

## WHO'S AFRAID OF THOMAS CROMWELL?

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Robert Bolt's famous play *A Man for All Seasons*<sup>1</sup> can easily be read (or seen) as a starkly dualistic story of the struggle between Good and Evil. The man of conscience, Sir Thomas More, nobly vindicates Dr. Johnson's tribute to him as "the person of the greatest virtue these islands ever produced."<sup>2</sup> More valiantly seeks to reconcile obedience to God, his love for his family and his profession, and his loyalty to King Henry VIII but is brought low by the King's insatiable lusts and his henchmen's determination to destroy More if they cannot corrupt him. Among the henchmen, Thomas Cromwell stands out as the figure most nearly opposite to More himself. More is a reluctant public servant who "was commanded into office; it was inflicted on" him; Cromwell is the "coming man" whose steady rise to power and prominence is uninterrupted throughout the play's duration.<sup>3</sup> Where More is deeply pious, Cromwell sees religious faith as a personal impediment to be discarded.<sup>4</sup> Where More sees the question whether Henry can divorce his barren wife Catherine as a matter of conscience, Cromwell believes it to be entirely a question of "convenience" to be resolved by employing the most expedient means of eliminating the difficulties that lie in the path of the

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1. ROBERT BOLT, *A MAN FOR ALL SEASONS: A PLAY IN TWO ACTS* (Random House 1990) (1960). Subsequent citations to the play are simply to the page number. In most quotations from the play I have silently omitted the stage directions.

2. Bolt quotes Samuel Johnson's as well as Robert Whittinton's much earlier description of More, from which Bolt took the play's title, as epigrams for the play. *See id.* at v.

3. *See id.* at 9, 26. Late in the play, Cromwell expresses a dark fear that "if I bring about More's death—I plant my own I think," *id.* at 137, a foreboding the accuracy of which the play has already confirmed, *see id.* at 127. As an aside, perhaps I should note that in this essay I am solely interested in Bolt's characters. The fidelity with which his characters portray their historical antecedents is not at issue here.

4. In the process of taking on as a protégé and tool Richard Rich, the feckless young scholar who ultimately betrays More through perjury, Cromwell asks:

Are you sure you're not religious?

RICH Almost sure.

CROMWELL Get sure.

*Id.* at 73.

sovereign's will.<sup>5</sup> Where More ultimately goes to the executioner's block by refusing to compromise his loyalty to the law of God and indeed to the English Constitution, Cromwell betrays the law he extols by using subornation of perjury to bring More down. More triumphs over tyranny by what Bolt calls his "adamantine sense of his own self";<sup>6</sup> Cromwell turns himself into an infinitely flexible tool of tyranny, the archetypal heartless bureaucrat.<sup>7</sup>

This interpretation of the contrasting characters of More and Cromwell is a natural one, and indeed it is an acceptable one on a *first* reading of the play. But it will not stand up, I am going to suggest, to a second and more careful consideration. Rather than offering us stock figures of virtue and vice, *A Man for All Seasons* presents us, in More and Cromwell, complex portraits of what it might mean for a three-dimensional human being, neither unearthly saint nor despicable sinner, to be a lawyer. In the end, I will conclude, Cromwell's apparent badness as a human being is directly linked to his failure to be a genuinely good lawyer.<sup>8</sup> But to see why that might be so, we must first entertain the substantial reasons one might give for admiring Thomas Cromwell.

## I. THE ADMIRABLE CROMWELL

Begin with what is surely indisputable: Cromwell is a man of great talents. In the play's first scene, More himself assures us that Cromwell is

... a very able man.

RICH And so he is!

MORE Yes, I say he is. He's very able.<sup>9</sup>

Nothing that happens thereafter gives us any reason to doubt More's evaluation. Throughout the play, Cromwell is portrayed as efficient

5. *See id.* at 73-74.

6. *Id.* at xii.

7. *See id.* at 159 (More's invocation of "the Law of God" and "Magna Carta"); *see also id.* at 157 (More's denunciation of Cromwell for setting England on "a long road" on which "presently [people] will have no hearts").

8. In discussing Bolt's Cromwell, I am going to set to one side the last incident in Act I of the play, in which Cromwell forces Rich's hand into a candle flame and is accused by Rich of sadistic pleasure. *See id.* at 77. The incident is absent from the movie version of *A Man for All Seasons*, which I take to be an indication that Bolt, who wrote the screenplay, had become dissatisfied with it. Be that as it may, the movie proves that scene is unnecessary to Cromwell as Bolt (ultimately) portrayed him.

