

St Thomas More and Family; a shared journey

18th Annual St Thomas More lecture,

St Thomas More Forum, Canberra 23 June 2023.

1. I acknowledge the Ngunnawal people, and all the traditional custodians of the land on which we meet, and I pay my respects to their elders past and present and emerging. For reasons that will shortly become apparent, I also acknowledge my father and elder, Sir Gerard Brennan, and the presence of his spirit here tonight.
2. I thank you Father Emil and Bill and Maree Mason for your invitation to give tonight's address. I understand it was after discussion with my esteemed brother Frank who is kindly with us tonight. At the outset, may I also acknowledge and thank you Frank for the tireless work you do in the public square *"lead(ing) us to an understanding of what we must be and do in order to achieve a social order which observes and implements the common good."*
3. Tonight, in coming together to commemorate the anniversary of the State execution of Sir Thomas More in 1535, we are reminded of the choice so effectively portrayed in the contrasting portraits of More and Thomas Cromwell¹, between the path of principle and that of expediency. We celebrate More's faith inspired choice for a reasoned discernment of "what was good and valid" over the ever-present call of expediency and that which was "humanly sensible".²
4. This audience is well versed in More's achievements and travails in the law, and in public service, and are no doubt familiar with the prolific writings of one regarded as the first major writer of the English Renaissance³.

¹ Living Hall of the Frick Gallery NY

² The Hon FG Brennan, *"The Sky is Red"* 2000 Sydney

³ Writings include Utopia; the unpublished histories of Richard III, 281 Latin poems, ten English poems, four platonic dialogues; a response to Boethius' "Consolation of Philosophy", numerous theological treatises and polemics, and translations of the Greek ironist, Lucian and the biography of the Italian philosopher, Pico della Mirandola; hundreds of letters to family and friends. See Wegemer, G and Smith, S (ed): *A Thomas More Source Book* (Catholic University of America Press, 2004)(TMSB)

5. I am neither a scholar of Thomas More, nor a member of one of the numerous Thomas More societies spread through the common law world. My introduction to Thomas More was, as a child, through osmosis, having a vague, but increasing awareness of the significance of St Thomas More as lawyer and statesman to my late father, Gerard Brennan, then a barrister at the Queensland bar and President of the local St Thomas More Society. I would go on to study “A Man for all Seasons”, relishing the narrative promoting the virtue of a life lived with the courage of one’s convictions.
6. In the spirit of tonight’s topic, I am particularly honoured to have the opportunity to reflect on what Thomas More’s example of a life well-lived meant for my father, more than 400 years after More’s life ended. In researching for tonight’s presentation, I found two addresses made by dad to the St Thomas More Society in Sydney in 1983 and 2000.
7. In these addresses, my father identified at least three deep insights about More’s life that are immemorial:
 - a. First: a life of integrity and industry dedicated to the improvement of our systems of law and government;
 - b. Second: discernment of the permissible and impermissible; and
 - c. Third: the centrality of a well informed conscience or set of guiding principles to the discernment of the signs of the times.

A: Integrity and Industry

8. The first insight that I share is taken from “*The Independence of Thomas More*” delivered in 1983. My father, into his third year as a justice of the High Court of Australia found the time to read, critique and analyse, various biographical works that ranged from More’s son in law and protagonist, William Roper, through to contemporary works. He avoided the “veritable army of hagiographers”. He considered anew the ongoing relevance of St Thomas More to the working of the “*tensions familiar to all who practice law under a*

system that yields less than perfect justice or who perform a public function in a society flawed by venality and an awe of power.”

9. Is that not a question familiar to this very audience?
10. The first extract speaks to the notion that duty and commitment are not to be reserved for instances in which the system is already whole but will stand to advance the system that might benefit from improvement. With great pleasure I recite his text:

“In the first place, (More’s) intellect was bent on discovery of the means whereby the system of law and government could be improved and his will effected those improvements so far as he was able. His pragmatic good sense no doubt told him he could not straighten every path and make virtue the unquestioned ideal of every soul but, within the limits of his authority in a succession of offices, he sought to leave the system as he knew it better for his tenure of each office. His industry, whether as under sheriff of London, a diplomat, a member of Council, Chancellor of the Duchy of Lancaster, or Lord Chancellor was commonly acknowledged- His availability to litigants and especially to poor suitors, attention to the minutiae of legal procedure, control of the writ of subpoena, and the creative but disciplined use of the common injunction, mark him out as a perceptive and constructive judge. By looking to the state of the defendant’s conscience as the determinant of the Chancellor’s response, he reduced the likelihood that equitable relief might abet acts of moral dishonesty by plaintiffs.

