met Nancy who has always been a Catholic. This proved that I did not use my fine legal mind in matters of religion.

But this was just after *A Man for All Seasons* came to the stage, and those lawyers *loved* Bolt's More. The speech he makes to Roper, about giving the devil the protection of law,¹⁴ was quoted by those lawyers and other lawyers and judges from Australia to Washington, in big rooms and little rooms. Lawyers love that speech for all the wrong reasons. Even the present generation of law students love Bolt's More. They no doubt understand, in their keen analytical minds, that More was a crank, but they are charmed by his conscientiousness and his sparkle. They are surprised that a lawyer can be that cool and still believe in something. They like the way Bolt has More rely on the law in a narrow, manipulative, lawyer's sense of what law is.¹⁵ And they like the way Bolt's More makes short shrift of principles: "I know what's legal, not what's right," he tells Roper.¹⁶

¹¹ Pope John Paul II has since designated More the patron saint of politicians. See *Dear Lord, Please Smite My Opponent. Amen*, TIME, Nov. 6, 2000, at 41.

¹² 2 BUTLER'S LIVES OF THE SAINTS 351-52 (Herbert Thurston, S.J. & Donald Attwater eds., 1962).

¹³ Richard Marius, *Vita Thomas More*, HARVARD MAGAZINE, Mar.-Apr. 1984, at 40 (discussing More's reaction to the early Reformation); see also JASPER RIDLEY, *STATESMAN AND SAINT: CARDINAL WOLSEY, SIR THOMAS MORE, AND THE POLITICS OF HENRY VIII* 263-84 (1982).

¹⁴ BOLT, *supra* note 4, at 65-67.

¹⁵ *Id.* at 66. "[I]n the thickets of the law, oh, there I'm a forester. I doubt if there's a man alive who could follow me there, thank God. . . ." *Id.*

¹⁶ *Id.* at 65.

(Roper is, in the play, like a first-year law student). More says he does not trust principles. "[W]e speak of being anchored to our principles [I]f the weather turns nasty you up with an anchor and let it down where there's less wind, and the fishing's better. And 'Look,' we say, 'look, I'm anchored! . . . To my principles!'"¹⁷ Bolt instructs the actor to laugh when he says that.¹⁸ Older lawyers join in the laughter.

I suppose American lawyers like More because he was wily. He had no power—never had—but he was a consummate manipulator of power, turning his attention now to the nobles and then to the common-law lawyers, one day to the King and another day to the bishops. Bolt had More say to Lady Alice that he expects to survive in Henry VIII's court: "Whatever can be done by smiling, you may rely on me to do."¹⁹

I think that there is a deeper reason for More's appeal, a reason that has more to do with the historical Sir Thomas than with Bolt's hero of selfhood. The deeper reason has to do with the virtue of hope, and with the way a good lawyer was then, and is now, hopeful. A good lawyer's hope is a skill, and his skill is a kind of hope. Blackstone, writing in the eighteenth century for a thoroughly Anglican legal culture, tells a More story that Bolt does not use.²⁰ When More and Erasmus were students at the University of Bruges, a learned doctor offered to debate any person on any subject.²¹ More volunteered and reduced the doctor to confusion by asking him whether the writ of replevin will lie for the recovery of beasts of the plow taken by *capias in withernam*.²² It is interesting, I think, that Blackstone liked that story.²³

You can get a similar point from the play, from the scene in which More challenges Cromwell on the proposition that silence gives consent:

¹⁷ *Id.* at 69.

¹⁸ *Id.*

¹⁹ *Id.* at 59.

²⁰ 3 WILLIAM BLACKSTONE, COMMENTARIES *149 n.(v).

²¹ *Id.*

²² *Id.*

²³ *Id.*

CROMWELL [S]ilence can, according to circumstances, speak. . . . The oath was put to good and faithful subjects up and down the country and they had declared His Grace's title to be just and good. . . . [T]he prisoner . . . refused. He calls this silence. Yet is there a man in this court, is there a man in this country, who does not *know* Sir Thomas More's opinion . . . ?

MORE Not so. . . . [T]he maxim . . . is . . . 'Silence gives consent.' If, therefore, you wish to construe what my silence 'betokened,' you must construe that I consented, not that I denied.

CROMWELL Is that what the world in fact construes from it?

