

Law in Sir Thomas More's *Utopia* as Compared to His Lord Chancellorship

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I. Introduction

We, in the United States, are in the midst of a debate about whether the memoranda written by a young lawyer can be presumed to indicate what he might do should he be nominated to and confirmed to serve on the Supreme Court of the United States. This convocation address, and the article hopefully to emerge from it, takes that question back five hundred years, changes some key facts, and asks it retrospectively (after the subject's later legal career was concluded by beheading) rather than prospectively.

To attempt to predict from what a man said or did in one period of his life what he might do later is, of course, a little absurd. Do we want people not to change, evolve and grow? Can we be sure that the cautious conservative bent of a young Harvard Law School graduate working in the heady days of a conservative take-over in Washington will translate into a conservative bent when given unsupervised freedom to interpret the law as a member of the Supreme Court? Probably not and so I begin this exercise almost with my conclusion, namely that what is interesting about what Sir Thomas More wrote early in his career and then did later as Lord Chancellor is its similarity and this is interesting because so little of the rest of *Utopia* closely reflected his considered opinions a lifetime later.

II. Sir Thomas More's Life

Sir Thomas More is, of course, even well-known today. Paul Scofield's memorable film portrayal of him in the movie *A Man for All Seasons*, followed closely in the hagiographical tradition begun by Sir Thomas' son-in-law, William Roper, who wrote a compelling biography of More not long after his execution for allegedly committing treason against Henry VIII and the Tudor state. But the details of Sir Thomas' life are not well known so I wanted to tell a bit more about him as it relates to the rest of this paper.

More was born in London (to a London family) in 1478 the son of a fairly prominent lawyer, John More, and his wife, also the child of a lawyer who served as a Justice of the King's Bench. Thomas More was close to his father who he described as: "civil, gentle, innocent, meek, merciful, just and pure."¹ More entered Oxford, the constituent college is unknown, at age 14. He did not stay long for in 1494, at age 16, he commenced study at the Inns of Court in Lincoln's Inn being called to the bar as an utter (or outer) barrister in 1501.² (The Inns of Court were a professionally controlled training program for attorneys run out of several "inns" in London.) During this period we know that he met Erasmus in the summer of 1499. As far as we know, they did not meet again until 1505.

During the period from his admission as an utter barrister until 1518, Sir Thomas appears to "have practiced law" probably in both the common law courts and in the Court of Chancery and in other prerogative jurisdictions. Chancery was the court presided over by the Lord Chancellor and administering a separate or complimentary system of jurisprudence known as "equity" as opposed to the "law" applied in the regular courts including the Courts of King's or Queen's Bench and the Court of Common Pleas. Chancery was a "prerogative" court meaning it emanated from the King's residual power to do justice and the other prerogative courts included the Court of Star Chamber, the Court of Requests, and the Court of High Commission. More was elected to Parliament in 1504, served as an under-sheriff (and as one of the Commissioner of Sewers) of London from 1510 until 1518 and finally became a royal councilor in 1518.³ He became a master, a kind of subsidiary judge, of the Court of Requests in 1512 and Speaker of the Commons in 1523. Requests was created as a separate jurisdiction by Wolsey in about 1519 to handle, as a delegee of Chancery, claims for extraordinary special treatment based on the poverty of the supplicant.⁴

It is in this period, ending in 1516 that More wrote his famous *Utopia*, a fictional recounting of a conversation between More and one Raphael Hythlodæus, a Portuguese traveler, who had visited the imaginary nation of Utopia. (There are other conversations reported, including with the late Cardinal and Lord Chancellor John Morton, who was More's spiritual father.) Richard Marius, More's leading biographer of our epoch, believes that More was moved to write it as an oblique response to Martin van Dorp, a theological conservative at the University of Louvain, who had criticized Erasmus's *In Praise of Folly*.⁵ We know that More shared his *Utopia* with Erasmus contemporaneously with its writing in Europe in 1515 and when it was finished Erasmus actually guided it through its initial publication by the press of Thierry Martens at Louvain in 1516. Jack Hexter concluded that More actually finished it after returning to England in 1516.⁶ This began an intense period, lasting about five years, of collaboration between the two in promoting a humanist agenda for the renaissance Christian scholar that was ended only by the growing

¹ Richard Marius, *Thomas More: A Biography* 8 (Cambridge, 1984).