Though More was opposed to the King’s divorce and known to be so, he performed his duties as Chancellor to the maximum extent consistent with his conscience. In 1531, he was charged with the responsibility of presenting to parliament the opinions garnered from various Universities in favour of Henry’s case. His address

to the Commons accorded integrity of motive to the King, but in no way committed the Chancellor to support the opinions...

Duty and industry and genius were committed by the King's good servant, not because the system was perfect or perfectable, but because the system could be made better by that commitment.

11. There can be no doubt that More was well placed to pursue a successful career in the law and public service. Born in 1477/78 in the centre of London, a bustling city of 50,000 persons, he was one of four surviving children to John and Agnes More, John More being a successful barrister and later judge of the Kings Bench. Thomas was afforded the best available education of the time, both in formal studies and personal preferments. He was clearly endowed with an intellectual capacity to excel in the opportunities open to him and a shrewdness to work the “*machinations of princes and the sources of power*” at home and abroad. But what endures from Thomas More’s inspirational list of achievements is the integrity and consistency of his purpose to employ his consummate skills and industry in service of the common good.

12. In introducing the distinguished philosopher, Mr Raymond Gaita, to deliver the opening lecture of a series devoted to “*The Common Good*” in Sydney in 2008, my father made the plea for improving our systems of law and government in the respectful pursuit of human dignity for all:

In a pluralist, secular democracy such as ours, the common good implies that all members of society are free to form respectful relationships with others, to have an opportunity to develop capacities and to contribute usefully to society. It implies a duty to do what can reasonably be done to see that others enjoy these social benefits.

Those benefits include not only monetary and material benefits but equality under the law, freedom of religious belief and practice, freedom from the exercise of arbitrary power, freedom from discrimination on the basis of sex, race or ethnicity, an opportunity to obtain an education and a means of livelihood, an

opportunity to found a family and an opportunity to employ one's capacities gainfully.

*To achieve such a society, there must be a consensus that this is the way in which we should define our policies and practices – a common cast of mind which rejects a crude majoritarian materialism and gives real meaning to the notion of a fair go for all. Christianity provides a spiritual basis for this conception, but the value system which satisfies Christ's injunction to love your neighbour as yourself can be, and is, consistent with a secular humanism based on respect for every person as a member of the human family. **Whatever basis appeals to each of us, we need thinkers to lead us to an understanding of what we must be and do in order to achieve a social order which observes and implements the common good.***

B: Discernment

13. The second insight identified by my father is that the “*genius of More was his gift of discernment*”. I cite his 1983 address:

The second lesson of (More's) life is that the dividing line between the permissible and dutiful performance of a function and the impermissible and dishonourable commitment to a false cause is oftentimes difficult of definition. All of (More's) sophistication and experience had to be added to his perception of principle in determining how far honourable ambition, financial security and professional repute were compatible with his adherence to the God he worshipped.

More maintained his own counsel on the King's great question so long as it was possible to do so. But when Cromwell sought to strip the Convocation of Bishops of their power to enact ecclesiastical canons without royal approval, More decided that opposition was necessary. On 16 May 1532, on the authority of a rump of Convocation, three bishops and four abbots subscribed the

Articles of Submission. That afternoon More surrendered the great seal. He had employed all his natural talents, all his political skills and influence in the struggle, choosing when to be silent and when to speak, upon what issues to support the King, and upon what issues to oppose him. But in the end he failed to achieve the object for which he had striven. He reached the point where shrewdness and power could go no further without impairing his integrity.....

Integrity of conscience was a lonely and misunderstood thing to cling to.

14. That is what More determined to do. My father paid high tribute to the manner in which he did so:

“Yet in this, we...may find the finest examples of the quintessential professional virtue of independence; independence of popular acclaim, of improper influence by State or Church, by family or friends..... A virtue that requires humility of mind, devotion to learning and breadth of experience.

15. The Honourable Senator Patrick Dodson, Special Envoy for Reconciliation and the Implementation of the Uluru Statement from the Heart, returned a similar tribute when, at dad’s funeral, he spoke of the fruits of his and his colleagues’ discernment in the Mabo decision:

Someone said of the former Chief Justice.... that he grappled or wrestled with the tension between the law and justice. But I remember one Sunday afternoon in Melbourne at the home of the late Ron Castan and Nelly. Amongst us there was Ronald Wilson, a former High Court judge himself. We were discussing the long tortuous path of Mabo in the courts. Sir Ronald summed it up after an afternoon of legalistic discussion with the opinion that ultimately in their judgment of Mabo, the chief and his colleagues had listened with their hearts to the truth of the law, and justice

was the outcome. By confronting the myth of terra nullius and to name it a legal fiction that made unjust deeds by the crown legal in the taking of First Nations lands, waters and way of life, the court had bequeathed both a gift and a challenge to the nation. Against the tide of an unrecognised flawed legal system, truth and justice prevailed...”

