

More's UTOPIA and Socio-Economics^{*}

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I. Introduction

The year 2016 marks the quincentennial of Thomas More's UTOPIA.¹ (Ironically, today is also the anniversary of More's execution on 6 July 1535.) More, who was for two years an Oxford man before he fell into the law, created a novel that is an icon of the Law and Literature movement,² although in the formative years of the movement, it was not included as an object of study.³ The book is renowned as a political fantasy, in the tradi-

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¹ THOMAS MORE, UTOPIA (Clarence H. Miller, trans., Yale Nota Bene: 2001) [hereinafter UTOPIA]. A complete online edition of UTOPIA, edited in 2012 and including related letters, commentary, and marginal notes that were included in or associated with the first four printings (1516-1518) is available at <http://theopenuptopia.org/full-text/>.

² On the place of More's UTOPIA in the law and literature movement, see Michael P. Malloy, *UTOPIA and the Law and Literature Movement*, 48 U. Pac. L. Rev. – (2016). On the Law and Literature movement, see Benjamin N. Cardozo, *Law and Literature*, reprinted in MARGARET HALL (ed.), *SELECTED WRITINGS OF B. N. CARDOZO* 338-428 (1947) (emphasizing practical advantages of study of law and literature); Richard H. Weisberg, *Wigmore and the Law and Literature Movement*, 21 LAW & LITERATURE 129 (2009) (examining origins of law and literature movement in United States); Robert Weisberg, *The Law-Literature Enterprise*, 1 YALE J. L. & HUMANITIES 1 (1988) (critiquing "enculturating" advantages of law and literature).

³ See, e.g., John H. Wigmore, *A List of Legal Novels*, 2 ILL. L. REV. 574 (1908) (including list of "legal novels" and the criteria for selecting them; not listing UTOPIA); John H. Wigmore, *A List of 100 Legal Novels*, 17 ILL. L. REV. 26 (1922) (reprinting and expanding list).

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tion of Plato's *Republic*.⁴ Nevertheless, a careful reading would yield a sense that something else is at work in this story, something beyond a now commonplace political fiction.

I have argued elsewhere⁵ that, properly interpreted in light of suggestions the author leaves for the reader in an introductory "letter,"⁶ the book reveals itself to be a reflection on the life of the law and the social stresses and responsibilities of the lawyer. In the present paper I argue that certain narrative devices and images in the story render the book a prescient analysis of a range of issues that anticipate the concerns of socio-economics. In fact, More is particularly effective in highlighting social and economic inequality, gold and fiscal policy, the role of law and polity in society, and the economics of war. I conclude that the central mystery posed by the book is determining More's views on these subjects distinct from those of his characters - including More himself.

II. The Narrative

More's *Utopia* is structured as a set of interlinked component parts, that some critics have characterized as a "framed" narrative in which one part provides a fictional context for the succeeding part. (Figure 1, below). This would be much like Shakespeare's *Taming of the Shrew* is "framed" by the story of the drunken tinker Christopher Sly who is tricked by a mischievous nobleman into believing that he is actually a nobleman himself. The nobleman then has the play *Taming of the Shrew* performed for Sly's diversion. The problem with this approach is that it makes the "framing features" negligible in relation to the body of the work, and conceptually unrelated to it. Looked at more closely, the sections of More's novel in fact are a group of interlocked building blocks (Figure 2, below), in which each part supports the other parts structurally.

⁴ Kelly De Luca, *Utopian Relations: A Literary Perspective on International Law and Justice*, 27 CANADIAN J. LAW & JURISPRUDENCE 521, 522-524 (2014) (noting similarities in tone and approach).

⁵ See Michael P. Malloy, *Encountering Utopia: Social Stresses and Responsibilities of the Lawyer*, Athens Institute for Education and Research (forthcoming, 2016).

⁶ UTOPIA at 3-7.