9. *Id.* at 5.

and effective save only in his efforts to bend More to the King's will.<sup>10</sup> Furthermore, Cromwell is not merely a competent civil servant narrowly trained along technical lines. Like More, Cromwell is steeped in the new learning of the Renaissance if, to be sure, with somewhat different interests and emphases from More.<sup>11</sup> Cromwell is ambitious, of course—the King refers to him and those like him as “jackals with sharp teeth and I am their lion”<sup>12</sup>—but we are given no reason to think that his successes in climbing the ladder of power are due to anything other than the recognition, by the King and others, of his abilities.

But, the objection will run, few of us admire ability and learning that are solely in the service of personal ambition. The fact that Cromwell has great talents makes his prostitution of them to the service of his own aggrandizement and Henry's tyrannous designs so much the worse. And, the objector will conclude, isn't that exactly what Bolt shows Cromwell doing? The answer to this question, however, is no. Far from being an unprincipled self-advancer, for most of the play Bolt's Cromwell is an almost perfect incarnation of the professional ideal embodied in modern American codes of legal ethics. The official commentary to the Rules of Professional Conduct of the bar of which I am a member states that “[a] lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.”<sup>13</sup> In the case of Bolt's Cromwell, who is a public official, that ethical ideal would require him to “act with commitment and dedication to the interests” of King Henry and of England, and to exercise “zeal in advocacy upon the

10. Pinpoint citation cannot capture the overall impact of Bolt's portraiture, but one might particularly refer to the dialogue between More and the Duke of Norfolk after More warns Norfolk that the Spanish ambassador may have been stirring up sedition along the Scottish border.

NORFOLK . . . As for the Spaniard, Thomas, it'll perhaps relieve your mind to know that one of Secretary Cromwell's agents made the tour with him.

MORE Oh. (*A flash of jealousy*) Of course if Master Cromwell has matters in hand—

NORFOLK He has.

MORE Yes, I can imagine.

*Id.* at 93.

11. See, e.g., *id.* at 5, 13 (references to Cromwell's knowledge of Machiavelli), 38 (Cromwell remarks “I do prepare myself for higher things. I stock my mind.”), 98 (Cromwell's implicit description of himself as “a man of letters” aware of More's European reputation and the impact abroad of More's apparent disapproval of the King's divorce).

12. *Id.* at 55. Henry's words amount to an ambiguous compliment at best, but are after all the self-serving comments of a monumental egotist.

13. NORTH CAROLINA STATE BAR REVISED RULES OF PROFESSIONAL CONDUCT [hereinafter N.C. RULES] Rule 1.3 cmt. 1.

[King's and kingdom's] behalf." At least up to the trial of More, that is what Cromwell says he is doing, and indeed what we see him doing.

Cromwell's earliest self-description comes in a discussion he has with Chapuys, the Spanish ambassador. Asked in essence for his job description, Cromwell replies that "I suppose you would call me 'The King's Ear' . . . It's a useful organ, the ear. But in fact it's even simpler than that. When the King wants something done, I do it."<sup>14</sup> Cromwell's later discussion of the role of the public servant is less colorful but makes it clear that his actions on behalf of the King's search for a divorce stem from the "commitment and dedication" to the sovereign's interests that modern legal ethics demands of government lawyers and which he claims More himself would endorse. Public office, Cromwell says, involves devotion to "matter[s] of convenience, administrative convenience."<sup>15</sup>

CROMWELL . . . The normal aim of administration is to keep steady this factor of convenience—and Sir Thomas would agree. Now normally when a man wants to change his woman, you let him if it's convenient and prevent him if it's not—normally indeed it's of so little importance that you leave it to the priests. But the constant factor is this element of convenience.

RICH Whose convenience?

CROMWELL Oh, ours. But everybody's too. However, in the present instance the man who wants to change his woman is our Sovereign Lord, Harry, by the Grace of God, the Eighth of that name. . . . And our job as administrators is to make it as convenient as we can.<sup>16</sup>

Cromwell's brutal language jars, but he is simply echoing the earlier warning of Cardinal Wolsey that the highest national interests require that the King secure a divorce.<sup>17</sup> Cromwell, in short, is acting on behalf of society's good ("Whose convenience? . . . everybody's") as determined by society's organ for the expression of the public will ("our Sovereign Lord, Harry").

There is nothing uniquely lawyer-like about a civil servant expressing a commitment to pursue the goals of the administration

14. BOLT, *supra* note 1, at 38.

15. *Id.* at 73.

