

# Thomas More's *Trial by Jury*

*Edited by* HENRY ANSGAR KELLY,  
LOUIS W. KARLIN &  
GERARD B. WEGEMER



# Thomas More's Trial by Jury

A Procedural and Legal Review  
with a Collection of Documents

*Edited by*

Henry Ansgar Kelly, Louis W. Karlin,  
and Gerard B. Wegemer



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## Thomas More's Trial by Jury

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# Preface

## *Thomas More in History*

Thomas More is one of the most famous persons in history. His life spanned the last part of the fifteenth century and the first part of the sixteenth century. Just as the best-known figures of the fifteenth century are undoubtedly Joan of Arc and Christopher Columbus, as was asserted by the Devil's Advocate at the opening of Joan's canonization trial in 1892,<sup>1</sup> it could be argued that More ranks as one of the most familiar historical persons of the first half of the sixteenth century, along with Martin Luther and Henry VIII. Henry VIII and Thomas More joined together at first to oppose Luther and what they perceived as heresies in his writings, but they would later come to a parting of minds. They differed less on doctrine and faith than on Church law and discipline, with More considering Henry not a heretic but rather a schismatic, an advocate of caesaro-papism, "the supremacy of the civil power in the control of ecclesiastical affairs."<sup>2</sup>

But More is perhaps the most elusive of these five persons, despite the many biographies and studies about him and his accomplishments and his eventual downfall at the hands of his king, his one-time friend and enemy at the end, Henry VIII.

Until fairly recently, More was undoubtedly most familiar as the cheerful humanist whose fanciful *Utopia* caught the imagination of the whole world of his time and has retained its fascination to this day, along with the adjective that memorializes it, "utopian." For a long time he was admired on all sides, and especially since the midpoints of the twentieth century, as the protagonist of Robert Bolt's *A Man for All Seasons* (the play of 1960 and film of 1966).<sup>3</sup> At the time of the celebration of the 500th anniversary of More's birth in 1977, the historian Hugh Trevor-Roper summed up this positive view when he said that More is "the first great Englishman whom we feel that we know, the most saintly of humanists, the most human of saints, the universal man of our cool northern renaissance."<sup>4</sup>

<sup>1</sup> H. A. Kelly, "Joan of Arc's Last Trial: The Attack of the Devil's Advocates," in *Fresh Verdicts on Joan of Arc*, ed. Bonnie Wheeler and Charles T. Wood (New York, 1996), pp. 205–38, at 208.

<sup>2</sup> Rightly pointed out by Seymour Baker House, "More, Sir Thomas," *ODNB*, section on "Opposition to the Royal Divorce."

<sup>3</sup> Robert Bolt, *A Man for All Seasons: A Play in Two Acts* (London, 1960). Bolt wrote the screenplay for the Columbia Pictures film, which was directed by Fred Zinnemann.

<sup>4</sup> Reported by R. W. Apple, Jr., "Gallery in London Presents an Exhibition for All Seasons," *New York Times*, December 4, 1977, as having been spoken "a few days ago." Trevor-Roper's comment is cited by Marvin O'Connell, "A Man for All Seasons: An Historian's Demur," *Catholic Dossier* 8 no. 2 (March–April 2002), 16–19.

But in more recent times, the tide seems to have turned against More in many quarters, especially with regard to his approval of the death penalty for convicted heretics.<sup>5</sup> Even in earlier decades More had his critics. Herschel Baker, professor of English at Harvard, during a course he was teaching in 1962 on “Religious Backgrounds on Sixteenth-Century Literature,” commented that if he had been on Thomas More’s canonization panel he would have voted against bestowing the honor upon him, since More was a successful politician, a status incompatible with sanctity.<sup>6</sup>