MORE [T]he world must construe according to its wits. This court must construe according to the law.²⁴

This was a lawyer's answer; it was right, and it was bold; and it demonstrated, in desperate circumstances, a stubborn optimism about the law. More adds, a moment later, "The law is a causeway upon which, so long as he keeps to it, a citizen may walk safely."²⁵ Optimism about the law is also the point of the devil speech—not that lawyers should have a special morality so that they can take the devil for a client, but that English law can deal justly even with devils. Combine that optimism about law with More's faith, and you have the virtue of hope. Hope as skill.

Blackstone liked such stories and so do we. It is not that More was merely conscientious. We would have, I suppose, some grudging admiration for a person who went to prison because he believed the federal excise tax on whiskey violates the natural law. In that way we can admire people who demonstrate against motorcycle helmet laws. We admire the resolute crank; but there is something else to admire in what More did. Bolt thought the something else was a sense of self. I think it was hope—lawyer's hope—hope about the law.

²⁴ BOLT, *supra* note 4, at 151-52.

²⁵ *Id.* at 153.

We lawyers like to see wit and learning triumph; we like the trial scene, as Blackstone liked the story from Erasmus. Is this not a curious kind of triumph? Cromwell lost face. He was a corrupted lawyer making a fatuous argument and was shown up. More, however, lost his head. Power prevailed—raw power—untruthful power. It is the purest irony that modern lawyers look on the trial scene as a lawyer's triumph, as a triumph for the law, but we do. We notice that Cromwell had to abandon the law in order to win, and in some way that means power is not as powerful as it thinks it is. The irony is that More's truth survives Cromwell's power. And More's understanding of what the law is, is a *lawyer's* understanding. I would call it a settled regard for reason and intellectual skill in the use of power. Combine that with More's faith, and you have the virtue of hope.

More's skill triumphs without winning; which is to say that skill can be hope. But we have to be careful, when we say that, to understand how hope works in the world. What Thomas Cromwell did in that generation—which was to establish England as a nation-state—endures more significantly than what More did. More, after all, was a crank. I am not sure that I know where More would be in a debate today on the deployment of U.S. nuclear missiles, but I know where Cromwell would be. I know which side would win.

There are two points here. One is that hope is the connection between habitual truthfulness and habitual optimism. The other is that hope does not depend on success. Gandhi had these habits of truthfulness and optimism when he went as a young lawyer to South Africa.²⁶ Dean Charles Houston, Thurgood Marshall, and William Hastie had them when they sat down to plan the war against the separate-but-equal doctrine in American constitutional law.²⁷ These habits of truthfulness and optimism do not disappear when the cause is lost. Gandhi lost. Hastie and Marshall won, but by the time they won, Dean Houston, their mentor, was dead. The virtue of hope

²⁶ John Leubsdorf, *Gandhi's Legal Ethics*, 51 RUTGERS L. REV. 923, 926-34 (1999).

²⁷ G.R. McNeil, *Charles Hamilton Houston: Social Engineer for Civil Rights*, in BLACK LEADERS OF THE TWENTIETH CENTURY 221, 221-40 (John Hope Franklin & August Meier eds., 1982).

survives failure; it has to do with the spirit as well as the mind. Its survival does not depend on a calculation of costs and benefits.

More's hope that he could use the law to save himself, his family, and his country was foreshadowed in his book *Utopia*.²⁸ There is a debate there between Raphael, who does not believe that a good man can serve princes, and More, who says that good men can serve princes: "You cannot pluck up [wrongheaded opinions] by the root," More says, "Don't give up the ship in a storm because you cannot direct the winds [W]hat you cannot turn to good, you . . . make as little bad as you can."²⁹

More was still alive when Cromwell became King Henry's chief minister. More told Cromwell, "If you will follow my poor advice, you shall, in your counsel-giving to his grace, ever tell him what he ought to do but never what he is able to do."³⁰ I suspect my elders in Indianapolis in 1961 liked More because More's story showed them the distinction between what power is able to do and what power ought to do. That distinction, I think, is the moral heart of the practice of law—of what a good lawyer does with her clients—of the happy fact that those business lawyers in Indianapolis were moral leaders for their clients. It is hope as skill and skill as hope.

Of course, the *logic* of our affection for More may carry us lawyers further than we want to go. Finally, this virtue of hope, this skill of More's, is theological. It may induce the hopeful person, as it induced More, to stop being sensible. Hopeful people tend sometimes to ignore the evidence. The evidence is that power corrupts. The world, particularly the political world, is entropic. Worldly power is a dim light getting dimmer. As Bolt's More said of the King at the height of their good relationship, "If my head should win him a castle in France, it should not fail to fall."³¹ It is not remarkable that More understood that. It may be remarkable that he was cheerful about it, and that he continued to do his best for the King.