² See J. H. Baker, *An Introduction to English Legal History* 184 (3d ed. London, 1990) for a discussion of the process in the Inns.

³ Marius at 53.

⁴ J. H. Baker at 138.

⁵ Marius at 149-52.

⁶ J. H. Hexter, *More's Utopia: The Biography of an Idea* 15 (Wesport, 1976).

strength in England of the Protestant factions which More resisted strongly and Erasmus responded to more equivocally. More's orthodoxy and in particular his resistance to the decentralized flavor of Protestantism no doubt recommended him to Henry VIII who appointed More to replace the disgraced Cardinal Wolsey as Lord Chancellor in October 15, 1529.⁷ Before this More had actively supported the King's assertions of fidelity to an orthodox Catholicism, advising him even in writing his famous book, *Assertio Septem Sacramentorum*, which rejected core theological claims of Luther and Tyndale and that pleased the then Pope.

More had played a role in Wolsey's downfall but it was known that he resisted the King's desire to replace Catherine of Aragon as Queen and resisted even more strongly the King's affection for Anne Boleyn. More remained as Lord Chancellor until 1532 when he was forced to resign over his conflict (silently maintained) with the King over the divorce and remarriage and the attendant splitting off the English Church from the See of Rome and most significantly in Henry's taking on the title as Supreme Head of the Christian Church in England. More's graceful and respectful efforts to avoid an overt split with the King are well-known.

III. *Utopia: Its Structure, Its Purposes and What it Says about Law*

Western literary and intellectual history has produced a number of utopian books, *The Republic*, *Erewhon*, *In Praise of Folly*, *New Atlantis*, *Walden Two*, etc. Commentary on utopias frequently considers the question of what in the particular work is meant seriously, what may be in jest, and what may be intended to critique existing conditions without necessarily endorsing the observed state of affairs in the imaginary land. These alternatives, 1) serious proposal, 2) humor, and 3) counterpunctual criticism, are all present in Sir Thomas More's *Utopia*, and because he was a joker through his life the second alternative plays more of a role than, say, in *The Republic*. As I proceed into this subject even indirectly by describing the overall shape of *Utopia* and its probable purposes, let me say that many very distinguished scholars of More and *Utopia* have weighed in with varying hypotheses about different parts of the book or More's overall purpose and there is no way that a college president, even one reckless enough to venture into this area, can add anything definitive except his own opinions.

In the foreward to *Utopia*, addressed to Peter Giles, More recounts how he was in Antwerp when Giles introduced him to Raphael Hythlodæus. He also mentions, significantly that: "I am constantly engaged in legal business, either pleading or hearing, either giving an award as arbiter or deciding a case as judge."⁸

Utopia is divided into two books. Book 1 is about one half of the length of Book 2. Some commentators make a significant distinction between the degree of "seriousness" in Book 1 versus Book 2 largely because of Book 2's longish description of the un-Christian religious beliefs and practices of the Utopians. I don't have a position on this so I make no distinction.

It is of course treacherous, as modern deconstruction has shown, to invest too much energy into trying to deduce the "purpose" of a literary work. But it has its utility, particularly in a focused inquiry like mine, for some comments that might

seem bizarre when compared to the author's known views about a particular matter can be made sense of in terms of the overall purpose of the book, if it is knowable. So, what then are the various theories of Sir Thomas' overall purpose in writing this interesting book? By overall purpose I do not mean what triggered him to write it but rather his overall purpose. Russell Ames has argued that *Utopia*, far from being a reactionary endorsement of a medieval communalism, is primarily a revolutionary book espousing the anti-aristocratic creed of a rising middle class in England.⁹ Alistair Fox sees *Utopia* as a book of delicious or intentional "inconclusiveness" by a clever author.¹⁰ The late Jack Hexter has suggested that *Utopia* reflects More's growing disenchantment with legal work (drudgery) and also a desire to find a position at the King's court.¹¹ If this is true then, interestingly, More's comments on law may actually have been part of an affirmative campaign to get power in order to change English law and legal practice. Colin Starnes believes that *Utopia* is largely written to contrast and critique Plato's *Republic* and that Raphael is Christian modernist, with an empirical bent compared to the extreme philosophical idealism of *The Republic*.¹² George Logan's erudite treatment of *Utopia* concludes, similarly to Starnes, that *Utopia* is a serious work of advanced renaissance humanistic philosophy.¹³ J.B. Trapp believes *Utopia* should primarily be viewed within the literary genre of idealized compositions taking parts from Horace, bits from Plutarch, etc. etc. and, therefore, primarily a work of literary composition.¹⁴ Perhaps not surprisingly, Richard Marius, More's biographer, the man most weighed down by the entire story of More's life, concludes:

How should we take *Utopia*? Disagreements abound. The irony of the work comes to us through profoundly serious issues, but we cannot tell where *irony* end and literal recommendations begins... The best we can do is to say that the details of *Utopia* raise problems but not necessarily *solutions*.¹⁵

Finally, virtually no one believes that *Utopia* is in any significant way a response to or reaction from Erasmus' *In Praise of Folly*.¹⁶ There are passages in *Utopia* that clearly support the thrust of Erasmus that abstract philosophers should not be kings.¹⁷

Given the plausibility of a number of these thoughtful explanations I start off being studiously agnostic as to the validity of any of them as they might explain or contextualize More's comments about law. Before describing what More does say about law and legal practices one methodological comment is in order. A lot of what

⁹ Russell Ames, *Citizen Thomas More and His Utopia* (Princeton, 1949) 80.

¹⁰ See generally Alistair Fox, *Utopia: An Elusive Vision* (New York, 1993).

¹¹ Hexter at 109.

¹² Colin Starnes, *The New Republic* 47-49 (Waterloo, Ontario 1990).

¹³ George M. Logan, *The Meaning of More's Utopia* 110 (Princeton, 1983).

¹⁴ J. B. Trapp, *Erasmus, Colet and More: The Early Tudor Humanists and their books* 59 (London: British Library, 1991).

¹⁵ Marius at 185.

¹⁶ Id. at 164. See generally Desiderius Erasmus, *In Praise of Folly*. Trans. John Wilson (Ann Arbor, 1971)

¹⁷ *Utopia* at 90.

⁷ Marius at 364,

⁸ Sir Thomas More, *Utopia* 6 (Edward Surtz, ed., New Haven, 1964).

is described about Utopian life has obvious implications for legal norms but my discussion of the role of law in Utopia is tied only to fairly explicit discussions of law or legal institutions. It is of course possible that some of these legal passages are themselves wholly incidental to a description of a particular aspect of Utopian society and that Sir Thomas did not mean to make a serious statement about law, but I am going to assume that all direct suggestions about law should be considered as serious.

I think the Utopian discussion of law can be summarized in thirteen statements of legal propositions as follows: 1) All lawyers are banished in Utopia.¹⁸ Individuals must plead their own cases in proceedings. 2) Law should not be “recondite” but interpreted in the most obvious fashion.¹⁹ 3) Laws should be few in number.²⁰ 4) Theft offenses should perhaps not be punishable at all and certainly not by death.²¹ 5) Marital infidelity should be punishable on a first offense by slavery and on a subsequent offense by death.²² 6) Except in a few cases, penalties should not be fixed for offenses but left to the discretion of the sentencing body “according to its atrocity or venality...”²³ 7) International treaties are worthless and should not be written.²⁴ 8) Religious freedom should be guaranteed by law.²⁵ 9) There should be fines for recourse to outmoded laws that are not generally enforced.²⁶ 10) The law and judges should avoid arcane interpretations and debates about law but should instead judge the overall equity or justice of a situation and decide accordingly.²⁷ 11) Private or exclusive property should be abolished.²⁸ (It is worthy of note that in this instance Sir Thomas quotes himself as directly disagreeing: “Life cannot be satisfactory where all things are common...”²⁹) 12) Private contracts exist and are enforced as should public obligations owed to individuals but there is no money exchanged but rather an overall credit accounting which is never reconciled.³⁰ 13) Through various rhetorical devices Utopia condemns trickiness or craftiness or extreme subtlety in law (and philosophy).³¹

This is an odd list if one is looking for a complete system of jurisprudence in *Utopia*. And immediately on reading it one confronts the issue anyone reading *Utopia* confronts, what is Sir Thomas advocating and what is he joking about or merely describing to elucidate, by apposition, current English law and practice? In some cases, the prohibition on private property, we seem to know that Sir Thomas did not agree with Utopian practice. But most of the other things look plausible or arguable. The discussion of theft and how to punish it might strike one as odd but, of course, it

echoes down through English history right to the time of Dickens when changes were finally made.