More’s beatification (the first step towards canonization) took place in 1886, along with 53 other Englishmen, including Bishop John Fisher and the seven monks convicted of the same offense.<sup>7</sup> All were declared martyrs, meaning that they did not have to pass muster on the outstanding holiness of their lives; it was sufficient that they could be shown to have died for the Catholic faith. The most celebrated of all devil’s advocates, Cardinal Prospero Lambertini, who later became Pope Benedict XIV (1740–58), gave the example of Mary Queen of Scots as a perfect example of someone who could easily be declared a martyr because of her motivations at her death and the motivations of those who tried her and executed her.<sup>8</sup> In the *Roman Martyrology*, however, More is lauded not only as a martyr for his fidelity to the Catholic faith, after having been imprisoned for resisting King Henry’s repudiation of his marriage and the primacy of the pope, but also as a family man of the most upright life and as head of his country’s legislature.<sup>9</sup>

<sup>5</sup> As House says (“More, Sir Thomas”), “No other aspect of More’s life has engendered greater controversy than his persecution of heretics. Critics argue that as one of Europe’s leading intellectuals, and one with particularly strong humanist leanings, More should have rejected capital punishment of heretics. His supporters point out that he was a product of his times, and that those men he most admired (including Bishop Fisher, also martyred by Henry VIII) lamented but accepted as necessary the practice of executing heretics.” A recent popular novel, *Wolf Hall*, by Hilary Mantel (London, 2009), which has as its protagonist a sensitive and thoughtful Thomas Cromwell, presents More as dour and humorless, a torturer of heresy suspects, who gets his comeuppance when he is condemned to death and executed.

<sup>6</sup> Testimony of H. A. Kelly, present in class.

<sup>7</sup> F. G. Holweck, *A Biographical Dictionary of the Saints* (St Louis, MO, 1924), p. 979.

<sup>8</sup> Benedict XIV, *Opus de servorum Dei beatificatione et beatorum canonizatione*, 7 vols (Prato, 1839–42), 3:119 (3.13.10). For the trial of Mary Queen of Scots and her execution under Queen Elizabeth (1586–87), see Jayne Elizabeth Lewis, *The Trial of Mary Queen of Scots: A Brief History with Document* (Boston, 1999).

<sup>9</sup> *Martyrologium Romanum*, new edition (Vatican City, 2001, rev. 2004), entry of June 22 (p. 348): “Sanctorum Ioannis Fisher, episcopi, et Thomae More, martyrum, qui, cum Henrico regi Octavo in controversia de eius matrimonio repudiando et de Romani Pontificis primatu restitissent, in Turrem Londonii in Anglia trusi sunt. Ioannes Fisher, episcopus Roffensis, vir eruditione et dignitate vitae clarissimus, hac die iussu ipsius Regis ante carcerem decollatus est; Thomas More vero, paterfamilias vita integerrimus et praeses coetus moderatorum nationis, propter fidelitatem erga Ecclesiam catholicam servatam, sexta die Iulii cum venerabili antistite martyrio coniunctus est” (“The feast of Saints John Fisher, bishop, and Thomas More, martyrs, who, when they resisted King Henry VIII in the controversy concerning the repudiation of his marriage and the primacy of the Roman Pontiff, were thrust into the Tower of London in England. John Fisher, Bishop of Rochester, a man famous for his learning and dignity, was beheaded this day before the prison by order of the said king, while Thomas More, the head of a family, most upright in his life, and leader of the body of legislators of his nation, because he remained faithful to the Catholic Church, was joined in martyrdom with the venerable prelate on the sixth day of July”). In the previous edition, ed. Cuthbert John and Anthony



In contrast, Joan of Arc, although she too was condemned to death in a trial organized by the English government, but in an ecclesiastical court, was not declared a martyr when she was beatified in 1909, but only a holy virgin (if she were a man, she would have been called a confessor), even though her trial and condemnation were later repudiated and overturned by a papal commission. In such a case, when the candidate for sainthood was not classed as a martyr, it was necessary to prove, in a lengthy trial before the cardinals in Rome, that she or he had lived a life of heroic virtue. The entry in the *Roman Martyrology* says of Joan only that she fought bravely for her country and was condemned to be burned to death by her enemies in an iniquitous trial.<sup>10</sup>