C: Centrality of conscience

16. The third insight relates to the centrality of conscience to More’s discernment of the signs of his times.

17. My father delivered “The Sky is Red” in the year 2000, the second year after his retirement as CJ. This address provided a deeper analysis of More’s process of discerning the signs of the times and the manner of the exercise of More’s conscience. It is based on the premise that:

Men and women seek a transcendent reality, something beyond human experience to whom or to which they can relate, for that vision positions humankind, gives us our true dignity and enables us to glimpse an ultimate destiny.

18. More had a lifelong devotion to his own spiritual and intellectual life and that of his family. More’s humanism underpinned his belief that lifelong education was essential to effective leadership for the common good. In *Utopia*, (p113) More mused that:

The education of children and young people is the responsibility of the priests (some of whom could be women) and its no less concerned with morality and virtue than with the study of good literature. For they take the greatest care from the outset to instil in the pupils’ minds...principles that benefit the life of the community”.

19. More had established a school in his household devising, in discussion with his great friend Erasmus, a curriculum in philosophy, literature, history and theology.

20. In writing to Gonell, the teacher of his school and a protégé of Erasmus, he set out the school's objectives:

To put virtue in first place among goods, learning in the second ... (The students) will thus be inwardly calm and at peace and neither stirred by praise of flatterers nor stung by the follies of unlearned mockers of learning”⁴

21. All with an interest in education and universal participation in the polity are grateful for More's egalitarian view. Nearly 500 years ago he wrote, and demonstrated by example:

Nor do I think that the harvest is much affected whether it is a man or a woman who does the sowing. ...both, I say are equally suited for the knowledge of learning by which reason is cultivated, and, like ploughed land, germinates a crop when the seeds of good precepts have been sown. ⁵

22. Great was the harvest reaped.

23. In her short life (1505-1544) Margaret Roper, More's eldest daughter, home schooled, was considered to have been one of the most learned women in sixteenth century England. Margaret excelled as an author, in the art of philosophical disputation, and in the translation of Latin and Greek texts to the vernacular, including translations of Erasmus, introducing English readers to humanist thought. She, with her siblings, engaged in daily correspondences with her father whenever he was abroad, in practise of the skills of grammar and rhetoric. Margaret was to be his abiding companion and soulmate in his horrendous days in the Tower, sharing the final journey in prayer and good discussion as they had long done.

24. We have seen that by 1532, More's public career was over. His response was extraordinarily gracious for even then he afforded credit to his King, acknowledging that by the “*incomparable benefit of his most gentle prince*” he had obtained his life's desire-

⁴ TMSB p198-199

⁵ TMSB, p198-199

“that he might have some years of his life free, in which, gradually withdrawing himself from the business of this life, he might continually remember the immortality of the life to come.

25. The ultimate crisis began two years later with the passing of the Act of Succession in 1534 which, in part denied the Pope any authority over ecclesiastical matters in the Realm, confounding the disorder in the separate but complimentary relationship then existing between Church and State. More was prepared to swear the succession but nothing more. The manner of his refusal before Lord Chancellor Audley, back at Lambeth Palace on 13 April 1534, speaks of the respect due to the deeply personal and binding nature of a conscience formed in good faith, as More saw it:

My purpose is not to put any fault either in the Act or any man that made it, or in the oath or any man that swears it, nor to condemn the conscience of any other man. But as for myself, in good faith my conscience moves me in the matter, that though I will not deny to swear the succession, yet unto the oath that here is offered to me I cannot swear without the jeopardding of my soul to permanent damnation.⁶

26. More resisted, not for the last time, an expedient and seemingly sensible reprieve in terms that continue to underpin the significance of an oath or affirmation:

If you doubt that I do refuse the oath only for the grudge of my conscience, or any other fantasy, I am ready here to satisfy you by my oath. Which if you do not trust it, why should you be the better to give me any oath? And if you trust that I will herein swear true, then I trust of your goodness you will not move me to swear the oath you had offered me, perceiving that for me to swear it is against my conscience.⁷

27. In his 2000 address, my father shone a light on the uncompromising integrity in which More sought to form his conscience:

“It was a conscience that sought to understand the Divine Will and, having understood it, to be obedient to the truth he saw”