IV. *Sir Thomas’ Subsequent Career Including His Time as Lord Chancellor*

A. *Introduction*

In evaluating the extent to which Sir Thomas More followed what he appeared to endorse in Utopian legal practice in his later professional career, one has to understand the development of Chancery, and the Star Chamber, as separate courts applying a seemingly separate jurisprudence from the law courts and the status of this historical development in 1529. In the generations after the Conquest by William of Normandy, English justice began to develop in what we call the royal courts a system of jurisprudence called the common law, common that is to all England. These courts gradually and by piecemeal grabbed jurisdiction and revenue for the crown from the inherited communal courts of the Anglo-Saxons. Sometimes jurisdiction was enlarged by fictional satisfaction of older rules and sometimes there was explicit royal legislation creating new causes of action or offenses.

In the development of the common law it was believed that these royal courts were emanations of the King’s prerogative (hence their ability to replace the communal courts) but of course they became regularized and were then seen as the product of the common law system. But the king’s prerogative continued to exist and he would occasionally hear cases in his “council” or delegate his chancellor, who headed the department of royal clerks, to hear such matters. In time, this power of the chancellor became known itself as a kind of jurisdiction, the Court of Chancery, and it possessed, certainly by 1400, a regular legal business. One has to be extraordinarily careful in describing the kinds of cases initially heard in Chancery and those later added to Chancery. But from the beginning the jurisdiction of Chancery was conceived to be based on some unique hardship, poverty, fraud, or perjury, that prevented justice in a broad sense from being achieved in the regular law courts, King’s Bench and Common Pleas. And later, as I mentioned before, Chancery spawned the Court of Requests which heard similar cases and the Star Chamber developed to hear certain quasi-criminal matters and High Commission heard matters of doctrinal aberrancy.

Suffice it to say that there never was a clear line delineating the outer limits of Chancery’s jurisdiction, and the common law lawyers and judges came to see Chancery as invading first in one case and then in a whole line of cases the common law’s turf. From the perspective of the Crown, Chancery’s growth, and it did grow, was justified by the fact that the common law had “blindness” in some cases to substantial injustice based on the application of its rules in a rigid fashion. The common law judges were suspicious about spongy claims of “substantial” justice and favored unremitting application of rules.

This low level conflict began to heat up in the late 15th century and then also throughout the 16th century when the common law judges claimed that Chancery was second guessing common law judgments or even moving to enjoin (Chancery alone had the power to enjoin or prohibit action---common law judges had the power to fine, impose damages and in limited cases imprison malefactors) legal action. The Chancellors were even seen to be enjoining the common law judges from acting. The Chancellors argued that their jurisdiction was based on

¹⁸ Id at 114.

¹⁹ Id.

²⁰ Id.

²¹ Id at Book 1.

²² Id at 109 and 112.

²³ Id. at 112.

²⁴ Id. at 117.

²⁵ Id. at 133.

²⁶ Id. at 44.

²⁷ Id. at 45.

²⁸ Id. at 53.

²⁹ Id. at 55.

³⁰ Id 94-5.

³¹ Id at 89. On philosophy see, Id. at 90.

“conscience” a specific conscience, limited by cases, and that their orders ordered malefactors (not the common law judges) to do something. For instance, if I was owed money by Jim Swartz and he gave me a penal bond and then he paid me back and I failed to cancel the bond and then executed on the bond to collect for a second time the debt, Jim Swartz might get a bill in Chancery to enjoin me from proceeding. His claim would be that I was acting fraudulently. But the common law judges frequently saw such actions as invading their domain.

During Cardinal Wolsey’s chancellorship two major developments occurred. First, he expanded the institutional opportunities for these special prerogative courts to hear and decide matters. Second, although he did this publicly and frequently with the connivance of the common law judges, the number and type of chancery cases increased significantly.³² The general types of cases: complex real property actions, debt and bond relief actions, poverty claims, other “conscience” claims, and familial descent and distribution cases remained roughly the same. It had become clear to some common law judges that they had a major and serious competitor. (This state of affairs steadily worsened after Sir Thomas’ demise and eventually in 1616 King James I permanently adjudicated the overall issue in favor of Chancery.) Thus, England, alone in Europe, ended up with two sets of courts frequently hearing related aspects of a single dispute.