We note that there is no reference in the *Martyrology* citation for More to any iniquity in the trial that convicted him, but there are many interesting similarities between his trial and that of Joan, even though Joan was prosecuted under the inquisitorial process, a procedure employed as well in English Church courts, including the Legatine trial of 1529,<sup>11</sup> whereas More was tried under the jury system of English common law. More had defended the fairness of the inquisitorial system as employed by English bishops against heresy suspects in his controversy with Christopher St German in 1533, in his *Apology* and *Debellation*.<sup>12</sup> But in the case of Joan of Arc, contrary to the requirements of Church law, Joan's judge, Bishop Pierre Cauchon (who was receiving a *per diem* stipend from the English) followed the abusive practices of many Continental heresy-inquisitors: he did not charge her with specific crimes committed in the past, but only with statements she made during a month of enforced interrogation.<sup>13</sup> Similarly, the charges against More were compiled from statements he allegedly made – and failed to make – during his time in prison.

Recently, Bishop Cauchon has found a defender for the validity of the procedures he used in prosecuting Joan,<sup>14</sup> and the trial of More has also found cham-

Ward (Rome, 1998), the entry for More, under July 6, reads: "Londini, in Anglia, sancti Thomae More, regni Cancellarii, qui, pro fide catholica ac beati Petri primatu, jubente Henrico Octavo rege, decollatus est" ("At London, in England, [the feast] of Thomas More, Chancellor of the realm, who was beheaded by order of King Henry VIII for the Catholic faith and the primacy of St Peter") (p. 162).

<sup>10</sup> *Martyrologium Romanum*, p. 312 (May 30): "Rothomagi in Normannia Galliae, sanctae Ioannae d'Arc, virginis, puellae Aurelianensis nuncupatae, quae, cum fortiter pro patria dimicasset, tandem, in hostium potestatem tradita, iniquo iudicio condemnata est et igne cremata" ("At Rouen in Normandy in France, the feast of St Joan of Arc, virgin, called the Maid of Orleans, who, after fighting valiantly for her country, was at last betrayed into the power of the enemy and in a wicked tribunal condemned and burned").

<sup>11</sup> Inquisitorial procedure was used not only in the Legatine trial of the marriage of Henry VIII and Catherine of Aragon, but also in the trials conducted by Archbishop Cranmer for the annulment of Henry's marriage to Catherine in 1533, and for the annulment of his marriage to Anne Boleyn in May 1536 (conducted simultaneously with her treason trial), less than a year after the treason trials of Fisher and More. See H. A. Kelly, *The Matrimonial Trials of Henry VIII* (Stanford, CA, 1976).

<sup>12</sup> H. A. Kelly, "Thomas More on Inquisitorial Due Process," *English Historical Review* 123 (2008), 847–94.

<sup>13</sup> H. A. Kelly, "The Right to Remain Silent: Before and After Joan of Arc," *Speculum* 68 (1993), repr. in *Inquisitions* as ch. 3, pp. 992–1026; idem, "Saint Joan and Confession: Internal and External Forum," in *Joan of Arc and Spirituality*, ed. Ann W. Astell and Bonnie Wheeler (New York, 2003), pp. 60–84.

<sup>14</sup> Daniel Hobbins, *The Trial of Joan of Arc* (Cambridge, MA, 2005), Introduction, pp. 1–32. I am

pions as well as denigrators. It is the purpose of this volume to review the known facts and reports about his prosecution, and to offer new “positions” and conclusions.

### *The Background to the Trial*

Thomas More, the son of a prominent judge, Sir John More, was unusual in receiving both a humanist and a legal education. He became a member of Parliament in 1504 and undersheriff of London in 1510. He early attracted the attention and friendship of the young Henry VIII, who was still only 17 when he became king in 1509, shortly before he married Catherine of Aragon, his brother's widow. More was named master of requests and a privy councillor in 1518, and was knighted in 1521. On the recommendation of the chancellor, Cardinal Wolsey, More became speaker of the House of Commons in 1523.