16. *Id.* at 73-74.

17. WOLSEY Let [the King] die without an heir and we'll have [civil war] back again. Let him die without an heir and this "peace" you think so much of will go out like that! (*He extinguishes the candle*) Very well then . . . England needs an heir . . .

*Id.* at 22.

that appointed him or her, but Bolt shows us repeatedly that Cromwell approaches public service from a distinctively legal perspective. Cromwell carries out the investigation of More's conduct as a judge and councilor with careful attention to the plausibility of evidence relating to possible misconduct and repeatedly insists that the investigation follow "the strict processes of the law."<sup>18</sup> Whatever the personal tone of irony one may perceive in his invocations of law, Cromwell's words are those of a lawyer respectful of due process.

RICH I'm only anxious to do what is correct, Secretary.

CROMWELL (*Smiling at him*) Yes, Richard, I know. (*Straight-faced*) You're absolutely right, it must be done by law. It's just a matter of finding the right law. Or making one.<sup>19</sup>

True, his pursuit of the sovereign's interests ultimately requires Cromwell to make new law wholesale by turning the English legal and religious world upside down but that observation is no slur on his professional conduct: modern codes of professional responsibility identify law reform as a laudable activity and, indeed, as one of the justifications for lawyers holding public office.<sup>20</sup>

In the end, of course, Cromwell resorts to perjurious testimony in order to secure More's conviction, an action permissible under no one's view of legal or political ethics, but even here Bolt provides the materials for a plea in mitigation if not exculpation. Cromwell turns to perjury only when faced with "alternatives [that] are bad" for the King, the country, and himself.<sup>21</sup> Even then Cromwell attempts once more to secure More's voluntary submission before the trial, at the trial Cromwell initially tries to establish More's guilt by relying solely on More's behavior, and at its end Cromwell tries to avoid the guilty

18. *Id.* at 103. See Cromwell's admission to Norfolk that a charge of bribery cannot be sustained:

NORFOLK . . . In other words, the moment he knew it was a bribe, he got rid of it.

CROMWELL (*Nodding judicially*) The facts will bear that interpretation, I suppose.

NORFOLK Oh, this is a horse that won't run, Master Secretary.

CROMWELL Just a trial canter, Your Grace.

*Id.* at 102.

Cromwell himself praises More for his legal ability and integrity before and even during the investigation. See *id.* at 74-75 (discussing More's innocence), 98-99 (agreeing with Norfolk that More does not support Spanish-incited sedition), 100 (describing the decision More gave in a case in which he was allegedly bribed as "an impeccably correct judgment").

19. *Id.* at 104.

20. See, e.g., N.C. Rules, *supra* note 13, Rule 6.5 cmt. 1 ("Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system.").

21. See BOLT, *supra* note 1, at 137.

verdict he has now ensured by persuading More to acquiesce.<sup>22</sup> Despite his fundamental lack of sympathy with More,<sup>23</sup> Bolt's Cromwell seems driven more out of exasperation than out of malice. Under modern ethical rules, Cromwell's actions would be deemed professional misconduct warranting disbarment,<sup>24</sup> but he would hardly be the first basically decent person who stumbled into a serious moral error through anger, frustration, and anxiety.

## II. WHAT'S REALLY WRONG WITH CROMWELL

There is a substantial case, then, for the proposition that rather than being the embodiment of bureaucratic evil, Cromwell is a talented lawyer and public servant who stumbles—disastrously from a moral point of view but in circumstances of extreme stress<sup>25</sup>—at the very end of the play. But the case, though substantial, is not the whole story and, in the end, it is not the deepest truth about Cromwell. His flaws run deeper, but they are located in a surprising place. Cromwell's willingness to do great evil flows out of what seems at first an almost banal fault, if fault it truly is: he has, in fact, a superficial understanding of the law. He is not, in a deep sense, a good lawyer.

Begin with a conversation among More, his wife Alice, his daughter Margaret, and his son-in-law William Roper immediately before More leaves home to be questioned by Cromwell for the first time. More jokes that he should “bring Cromwell to dinner . . . . It'd serve him right.”<sup>26</sup>

MARGARET Oh, Father, don't be witty!

MORE Why not? Wit's what's in question.

ROPER While we are witty, the Devil may enter us unawares.

MORE He's not the Devil, son Roper, he's a lawyer! And my case is watertight!

ALICE They say he's a very penetrating lawyer.