At the time of More’s accession as Lord Chancellor in 1529 the irritations between the law courts and the prerogative courts were not raw. There was, however, an ongoing debate and a respected common lawyer and political thinker, Christopher St. Germain, had written a dialogue that we know as *Doctor and Student*.³³ The dialogue is between a doctor of divinity and a student of the common law and is designed to explain that the scope of “equity” as chancery’s jurisprudence came to be known, was not a generalized and unbounded conscience but rather specific reliefs to common law doctrinal failures or even more generally a notion that law should be interpreted flexibly and in aid of its purposes and not narrowly and literally.³⁴ St. Germain’s dialogue provoked a responsive by a common law adherent and then a rejoinder by St. Germain.³⁵ Although More and St. Germain ended up very much on opposite sides of the fence over Henry’s divorce and withdrawal from the Roman church, both believed that the idea of equity or the softening of the edges of rules in extraordinary situations of justice needed to be incorporated into the common law as well as in Chancery.³⁶

B. More’s Record as Chancellor

As everyone trying to deduce Judge Roberts’ views on legal matters is finding out, it is difficult to separate what a lawyer has said from what his client at a particular time wished to do or his professional supervisor may have wanted. And

once someone gets to be a high legal official, like Sir Thomas, that difficulty is compounded by the demands of the institutional role as, say, the Lord Chancellor. The state of judicial records from the 16th century Chancery adds a further element of complexity in that it is not clear from many chancery records who is representing the parties or actually decided the matter or even what the final decision was. Luckily, an extraordinarily able legal scholar and historian, J.A. Guy, has poured over the Chancery’s records for Sir Thomas’ period as Lord Chancellor and his fine work³⁷ provides information that can be used to attempt to answer the question posed at the beginning of this paper.

The case of Richard Fisher, a servant of Catherine of Aragon, against John Chandler, a London draper, is illustrative.³⁸ Fisher sought a bill in equity after Chandler had sued him in the London Mayor’s Court in an action of debt for 21 pounds. Fisher asked that his body (he had been arrested) and the records of the Mayor’s Court proceeding be brought into the Chancery for review. His claim was that he was underage when the “debt” was incurred and that it was unconscionable for Chandler to proceed against him. We do not know what finally happened in this matter but we do know that Chandler countered with the claim that Fisher had become bound at his father’s request--his father was also a draper like Chandler. Thus, the Chancellor had to decide whether Fisher himself may have been conniving with his father to avoid this obligation by placing a young, but perhaps not young-appearing, Fisher as the obligor on the debt obligation and then using his nonage as a defense to timely payment.

It is from the bits and shards of cases like Fisher’s that one has to attempt to answer the question that I posed at the beginning of this exercise. In the paragraphs below I will attempt to summarize, using Guy’s evidence, or to explain why no evidence exists, the extent to which the older Sir Thomas emulated Utopian legal practices.

More showed a consistent dislike for technical or crafty argumentation in the Chancery in favor of general claims for justice. For the most part More showed his dislike for craftiness in the context of complex real property cases involving property held to “uses,” we would say property held by trustees. Frequently the trustees would fail to do what they had promised to do upon entering into the trust relationship or conversely the feoffees to uses (trustees) would be ousted by a crafty and occasionally false claim of title.³⁹

More favored outcomes that favored the innocent and honest party, broadly conceived, even if he or she would lose the strict legal question. Four creditors of Harry Lightmaker, a merchant who was abroad, sued his son, who was handling his father’s affairs temporarily for 125 pounds at law and procured the son’s, Edward, arrest and detention.⁴⁰ The son could not prove or disprove the validity of the underlying debts (without his father) so he sought a bill in chancery and Sir Thomas granted the bill ordering Edward’s release and the adjournment of the hearing on the creditors claims until the father returned.

More did not continue Wolsey’s expansion of prerogative jurisdictions but argued that the

³² J. A. Guy, *The Public Career of Sir Thomas More* 40 (Brighton, 1980).

³³ J. H. Baker at 216.

³⁴ Christopher St. Germain, *Doctor & Student*, Selden Society v. 151 (T. F. Plucknett, and J. L. Barton, eds. London, 1974). The argument was also made in a later treatise of St. Germain’s. *Christopher St. Germain on Chancery and Statute*, “A Little Treatise concerning Writs of Subpoena,” (J. A. Guy, ed., London, Selden Society Special Vol. 1985).