Henry began to press for an annulment of his marriage to Catherine of Aragon in 1527, and when the trial of the matter in 1529 by the papal legates Cardinal Wolsey and Cardinal Campeggio was suspended and advoked to Rome, Wolsey was removed from his office as chancellor of the realm. Henry offered the position to More, who accepted it only on condition that he would not be required to support the annulment initiative. This initiative soon fell under the direction of Thomas Cromwell, Wolsey's former assistant, and one prominent aspect of the campaign was to assert English royal control, as opposed to papal control, over local ecclesiastical matters. Early in 1531, the clergy of the Province of Canterbury were coerced into agreeing to call Henry the Supreme Head of the Church in England, “as far as the law of Christ allowed.” When the clergy further yielded their independence to the king in 1532, More resigned as chancellor.

In 1534, Parliament passed the Act of Succession, requiring subjects when asked to confirm by oath their agreement to the right of the offspring of Henry and Anne Boleyn to succeed to the throne. More refused to take the oath that was presented to him, presumably because it included approval of the annulment of the marriage of Henry and Catherine, and he was imprisoned, in anticipation of being tried and convicted of violating the statute. The stipulated crime for refusing the oath, however, was not treason, which carried a death penalty, but rather the lesser offense of misprision of treason, which carried the penalty of life in prison (More however was never tried for this crime).

Towards the end of the same year, 1534, Parliament passed three more statutes that would affect More, one convicting him of misprision by attainder, another recognizing Henry as Supreme Head of the Church in England, and the third declaring it treason to oppose any royal title by word or deed. It is important to note that, even though the penalty for infringing the third statute was the hanging, drawing, and quartering imposed upon persons convicted of treason, this statute (the Act of Treasons), unlike the Act of Succession with its mandatory oath, carried no requirement to give a positive affirmation on any subject.

preparing a response, “Questions of Due Process in the Trial of Joan of Arc,” in a volume of studies of famous trials.

The two latter statutes came into effect on February 1, 1535, and in the next months a total of nine persons were tried, convicted, and executed for opposing the king's new title: three Carthusian priors and a Bridgettine monk in April, three Carthusian monks in early June, Bishop Fisher in mid-June, and More at the end of June, with conviction on July 1 and execution on July 6 (like Fisher and More, the six Carthusians and the Bridgettine monks have been canonized). All of these trials will be reviewed below.

### *The Trial*

The trial in which More was convicted of treason was long denounced as a typical political miscarriage of justice, with participants simply doing the bidding of the reigning tyrant. But in comparatively recent times, specifically since 1964, the trial has been taken seriously as a carefully prepared and executed judicial process in which the judges were amenable to reasonable arguments. We, however, have reasons to disagree with this consensus, and wish to open the case for reassessment. To that end we have assembled together all of the surviving testimonies to the trial for a re-examination.

The official records of the trial, contained in the “Bag of Secrets,” are quite meager. There is the text of the commission of oyer and terminer appointed on June 26, 1535, to try Thomas More for treason, and the bill of indictment produced by the commissioners, together with the report that it was found to be a true bill by a grand jury, and the further report that More was charged with the listed crimes, to which he pleaded not guilty, but then was found guilty by a petty jury. No account is to be found here of the actual conduct of the trial. The most important item is the indictment, from which we can tell exactly what More was charged with.

He was charged with violating a combination of two of the statutes that had been passed by Parliament in the previous November–December (1534). As noted above, the first statute acknowledged the king and his successors to be Supreme Head of the Church in England, and the second statute declared that anyone who maliciously wished by words or writing “or by craft attempted” to do any harm against the king or queen, “or to deprive them of the dignity, title, or name of their royal estates,” would be guilty of high treason. The indictment, however, leaves out the qualification about words or writing or craft. It accuses More of violating the statute in three ways: first, by maliciously remaining silent when questioned about the king's title of supremacy; second, by maliciously conspiring with Bishop John Fisher to deprive the king of this title; and third, by maliciously asserting to Solicitor General Richard Rich that Parliament did not have the right to declare the king Supreme Head of the English Church.

There are two main accounts of what went on at the trial. One is by an eyewitness, whose report was quickly disseminated abroad, especially in a French version known today as the *Paris News Letter*. The original account was in Latin, and it is best preserved in a Guildhall manuscript (Doc. 17). The second main account was by More's son-in-law William Roper, written 20 years after the event, on the basis of what certain persons who attended the trial recounted to him.