22. See *id.* at 137, 151-52, 158.

23. See Cromwell's words at the bottom of page 153 and the stage direction there stating that Cromwell and More “*hate each other and each other's standpoint.*”

24. See NC Rules, *supra* note 13, Rule 8.4(c)-(d) (defining misconduct to include “conduct involving dishonesty . . . deceit, or misrepresentation” and “conduct that is prejudicial to the administration of justice”).

25. Contemporary American prosecutors do not customarily face the possibility of losing their heads if they fail to win a case for the government.

26. BOLT, *supra* note 1, at 112. Because of More's resignation from office and disgrace and his subsequent loss of income, he and his family are living in straitened circumstances, hence the suggestion that dinner at the Mores' would “serve him right.”

MORE What, Cromwell? Pooh, he's a pragmatist—and that's the only resemblance he has to the Devil, son Roper; a pragmatist, the merest plumber.<sup>27</sup>

A lot is going on in this dialogue and it will repay a careful reading.

More begins with one of his own most pronounced personal characteristics, a joke.<sup>28</sup> Provoked, unusually, by his levity at a serious moment, Margaret asks him to refrain from being “witty,” but More turns her reproachful words upside down: precisely because Cromwell's investigation is no laughing matter, “[w]it's what's in question.” The issue here is not merely about the appropriate place for humor, although that is part of it. For Bolt's More, wit is a capacious concept, indeed, it is the defining characteristic of the human. Later in the play, when he meets Margaret and Roper on his way home from Cromwell's interrogation, More explains that

God made the *angels* to show him splendor—as he made animals for innocence and plants for their simplicity. But Man he made to serve him wittily, in the tangle of his mind!<sup>29</sup>

Wit in this enlarged sense is the human capacity for understanding oneself and others rightly. Living humanly, More implies, demands the very honesty and lively sense of proportion that characterize a healthy sense of humor. A person lacking these traits of character is likely systematically to misunderstand and misvalue self, other persons, and the social, political, and moral relationships that connect us.

The Spanish ambassador Chapuys is a perfect, if relatively benign, example. Entirely without humor himself, Chapuys is quite incapable of seeing himself or others realistically<sup>30</sup> or of understanding the absurdity of his own behavior.<sup>31</sup> More's own son-in-law,

27. *Id.* at 112-13.

28. The historical More was, of course, a notoriously droll man. Bolt clearly intends us to understand the More of *A Man for all Seasons* along the same lines. Among many examples in the play, see More's response to the worldly Cardinal Wolsey's jibe that:

... You should have been a cleric!

MORE (*Amused . . .*) Like yourself, Your Grace?

*Id.* at 23-24.

29. *Id.* at 126.

30. CHAPUYS [explaining the occasion of a visit to More] ... After all, we are brothers in Christ, you and I!

MORE A characteristic we share with the rest of humanity. You live in Cheapside, Sigñor? To make contact with a brother in Christ you have only to open your window and empty a chamberpot. There was no need to come to Chelsea.

*Id.* at 85.

31. NORFOLK [referring to Chapuys] Funny company, Thomas?

MORE It's quite unintentional. He doesn't mean to be funny.

Roper, is another example, as he demonstrates in the dialogue we are considering. Baffled and irritated, as usual, by More's behavior, Roper responds on the basis of his own predictable disposition for dividing the world into Light and Dark. More's wittiness, Roper solemnly warns, represents a drastic and potentially deadly underestimation of the diabolical forces concentrated in Cromwell: "While we are witty, the Devil may enter us unawares."<sup>32</sup> More simply laughs at this example of Roper's reflexive Manichaeism. Arguing with Cromwell is no supernatural battle with a figure of Satanic dimensions, but only an ordinary debate with a fellow lawyer, one in which it is More's cause that is the "watertight" case.<sup>33</sup>

At this point Alice More interjects a cautionary note of a quite different sort. Accepting her husband's assertion that confrontation with Cromwell will call upon More's wit as a lawyer, she reminds More that by common repute, Cromwell himself is an outstanding practitioner of More's own profession, "a very penetrating lawyer."<sup>34</sup> More is unwise indeed, Alice suggests, if in his pride he assumes his own professional superiority to Cromwell. But despite his repeated acknowledgments of Cromwell's abilities, More dismisses with contempt his rival's professional character and thus, his wife's concerns: "What, Cromwell? Pooh, he's a pragmatist . . . a pragmatist, the merest plumber."<sup>35</sup> What can More mean by this surprising comment?