³⁵ Guy, *The Public Career*, at 43-44.

³⁶ Marius at 377-78.

³⁷ Guy, *passim*.

³⁸ Guy at 69-70.

³⁹ Guy at 58-61.

⁴⁰ Guy at 73.

common law judges should import notions of equity into the common law. In his biography of Sir Thomas, William Roper recounts the following story:

And after dinner when [More] had broken with them [the common law judges] what complaints he had heard of his injunctions, and moreover showed them both the number and causes of every one of them in order so plainly, that upon full debating of those matters, they were all enforced to confess, that they in like case could have done no otherwise themselves, then offered he this unto them, that if the justices of every court (unto whom the reformation of rigour of the law, by reason of their office, most specially appertained) would upon reasonable considerations, by their own discretions (as they were, as he thought, in conscience bound) mitigate and reform the rigour of the law themselves, there should from thenceforth by him no more injunctions be granted. Whereupon, when they refused to condescend, then said he unto them: 'Forasmuch as yourselves, my lords, drive me to that necessity for awarding out injunctions to relieve the people's injury, you cannot hereafter any more justly blame me.' And after that he said secretly unto [Roper] 'I perceive, son, why they like not so to do, for they see that they may by the verdict of the jury cast off all quarrels from themselves upon them, which they account their chief defense; and therefore am I compelled to abide the adventure of all such reports.'⁴¹

More did not play any direct role in suggesting reform of the penalty for theft but his actions suggested that he continued to believe that personal crimes of violence were more serious than property crimes. Chancery of course had no jurisdiction over crimes and indeed most crimes were non-statutory so any change in the punishments for theft would have had to come from the common law judges. At the same time, one thoughtful commentator on *Utopia*, Dominic Baker-Smith, has suggested that More offered the suggestion of changing the punishments for theft based on a canon law notion that crimes "necessity" should not be crimes at all or should be crimes of lesser severity.⁴² More did participate in freeing a number of debtors imprisoned by granting them relief in equity for the fraud or knavery of their accuser at law.

Contrary to Utopian practice More actively pursued heretics and savagely attacked them in pamphlets during his time as Lord Chancellor. As Richard Marius has written: "[More used the tools of his office] to wage unrelenting war against the enemies of the faith."⁴³ Marius' explanation for this is that More was a "cruelly divided man,"⁴⁴ meaning he was torn between his desire to serve the Crown and his own wish to prepare for heaven. More examined some heretics at his home, with clergy present but also participated in the burning of certain heretics while Lord Chancellor.⁴⁵ All of this can not be squared with More's admiring reference to the legal freedom of Utopians to believe as they wished, but again the distinction to be made may be that the Lord Chancellor really had no direct role to play in deciding about religious toleration. Perhaps the answer can be found in his words of admonition to political

officials when things are going contrary to their considered opinions: "If you cannot pluck up wrongheaded opinions by the root, if you cannot cure according to your heart's desire vices of long standing, yet you must not on that account desert the commonwealth. You must not abandon the ship in a storm because you cannot control the winds."⁴⁶

Justice should operate in a fashion that is blind to the wealth and status of the litigants. As mentioned above, More could hear cases both in the Chancery and also in the Star Chamber particularly when force or violence was alleged that would not be recognized in a common law proceeding. One example was a series of cases arising from the death of Lord Willoughby de Eresby in 1526.⁴⁷ The Lord's widow, Lady Mary, maintained that her daughter who was nine, Catherine, inherited as the general heir all of her father's estates. However, Catherine's uncle, brother of the late Lord, Sir Christopher Willoughby, claimed the entire inheritance as the heir male (claiming implicitly that the underlying title was a title in fee tail male as opposed to a fee simple absolute.) As it turned out, there were several different sources of title for the several estates of the deceased Lord and so More proceeded with caution, protecting the young daughter, by picking through each estate (he did not finish this litigation) and ascertaining which kind of title the late Lord held and also awarding these estates to Catherine or Sir. Christopher, as the facts required. He also sequestered the profits accruing from any estates whose title remained unclear pending a final resolution of the case. This case reflects the traditional chancery concern with wards, young heirs, and also concern about oppression by a wealthy uncle.