There is this major, crucial difference between the two accounts: the Guildhall version reports that only three charges were levied against More, namely, malicious silence and two instances of malicious conspiracy with Fisher, and it was on the basis of these three charges that the jury found him guilty. Roper's account, on the contrary, makes it appear that there was only the single charge of making an assertion to Richard Rich impugning the royal supremacy.

The consensus resolution (spearheaded by Professor J. Duncan M. Derrett) between the two accounts is that More's objections against the parts of the indictment were sustained by the judges, and that these charges were dismissed; and, as a consequence, More pleaded not guilty only to the last part, dealing with Richard Rich. However, apart from the fact that there is nothing at all to suggest that the judges responded favorably to any of More's arguments, and the unlikelihood that these judges, some of whom had undoubtedly helped to construct the case against More, would so easily have dropped most of it, there are positive reasons to doubt this analysis of events, which will be set forth in the procedural analysis by Henry Ansgar Kelly, in which it is concluded that More was charged and convicted on the whole indictment.

Prominent among the reasons for this conclusion are the accounts of the trial given by Henry VIII's cousin, Reginald Pole (who would go on to become a cardinal and Archbishop of Canterbury in Queen Mary's reign), based on an eyewitness report, and the account given by one of the judges at the trial, Sir John Spelman.

As is well known to historians and laymen alike, notably from Bolt's *A Man for All Seasons*, the final charge relied upon the testimony of Richard Rich, which was denounced by More as perjured. We will show that there are extant two accounts of More's conversation with Rich, one in the report that Rich made, which formed the basis of the indictment charge, and the other as reported by Roper. We conclude that Roper's account is More's version of the exchange, in which he denied that Parliament had the power to make a person pope, whereas by Rich's account, followed by the indictment, More denied Parliament the power to make Henry Head of the English Church.

As for what happened after the verdict was announced, we have three different accounts. According to the eyewitness account represented in the Guildhall Report, More revealed his real opinion concerning the Statutes upon which he had been convicted and sentenced to death, in order to exonerate his conscience. According to Pole's account, however, More had refrained from giving his opinion about the law declaring the king Supreme Head of the English Church in order not to harm his defense. But once he was found guilty, he spoke out in order to prevent Englishmen from accepting, out of ignorance or imprudence, what he now termed was a pestiferous statute that was inimical to them. Finally, according to the Roper account, More acted on his earlier promise to speak against the indictment after an adverse verdict came in, but before the sentence of death was imposed. According to this report, More spoke in order to void the indictment, on the grounds that the Statute was contrary to the laws of the Church as a whole, and also contrary to Magna Carta and the laws of England.

The consensus view, following Derrett, is that the Roper account is the most accurate, showing that More was making a standard motion to overturn the

verdict. There is, however, no evidence that such a motion was ever used in criminal cases in the sixteenth century.

The question of whether the judges should have accepted More's alleged motion has been considered the only legal difficulty raised by the trial, but we have isolated what we consider to be a more important question: whether the judges treated More fairly and according to law in not accepting his contention that he did not fall under the Treasons Statute. More argued, first, that he did nothing by spoken or written word or by deed to impugn the king's title, and specifically, that his silence, or refusal to speak on the subject, should be not construed as opposition but, if anything, as affirmation; and, secondly, that he did nothing out of malice, which was a necessary condition for incurring the statutory censure.

These points will be discussed not only in the procedural review below, where the parallel proceedings against Bishop Fisher will also be discussed, and in R. H. Helmholz's discussion of natural-law principles and requirements, but also in the review of major legal issues by Louis Karlin and David Oakley, which will focus on a comparison between sixteenth-century and modern law, and in the discussion in chapter 5 by Justice Michael Tudendhat and in the round table participated in by him and Judges Edith Jones, Sidney Fitzwater, and Jennie Latta at a conference on More's trial held at the University of Dallas, November 7, 2008. Elizabeth McCutcheon's essay deals with the interrogations of More in the Tower, which formed the main basis of the charges against him.