Perhaps the most obvious answer, one that Bolt has skillfully set up for us at several earlier points in the play, is that More is dismissive of Cromwell's pragmatism because More himself is deeply nonpragmatic, systematically and even stubbornly other-worldly. At an early point in the play, this possibility is raised both by More's steward and Cardinal Wolsey. The steward remarks that More "would give anything to anyone"<sup>36</sup> and worries that this trait or compulsion will ultimately endanger More: "[S]ome day someone's going to ask him for something that he wants to keep; and he'll be out

*Id.* at 89.

32. *Id.* at 112.

33. *See id.*

34. *Id.* at 113.

35. *Id.*

36. *Id.* at 17. The dialogue continues:

STEWARD Some say that's good and some say that's bad, but I say he can't help it . . .

*Id.*



of practice.”<sup>37</sup> In the following scene, Wolsey repeatedly upbraids More for his lack of political realism.

WOLSEY . . . You're a constant regret to me, Thomas. If you could just see facts flat on, without that horrible moral squint; with just a little common sense, you could have been a statesman.<sup>38</sup>

As the interview closes, Wolsey warns More that, as the steward has already intimated, More's lack of pragmatism puts him in danger.

WOLSEY . . . come down to earth, Thomas. And until you do, bear in mind you have an enemy!

MORE Where, your Grace?

WOLSEY (*Looks back at him, hard-faced, harsh; for the first time we see this is a carnivore*) Here, Thomas.<sup>39</sup>

This interpretation of More's character as essentially and deliberately impractical is suggested at later points as well, perhaps most directly by the Common Man's discussion of More's reputation for sanctity.

COMMON MAN . . . saintliness is a quality less easy to establish [than scholarship]. But from his willful indifference to realities which were obvious to quite ordinary contemporaries, it seems all too probable that he had it.<sup>40</sup>

On this reading, More's dismissal of Cromwell's professionalism as the pragmatism of “the merest plumber” would simply be a restatement of More's own fundamental lack of concern for “realities.” And if that is correct, it is very difficult not to share Alice's concern that her husband is underestimating the threat Cromwell poses: few of us, I think, would want to be represented by a lawyer willfully indifferent to obvious realities.

This understanding of More, though obvious, cannot be right. In the first place, it is not the ultimate judgment of the play's hard-bitten realists, Cardinal Wolsey and Cromwell. Despite Wolsey's anger with More and his description of himself as More's enemy, we learn from none other than Henry VIII that “Wolsey named [More] for Chancellor . . . and Wolsey was no fool.”<sup>41</sup> Despite Cromwell's belief that More's “innocence” has entangled More in difficulties that a

37. *Id.*

38. *Id.* at 19.

39. *Id.* at 23.

40. *Id.* at 36. The Common Man, who doubles as More's steward, periodically discusses the play with the audience. In the preface, Bolt describes the Common Man “as a portrayal of that mythical beast, The Man in the Street.” *Id.* at xix.

41. *Id.* at 52. This fact is startling: the exchange in which Wolsey labeled himself More's enemy concerned More's preference that he, rather than Cromwell, be Wolsey's successor as Chancellor.

more worldly person would have avoided, Cromwell clearly recognizes in More a worthy and skilled opponent; as he tells Rich at the end of Act I, in contrast to those who are “only fit for Heaven . . . . Sir Thomas has plenty of sense.”<sup>42</sup> Secondly, More’s own comments make it clear that he emphatically values and admires the practical skills of a good lawyer or statesman. More praises Wolsey to the King as “a statesman of incomparable ability,” while he assures his family that it is his legal skill that ensures his and their safety: “[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.”<sup>43</sup> Finally, More’s skillful conduct of his own defense in the two interrogation scenes and at his trial demonstrates that his self-appraisal is not an egotistical mistake. To Cromwell’s repeated frustration, More cannot be snared through the legal process until that process itself is corrupted. More is an intensely practical and proficient lawyer and his disparagement of Cromwell as “a pragmatist, the merest plumber” cannot rest on hostility to effectiveness in lawyering.

What is wrong with Cromwell as a lawyer according to More is that Cromwell fundamentally misunderstands the law itself. This emerges clearly during the trial. The context is Cromwell’s initial attempt to establish More’s treasonable denial of the King’s new title of Supreme Head of the Church in England without resort to perjurious testimony. Conceding *arguendo* that More has not actually made a statement denying the title, Cromwell argues (quite plausibly) that his silence on the matter is actually “most eloquent denial.”<sup>44</sup> More’s response is highly technical and Cromwell in turn accuses him of standing on a legalistic quibble.