⁶ Ackroyd, P: *The Life of Thomas More* (1998) pp360-361

⁷ *Ibid*, p361

28. More knew well the consequences of his stand. He was to be imprisoned in the Tower. Yet with “good faith” and sure confidence in the integrity of his position based on a rigorously informed conscience, he had a calmness of vision that allowed him to speak with tolerance and hope.
29. On 17 April 1534 he entered the Tower through the Traitor’s gate.
30. At this time of extreme need, More was both comforted and challenged by his beloved daughter Margaret who, either directly or through her maid, was permitted regular visitation rights with her father.
31. Margaret was devoted to her father, and it was his open conversation with her, where she relayed her own and other’s views, that provides More’s longest exposition of his self-examination and resolve to hold firm to the discharge of his conscience in refusing the oath.⁸ Margaret’s report to her sister of her conversation with their father is telling. The established ritual of the Tower visits: inquiry of immediate concerns and physical needs; shared prayer routine; news of loved ones and of domestic concerns. Then the gentle introduction of messengers and message urging a change of course for the welfare of all, the patient and thorough discussion of each substantive contention challenging More’s position and reasoning. And throughout, while each maintain their different position, the tone of love, respect and of grace: a shared journey.
32. And so it was in being true to family and to himself, More’s was assured in his judgment and enabled to embrace a calm and clear sighted mind that “*so eased and diminished all the griefs and pains of his imprisonment and all his other adversity...*”⁹
33. It is thought that it was through Margaret’s visits that the prolific writings of More in his year in the Tower became available for posterity. And so we hear More’s voice:

⁸ TMSB pp 317-335

⁹ TMSB p213 note 4

*My case was such in this matter through the clearness of my own conscience that though I might have pain I could not have harm, for a man may in such a case lose his head and have no harm”*¹⁰

34. On 7 May 1535, More was subjected to an unfair trial for high treason before Lord Chancellor Audley and other knights of the Realm. While struck by fear and indisposition caused by 15 months in the Tower, More made a strong defence to the charge of malice grounded only on the perjury of Rich. More was sentenced to the barbaric punishment of being hung, drawn and quartered. Under sentence, but with his eyes firmly on his eternal goal, More addressed his judges:

*I verily trust, and shall therefore heartily pray, that although your Lordships have been on earth my judges to condemnation, yet that we may hereafter meet joyfully together in Heaven to our everlasting salvation.*¹¹

35. By the King’s pardon, the sentence was changed to death by beheading. More expressed his thanks for the mercy shown and that he had “*convenient time and space to have remembrance of my end*”.

36. My father too welcomed the ‘*time and space to have remembrance of his end*’ and the hope of a new beginning. Unlike More he was not under pain of imprisonment and a barbaric and unjust ending of his life from the State he had served so faithfully and well; and nor, once covid restrictions eased, was he under pain of enforced isolation from those he loved. But like More he embraced what opportunity he had to share the sacrament of his passing with his family and dear friends giving full expression to the value of human dignity.

37. The ritual recounted, and the tone expressed in the letter of Margaret and More (above) resonates with me, no doubt, as it does with many of you, when recalling the sharing of an end of life journey: the daily sharing of prayer being both a comfort and a bond eg when dad’s nine year old great-grand-daughter, Madeline, asked to recite the suscipe of St Ignatius with him; the effort taken to retain interest in others and maintain dignity in all things; the patience; the special highlights that linger. And so, the peace of a life of transcendental reflection is passed to others, including the youngest generation.

¹⁰ TMSB, p 213, note 3

¹¹ *A complete collection of State Trials and proceedings for High Treason*, vol 1 ,(London 1730) p 63

38. Sir William Deane in his eulogy for my father said:

““Proud of our freedoms”, “respectful of all peoples”, “insistent on human dignity”: that is the voice of Sir Gerard Brennan. Add “love of family and friends” and “concern for the vulnerable and discarded” and you have the man himself”

39. Brennan and More, both.

40. In conclusion. Tonight, we have heard the voices of More in 1500 and Brennan in 2000.

We may all choose to stand on the shoulders of these, and other giants of our choosing, seeking guidance on how we can recognise and make the choice between what is good and valid in service of the common good and what is expedient and humanly sensible, dictated by our own bubble or the appearance of the sky. Wherever we stand, each of us is called to heed and to nurture well the small voice within. More’s life demonstrates that demands a search, as best we can, for truth, grounded in, but beyond our own experience. It takes time and self discipline, but with an openness to learning, a “listening heart” to the experience of others and an integrity of purpose we can each make our best contribution to the common good.

Looking to our own polity we must all be aware that the enabling legislation for the Referendum on the Voice seeking constitutional recognition, in terms sought by indigenous Australians, passed in the Senate earlier this week. Invigorated by More’s example, we may be emboldened to hope that each of us will listen with our hearts to the truth of our law, our history and of lived experience, and strive for justice. For then, we may pass to the next generations some clear road signs for the continued journey.

Madeline Brennan KC

23 June 2023