All of these discussions are keyed to the pertinent documents here included, which are re-edited and, where appropriate, provided with English translations, with the expectation that the presentation of these sources together will help to put the trial events into perspective. In this way we hope that greater justice will be done to the facts and meaning of the facts of More's trial than has been done in the past.

In an appendix, we present a docudrama or dramatic reading of More's trial, based on the reports of the Guildhall witness, Spelman, Pole, and Roper, to suggest a plausible, though obviously conjectural, sequence of the events of the process that ended in the conviction and execution of Sir Thomas More.

Henry Ansgar Kelly  
Louis W. Karlin  
Gerard B. Wegemer  
July 1, 2011

## Abbreviations

CJC	<i>Corpus Juris Canonici</i> . 3 vols. Rome, 1582. Available online at <a href="http://digital.library.ucla.edu/canonlaw">http://digital.library.ucla.edu/canonlaw</a>
Correspondence	<i>The Correspondence of Sir Thomas More</i> . Ed. Elizabeth Frances Rogers. Princeton, NJ, 1947
CW	<i>Complete Works of St Thomas More</i> . 15 vols. New Haven, CT, 1963–97
DNB	<i>Dictionary of National Biography</i> . 22 vols. London, 1908–9
Last Letters	<i>The Last Letters of Thomas More</i> . Ed. Alvaro de Silva. Grand Rapids, MI, 2000
LP	<i>Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII</i> . 23 vols. in 38. Vols. 1–4 ed. J. S. Brewer; vols. 5–13 ed. James Gairdner; vols. 14–21 ed. James Gairdner and R. H. Brodie. Emended repr. Vaduz, 1965
MED	<i>Middle English Dictionary</i> . 17 vols. Ann Arbor, MI, 1952–2001
OED	<i>Oxford English Dictionary</i> . 20 vols. 2nd edn. Oxford, 1989. 3rd edn, online (in progress)
ODNB	<i>Oxford Dictionary of National Biography</i> . 60 vols. Oxford, 2004
PRO	Public Record Office (in The National Archives, Kew)

## Chronology

March 26, 1534: Act of Succession (25 H8 c. 22), effective May 1, 1534, penalty of high treason for maliciously writing or acting against it, misprision of treason for maliciously talking against it, and misprision of treason for obstinately refusing an oath to support the Act

April 13, 1534: An oath of succession is put to More at Lambeth Palace, which he refuses

April 17, 1534: More imprisoned in the Tower for his refusal

November–December, 1534

Act recognizing the king as Supreme Head of the Church in England (26 H8 c. 1) (**Doc. 1**)

Act giving the text of the required oath of succession (26 H8 c. 2)

Act making it high treason to maliciously deprive the king and Queen of the dignity, title, or name of their royal estates, by word or deed; effective February 1, 1535 (26 H8 c. 13) (**Doc. 2**)

Act of attainder against Bishop Fisher and others, convicting them of misprision of treason for refusing the oath of succession (26 H8 c. 22)

Act of attainder against Thomas More, convicting him of misprision of treason for refusing the oath of succession. (26 H8 c. 23)

April 23–29, 1535: Trial of three Carthusian priors and one Bridgettine monk (**Doc. 3**)

April 30 (Friday), 1535: More interrogated by Cromwell, Hales, Rich, Bedill, and Tregonwell (dated by More, **Doc. 4**, §2; dated May 7 in the indictment, **Doc. 16**, §4)

May 2–3, 1535: More's letter to Margaret (**Doc. 4**)

May 12, 1535: More writes to John Fisher; see indictment §5

May 26, 1535: More writes to John Fisher; see indictment §6

June 1–11, 1535: Trial of Carthusian monks (**Doc. 7**)

June 1–17, 1535: Trial of Bishop Fisher (**Doc. 12**)

June 3, 1535: More and Fisher interrogated separately; see indictment §§7, 9; **Docs 5 and 6**

June 12, 1535: Richard Rich's disputed conversation with More; see indictment §11; **Doc. 9**

June 14, 1535: More interrogated again (**Doc. 11**)

June 18, 1535: The Carthusian monks hanged

c. June 19, 1535: Cromwell's remembrances concerning Fisher and More; **Doc. 13**