MORE . . . The maxim of the law 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? Do you pretend that is what you *wish* the world to construe from it?

42. *Id.* at 77. In the first interrogation scene in Act II, Cromwell acknowledges that More was “once so effective *in* the world.” *Id.* at 114. In the same scene Cromwell eventually acknowledges that More has defeated his efforts to entrap him. *See id.* at 118. Cromwell’s growing dislike of More in Act II—see *id.* at 119 (“I don’t like him so well as I did”) and the stage direction on page 153 (Cromwell and More “*hate each other and each other’s standpoint*”)—stems from Cromwell’s increasing recognition that More’s skill at avoiding submission threatens Cromwell himself. *See id.* at 137 (Cromwell’s speech).

43. *Id.* at 52, 66.

44. *Id.* at 152.

MORE The world must construe according to its wits. This Court must construe according to the law.

CROMWELL I put it to the Court that the prisoner is perverting the law—making smoky what should be a clear light to discover to the Court his own wrongdoing!

MORE The law is not a “light” for you or any man to see by; the law is not an instrument of any kind. (*To the FOREMAN [of the jury]*) The law is a causeway upon which, so long as he keeps to it, a citizen may walk safely.<sup>45</sup>

For Cromwell, the law is simply a tool, the means by which one can achieve certain goals. The goals may be purely selfish—that is in part what he is accusing More of doing—or they may be in service of the needs of society and the state. Cromwell’s own efforts to bring More to heel by “finding the right law [o]r making one,”<sup>46</sup> after all, serve the expressed interests of sovereign and people. (“Whose convenience?” “Oh, ours. But everybody’s too.”<sup>47</sup>) Because the law is an instrument, there is nothing a lawyer can be but a pragmatist. Early in the play, indeed, Cromwell echoes More’s charge that he is the “*merest* plumber,” but with pride.

CROMWELL . . . When the King wants something done, I do it.

CHAPUYS Ah. But then why these Justices, Chancellors, Admirals?

CROMWELL Oh, *they* are the constitution. Our ancient, English constitution. I merely do things.<sup>48</sup>

The outward edifice of English justice<sup>49</sup> purports to represent a political order that is more than a smoothly operating bureaucratic machine for achieving “administrative convenience.” But Cromwell thinks this an empty, or at best ceremonial pretension, on a par with the ditty he chants at the beginning of the trial scene.<sup>50</sup> A good lawyer, for Cromwell, is a lawyer adept at utilizing the law to accomplish ends

45. *Id.* at 152-53.

46. *Id.* at 104.

47. *Id.* at 73.

48. *Id.* at 38.

49. The reader will recall that in this context “admiral” clearly means judge in admiralty.

50. CROMWELL What Englishman can behold without Awe  
The Canvas and the Rigging of the Law!  
Forbidden here the galley-master’s whip—  
Hearts of Oak, in the Law’s Great Ship!

BOLT, *supra* note 1, at 148.

Coming from someone who refrained from racking More only because “the King will not permit it” and is prepared to corrupt the legal process if necessary to achieve his ends, this can only be ironic. *See id.* at 137 (where Cromwell considers and then rejects the possibility of torturing More).

that are necessarily derived from somewhere else. The law itself is an empty shell, mere process, social plumbing.

More does not, of course, deny the obvious fact that people invoke the law for reasons—he immediately follows his assertion that the law is not an instrument by noting the law’s utility as a means of individual self-protection through law-abiding behavior. But unlike Cromwell, More believes that the law is not, and should not become, a mere instrument of any kind—or anyone. Even when someone invokes the law for self-preservation, he or she does so not as an isolated individual, but as a “citizen,” a member of a society that constitutes itself, in part, in and through the law. Human community is no automatic product of nature; indeed human error can fracture or destroy it.<sup>51</sup> Instead, human beings *make* community by their active participation in creating and maintaining common patterns of life and thought.<sup>52</sup> This is so not because human beings create themselves but precisely because the nurturance of earthly community, with all its limits, is part of the human, creaturely task. The political community necessarily is made up of finite, ignorant, and sinful creatures, and for its preservation it requires a medium through which the common good can be debated, social controversies articulated, and political disputes resolved, in human terms. Law provides such a language, and its efficacy depends on the ability of all of society’s members to see the law as a shared enterprise that belongs to all rather than as a mechanism for the exercise of someone’s (anyone’s, even everyone’s collective) will.