²⁸ THOMAS MORE, *UTOPIA* (George M. Logan & Robert M. Adams eds., 1989).

²⁹ *Id.* at 36.

³⁰ PETER ACKROYD, *THE LIFE OF THOMAS MORE* 196 (1998).

³¹ BOLT, *supra* note 4, at xv.

More did not despair when Cromwell demonstrated that power cannot always be tempered by law. That discovery could have led him to truthfulness *without* optimism, which is the spiritual condition in the play of Cardinal Wolsey, who says that conscience has nothing to do with being a statesman.³² Or it could have led to optimism without truth, which is the spiritual condition of Thomas Cromwell, who believes in what he calls "administrative convenience."³³ The one kind of cynicism leads conscientious people to avoid power. The other kind of cynicism—optimism without truth—leads to the politics that can call a certain nuclear missile a peacemaker and can refer to tax increases as revenue enhancement. Wolsey's cynicism turns the world over to scoundrels; Cromwell's cynicism turns the world over to liars.

More's hope, his "marvellous mirth," is by contrast a long way from cynicism but deeper than good cheer. It is, in my view, the joy that Jews and Christians see as a sign of the presence of God. It is the joy that makes it possible to tell the truth; the joy that we treasure in the Hebrew prophets and in the ability of the Jewish people of every age to smile, and even to laugh, at the worst the world can do. It is the joy of the first Christians, who, according to *The Acts of the Apostles*, were "glad to have . . . the honor of suffering humiliation for the sake of the name."³⁴

American lawyers may just be stuck with affection for Thomas More. I do not think lawyers today can either take him whole—he really *was* a crank—or whittle him down to Bolt's hero of selfhood. We are somewhere in between, which is not very thorough of us, but is probably what will keep More among us. I think of what G.K. Chesterton said in 1935 when More was canonized, "Blessed Thomas More is more important at this moment than at any moment since his death, even perhaps the great moment of his dying; but he is not quite so important as he will be in about a hundred years time."³⁵

³² *Id.* at 19.

³³ *Id.* at 73.

³⁴ *Acts* 5:41.

³⁵ G.K. Chesterton, *A Turning Point in History, in THE FAME OF BLESSED THOMAS MORE* 63 (1929).

POSTSCRIPT

Many of us who teach legal ethics (or even jurisprudence) use Bolt's play, or the movie version of the story (for which Bolt wrote the screenplay), and I perceive that we do it with some misgiving.

The older among us probably use it, in part, because we remember the impact the play (before the movie was made) had among lawyers when we were young in the profession and listening for sensitive voices from our elders. What seemed to strike lawyers about it was the way Bolt thought of More as depending on his wit and on the law, or on his wit in the law, which is something Bolt focused on particularly and something that was, from the historical record, apparently accurate, although More and Roper would never have talked about it in terms of More's adamant sense of self.

The thing our elders seemed to like then was that More thought he could save his own neck by being a clever and exacting lawyer. His thinking so was the force not only of dialogue that must have been an actor's dream, but also of the stagecraft Bolt prescribed for his players—sparse sets, economic lighting, simple costumes, and, above all, the contrast provided between this superb aristocratic lawyer and a plebeian who talked directly to the audience. More did not succeed in saving his own neck, but he played a magnificent game and lost only because the other side got away with cheating. (Martyrdom, in the play, is merely an epilogue.) In a Law Day, speech you could always say that such cheating would never have worked in America, but one source of our vague misgiving in using the story in teaching may have been that we were not so sure of the difference.

Then came the movie, a second source of misgiving, even though Bolt wrote the screenplay.³⁶ The play is about a dangerous but encouraging (for lawyers anyway) game, a game the older lawyers loved in those days, and a game they were good at. The movie was entirely different, entirely different from a mid-twentieth-century American lawyer's perspective. The scenery, the frequent appearance of armed force, the physical power of the buildings, the musical score, the sense that More and his family were isolated in Chelsea while power had its way in splendid places—all of this arrayed against one

³⁶ A MAN FOR ALL SEASONS (Columbia Pictures 1966).

government lawyer, who had just lost his job—make of the movie a Greek tragedy, a story in which More's dependence on wit is (and he knows it) futile and bound to fail, as we know from the first scene.

I still try to get students to read the play. If I were more resourceful I might track down a videotape of the play; it was on television as I remember. One television version had the National Rifle Association's Charlton Heston in the lead—and even it might suffice. The movie, however, has much less to say to lawyers, much less to encourage dependence on wit and the law than the play did; I give the movie a pass.