More did not act to abolish lawyers or the legal profession or appear to disfavor them in any explicit way. Again this is a matter of roles, for the Lord Chancellor had no control over the bar which was self-regulating from its origins or only regulated by the judges of the Common Pleas or the Bench. He surely disliked the notion that legal craftiness might help one person over another but he did not ever act to eliminate lawyers or even limit the scope of their activities.

More took no steps to abolish or limit private property, eliminate international agreements, or to punish marital infidelity more seriously than it had hitherto been punished in England. We know Sir Thomas himself argued against the idea that private property could or should be eliminated in his *Utopia*. But he surely felt that private property and the power which came with large, uncultivated⁴⁸, holdings of property were dangerous and even unjust to those without such holdings or power. At the same time it would greatly overstate what we know of his lord chancellorship to say that he displayed any hostility to private ownership of land or other property. Indeed, almost all Chancery cases involved competing claims for such valuable assets and frequently involved competing claimants of roughly equal status and wealth (pending the outcome of the case, of course.)⁴⁹ Raphael, by contrast, endorses a Platonic vision of

⁴¹ William Roper, *The Life of Sir Thomas Moore(sic), Kknighte*, 44-45 Early Eng. Text Soc'y, v. 197 (Oxford, 1958).

⁴² Dominic Baker-Smith, *More's Utopia* 106 (London, 1991).

⁴³ Marius at 386.

⁴⁴ Id. at 391.

⁴⁵ Id. at 392-402.

⁴⁶ *Utopia* at 49-50. Roper recounts a conversation with his father-in-law in which Sir Thomas seems to suggest that high and mighty might some day wish they had a state of toleration rather than one which persecutes heretics for they might end up being persecuted. Roper at 35.

⁴⁷ Guy at 59-60.

⁴⁸ *Utopia* at 27.

⁴⁹ Guy at 63-65.

limited property, wholesale equality and limited laws.⁵⁰

More did at points in his legal career endorse efforts to improve governmental practices along Utopian lines. In a thoughtful essay based on the Records of the Duchy of Lancaster of which Sir Thomas served as Chancellor there are a number of cases reported, including some protracted litigation about election procedures in the borough of Preston. More, as Chancellor, attempted to impose on the powerful local figures certain requirements of fair play with a strong Utopian flavor.⁵¹ He also pursued during his professional life improvements in public health and medical practice suggested in *Utopia*.⁵²

V. Endnote

As *Utopia* comes to an end, Sir Thomas was careful to distance himself from certain Utopian practices. As to Raphael, he wrote: "...I cannot agree with all that he said."⁵³ Even more pointedly he said: "When Raphael had finished his story, many things came to my mind which seemed very absurdly established in the customs and laws of the people described...but most of all in that feature which is the principal foundation of their whole structure, I mean their common life and subsistence---without any exchange of money."⁵⁴

The wonder of More's *Utopia* is that even as to its most outlandish, to 16th century English eyes, features, the utopian author can still be critiquing his own society and legal order. So, while abolishing private property or eliminating currency may be absurd or impossible it is not absurd to construct and administer a system of jurisprudence focused on treating equally, the rich and the poor. As to other things, like the need for fewer laws and simpler interpretive methods, there is no discontinuity between *Utopia* and More's chancellorship. But finally, there are a few things, Sir Thomas's views of religious toleration as opposed to his duty as a royal servant, about which we will perhaps be forever in doubt. But it would seem that if Sir Thomas refused to swear an oath affirming the King's supremacy over the church in England and he truly felt that religious toleration was good or desirable, it would seem unlikely that he would lead a very vicious charge against heretics unless at bottom there was in Sir Thomas, later in life and on painful reflection as the world came apart around him, really a most convinced Christian orthodoxy which made the notion of the King's supremacy morally abhorrent. So, in the end it may be appropriate that history remembers him more as moral exemplar, St. Thomas More, rather than as a sophisticated and reforming Lord Chancellor. And by a great irony of history that title may better be attached to Thomas Wolsey.

⁵⁰ *Utopia* at 53.

⁵¹ Margaret Hastings, "Sir Thomas More: Maker of English Law?" in R. S. Sylvester and G. P. Marc'hadour, *Essential Articles for the Study of Thomas More* 112-116 (Hamden, 1977).

⁵² Arthur S. McNulty, "Thomas More as Public Health Reformer," *id.* at 119-49.

⁵³ *Utopia* at 152.

⁵⁴ *Id.* at 151.