More therefore rejects the reduction of law to a mere instrument of extra-legal goals, whatever those goals may be. The efforts of Wolsey, Cromwell, and the King to bend, break, or transform the law in their pursuit of an heir to the throne are profoundly wrong, but so is his son-in-law’s desire to make the law a tool of divine justice.

MARGARET Father, that man’s bad.

MORE There is no law against that.

ROPER There is! God’s law!

MORE Then God can arrest him.

ROPER Sophistication upon sophistication!

51. *See id.* at 22 (More speaks of statesmen “lead[ing] their country by a short route to chaos”).

52. Bolt observes in the preface that “[i]f ‘society’ is the name we give to human behavior when it is patterned and orderly, then the Law . . . is the very pattern of society.” *Id.* at xvi.

MORE No, sheer simplicity. The law, Roper, the law. I know what's legal not what's right. And I'll stick to what's legal.

ROPER Then you set man's law above God's!

MORE No, far below; but let me draw your attention to a fact—I'm *not* God.<sup>53</sup>

Because we are, none of us, God, a healthy political community is “planted thick with laws from coast to coast—man's laws, not God's.”<sup>54</sup> The lawyer who recognizes the truth of this will also recognize a duty to cultivate (which can involve weeding) the law. In doing so, the lawyer's professional activities become a means of fulfilling the common human vocation to serve God “wittily, in the tangle of [our] mind.”<sup>55</sup> Destroy the law instead by rendering it entirely instrumental, and the political community will rapidly become a hell on earth.

Cromwell is a bad lawyer because he thinks the law is nothing but an instrument or a weapon. He has no feel for the law as a social bond that unites us even when we invoke it to resolve our disputes. Although perfectly capable of distinguishing correct legal judgments from incorrect ones, Cromwell has no idea why that distinction might matter, no concept of the harm done to society and to all its members when the law is degraded or warped or corrupted. Aware of the menace posed by the King's unchecked power,<sup>56</sup> Cromwell does not recognize that he himself has unleashed it by breaking down the human law that limited and channeled it. No figure of diabolical stature in himself, Cromwell achieves a certain Satanic quality by his unthinking reduction of the community's law into a tool. “Pooh, he's a pragmatist—and that's the only resemblance he has to the Devil, son Roper . . . .”<sup>57</sup> Unfortunately for More, that resemblance proves close enough.

### III. LAWYERS WITHOUT DOCTRINE

Early in *A Man for All Seasons*, Richard Rich objects when the Duke of Norfolk denounces Machiavelli's *The Prince* as a “[n]asty

53. *Id.* at 65-66.

54. *Id.* at 66.

55. *Id.* at 126.

56. As Cromwell somewhat ruefully notes, “there's no going back, Rich. I find we've made ourselves the keepers of [the King's] conscience. And it's ravenous.” *Id.* at 120.

57. *Id.* at 113.

book.”<sup>58</sup>

RICH The doctrines of Machiavelli have been largely mistaken, I think; indeed, properly apprehended, he has no doctrine. Master Cromwell has the sense of it I think when he says—<sup>59</sup>

Norfolk interrupts at that point, so we never learn precisely what Cromwell says, but presumably it is along the lines of Rich’s assertion that Machiavelli has no doctrine. Whatever one might say about Machiavelli, however, in the play it is Cromwell who has “no doctrine” and necessarily so. If the law is, as he believes, simply a tool, then its rules, principles, tenets, and holdings can only be rhetorical tricks of the trade, the surface ornamentation custom requires when political or personal arguments are presented in certain forums. Such trivialities obviously can be communicated, but they are not the proper subjects of “doctrine”: *doctrina*, the patient construction and explication of teaching within a tradition of thought and action. Cromwell is a lawyer without doctrine, without a tradition, without law.

For the whole of the twentieth century, lawyers in the United States have toyed with the idea that we can and should all be like Cromwell. Sometimes the thought has seemed liberating, at others terrifying; for some lawyers it has been both simultaneously. But ever since Holmes’s famous 1897 dictum that “the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics,”<sup>60</sup> American lawyers have had to entertain the possibility that we have no doctrine. And if we have nothing of substance to teach, then legal argument can hardly be more than a grab-bag of conventional linguistic tricks. Taking legal argument seriously, other than for purely instrumental purposes, is a superstition, a bizarre fetishism—an intellectual sin that Roper directly attributes to More: “I have long suspected this; this is the golden calf; the law’s your god.”<sup>61</sup>

The instrumentalist lawyers in *A Man for All Seasons* recognize and are willing to act on the insight that the law is a mere tool. Nothing in the law should stand in the way of achieving what is good and right, Roper announces: he would “cut down every law in

58. *Id.* at 12.