June 22, 1535: Bishop John Fisher beheaded

June 26, 1535: Commission of oyer and terminer concerning More (**Doc. 15**)

June 28, 1535: Grand jury meets, accepts indictment (**Doc. 15**)

July 1, 1535: More charged and found guilty (**Docs. 15–20**)

July 6, 1535: More's execution by beheading (**Doc. 17**, §15)

# Contents

List of Contributors	ix
Preface	xi
Thomas More in History	xi
The Background to the Trial	xiv
The Trial	xv
Abbreviations	xviii
Chronology	xix
<b>1 A Procedural Review of Thomas More's Trial</b>	<b>1</b>
<i>Henry Ansgar Kelly</i>	
Introduction	1
The Official Records of the Trial	3
The Indictment	6
The Conduct of the Trial	16
The First Part of the Accusation: Silence	18
The Second and Third Parts: Collusion with Fisher	31
The Last Part of the Indictment: More's Alleged Statement to Richard Rich	35
The Jury's Verdict	38
Post-Verdict Events: Alternative Versions	41
Jury System vs. Inquisitorial System	46
Conclusion	48
<b>2 Natural Law and the Trial of Thomas More</b>	<b>53</b>
<i>R. H. Helmholtz</i>	
Introduction	53
The Right to Silence	56
The Necessity of Proof	59
The Rights of Conscience	63
The Invalidity of the Henrician Statute	66
Conclusion	69
<b>3 A Guide to Thomas More's Trial for Modern Lawyers</b>	<b>71</b>
<i>Louis W. Karlin and David R. Oakley</i>	
Introduction	71
Jurisdiction	72
Substantive Law of Treason and More's Defenses	73
Arrest and Detention	78
Grand Jury/Indictment	79



Arraignment/Plea	81
Role of Petty Jury	82
Role of Judges	84
Trial Rights and Practice	85
Post-Trial Rights and Practice	89
More's Initial Refusal of the Oath of Succession and His Final Argument at Trial	90
<b>4 Thomas More's Three Prison Letters Reporting on His Interrogations</b>	<b>94</b>
<i>Elizabeth McCutcheon</i>	
Overview	94
Letter of c. April 17, 1534	97
Letter of May 2 or 3, 1535	100
Letter of June 3, 1535	102
Recapitulation	106
Appendix: Interrogations of Thomas More between April 13, 1534 and June 14, 1535	109
<b>5 Judicial Commentary on Thomas More's Trial</b>	<b>111</b>
Preliminary Comment	111
<i>Michael Tugendhat</i>	
Round Table	119
<i>Edith Jones, Sidney Fitzwater, Jennie Latta, Michael Tugendhat</i>	
<b>Appendix 1: Documents</b>	<b>137</b>
1 Act of Recognizing Henry VIII as Supreme Head of the Church in England (Nov.–Dec. 1534)	137
2 Act of Treasons (Nov.–Dec. 1534)	138
3 Trial of Charterhouse Priors Houghton, Webster, and Lawrence and the Bridgettine Monk Reynolds, April 23–29, 1535 (Bag of Secrets)	140
4 More's Letter of May 2/3, 1535	142
5 Tower Interrogation of More, June 3, 1535	145
6 More's Letter of June 3, 1535	145
7 Trial of Charterhouse Monks Middlemore, Exmew, and Newdigate, June 1–11, 1535 (Bag of Secrets)	148
8 Interrogations of Tower Servants, June 7–11, 1535	150
9 Richard Rich's Report on Thomas More, June 12, 1535	157
10 Tower Interrogation of Fisher, June 12, 1535	159
11 Tower Interrogations of Fisher and More, June 14, 1535	163
12 Trial of Bishop Fisher, June 1–17, 1535 (Bag of Secrets)	165
13 Cromwell's Remembrances, c. June 18, 1535	167
14 Henry VIII's Order to Publicize the Guilt of Fisher and More, June 25, 1535	169
15 More's Trial, June 26–July 1, 1535 (Bag of Secrets)	172
16 More's Indictment	175
17 Guildhall Report	186
18 Spelman's Report	195
19 Pole's Account	196