59. *Id.* at 13.

60. Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).

61. BOLT, *supra* note 1, at 66.

England to do that!"<sup>62</sup> Cromwell, of course, is the master of goal-directed lawyering in the interests of the client.

CROMWELL . . . [I]t must be done by law. It's just a matter of finding the right law. Or making one.<sup>63</sup>

Legal argument is a tool, and the Cromwellian lawyer knows that nothing is lost if the tool bends or breaks in the pursuit of the client's interests. The same analysis applies, of course, when a Cromwell becomes a judge: the only difference is that the "client" is now substantive justice, or economic efficiency, or whatever other social goal or goals the judge deems worthy. To let the forms of legal argument stand in the way of such goals, at least where it really matters,<sup>64</sup> would be foolish, indeed, a dereliction of duty.

And then there is More, who does take the law and legal argument seriously. He denies Roper's claim that doing so makes the law an idol—"Oh, Roper, you're a fool, God's my god"<sup>65</sup>—and, as we have seen, he insists that the law is a human creation, not the gift of some omnipresence in the sky.<sup>66</sup> We must take law seriously because as a political community we need it. None of us are God, as More reminds Roper, and even at our best, our grasp of right and wrong, common good and individual right, will be tintured by our own moral and intellectual shortcomings. The law requires us to present our views and seek our goals through a shared language. Like any language, law limits and channels what can be said; in doing so, law sets limits to social conflict and to the threat that political power always poses to the community. If we destroy the law's integrity in the pursuit of some goal, however worthy, we break down one of the necessary conditions of a decent society. Roper's willingness to "cut down every law in England" to uproot evil is suicidal.

MORE . . . [I]f you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that

62. *Id.*

63. *Id.* at 104.

64. Judge Cromwell might well accept results based on legal argument where he doesn't really care about the outcome.

CROMWELL . . . Now normally when a man wants to change his woman, you let him if it's convenient and prevent him if it's not—normally indeed it's of so little importance that you leave it to the priests.

*Id.* at 73.

65. *Id.* at 67.

66. "This country's planted thick with laws from coast to coast—man's laws, not God's." *Id.* at 66; *cf.* *Southern Pac. Co. v. Jensen*, 244 U.S. 205, 222 (1917) (Holmes, J., dissenting) ("The common law is not a brooding omnipresence in the sky but the articulate voice of some sovereign or quasi-sovereign that can be identified.").

would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.<sup>67</sup>

What Roper wishes for, Cromwell achieves: the wholesale reduction of law to the tool of power, a tool wielded in what Cromwell believes the public interest, but a tool nonetheless. The consequences, More warns, will be catastrophic. Discard the respect for law that enables it to channel power and conflict, and eventually neither power nor conflict will have limits.

MORE . . . What you have hunted me for is not my actions, but the thoughts of my heart. It is a long road you have opened. For first men will disclaim their hearts and presently they will have no hearts. God help the people whose Statesmen walk your road.<sup>68</sup>

American lawyers and judges at the close of the second millennium are, I think, not yet heartless as a group. Indeed, often we are filled with passionate intensity, and in itself that is often good. But, like More, I do not think our passions will remain benign if we walk the long road that Cromwell opens. Taking legal argument seriously is a matter of keeping faith with one another. Law as doctrine and tradition, law that matters to those who practice it and those who administer it, makes political community possible among people with divergent interests and perspectives who wish to be citizens—not subjects. Taking law seriously is one of the ways in which we enact the democratic axiom that “[t]here is enough community for us to talk, not enough for anyone to command.”<sup>69</sup> Lawyers cynical about their profession and judges willing to reach the “right” result at whatever cost to legal principle aren’t clear-eyed realists but short-sighted adversaries of the common good.

The ways in which lawyers and judges should take law seriously are debatable. But God help us if we become Cromwell.

67. BOLT, *supra* note 1, at 66.

68. *Id.* at 157.

69. Letter from Oliver Wendell Holmes, Jr., to Alice Stopford Green (Aug. 20, 1909), in *THE ESSENTIAL HOLMES: SELECTIONS FROM THE LETTERS, SPEECHES, JUDICIAL OPINIONS, AND OTHER WRITINGS OF OLIVER WENDELL HOLMES, JR.*, 115, 116 (Richard A. Posner ed., 1992).