Figure 1 – “Framed” Narrative

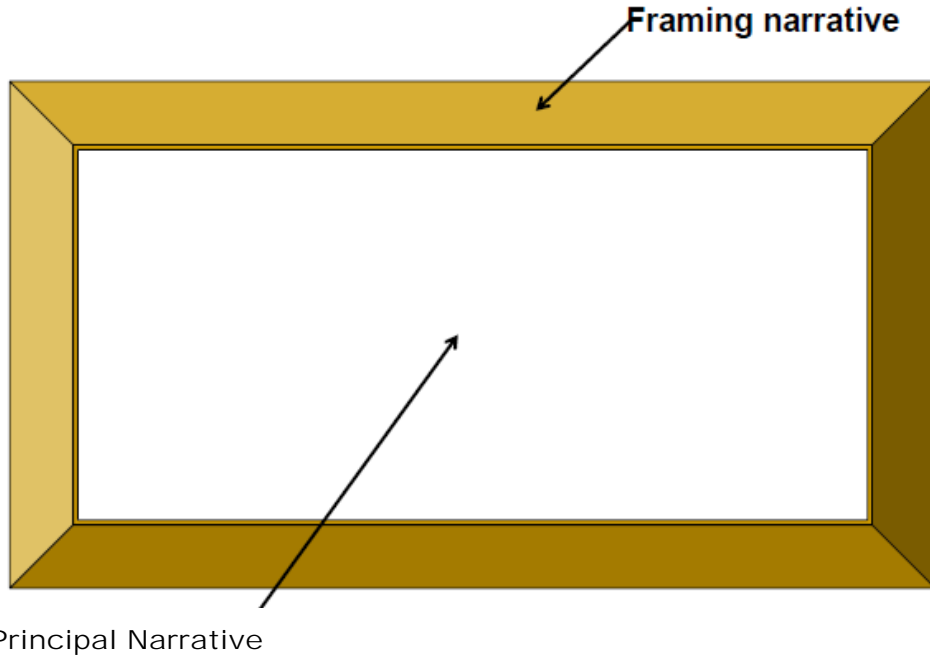
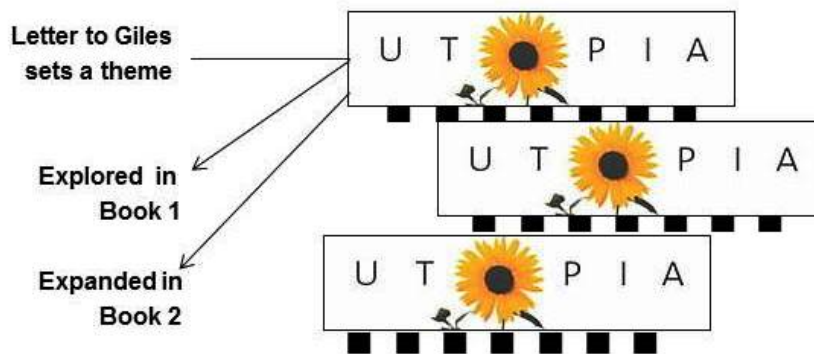


Figure 2 – Interlocked Elements of the Narrative



By way of a preface, we begin with a letter, in which More the character – posing as More the author – explains to More’s real-life friend Peter Giles of Antwerp the circumstances surrounding his meeting with the trav-

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eller Hythloday and the difficulty that he has in finding any time to devote to writing, given his busy professional schedule. The letter is, of course, a narrative construction, ostensibly intended to give the succeeding story an air of verisimilitude.⁷ However, it also reveals a theme pursued throughout the rest of the novel, namely, the social and professional responsibilities imposed on a lawyer.

There follows in Book I a variation on the Socratic dialogue of Plato's *The Republic*. Giles introduces More the character to Raphael Hythloday, an adventurer and explorer, with whom More and Giles have a lengthy conversation about Hythloday's travels. It begins as a very broad survey of the exotic, but real places where he has visited, but it gradually circles around to a more specific, but more fictive, discussion of prominent people and their almost instinctive resistance to good counsel. First Giles and then More would urge on Hythloday the utility, and indeed the necessity, of acting as wise counsellor to monarchs, prelates, and other influential persons. Hythloday remains resistant, however, based on his personal experience with highly placed persons in the past.

This interchange leads the interlocutors to the subject of how best to counsel a prince or prelate, which naturally prompts Hythloday's observations about the contemporary social problems of the time – instability and warfare, the linkage of statecraft to economic privation, severe criminal and penal policy that responds to those economic issues, and the systemic problems – such as the practice of enclosure common land – that exacerbate those economic issues.

The panorama of these social ills is implicitly contrasted with conditions in the island republic of Utopia, which – like Plato's republic – are so rationally maintained that “these things might be better . . . but they might still seem strange.” This leads to a brief discussion over the advantages and disadvantages of trying to advise princes and then, of course, the three decide to “go inside to eat lunch. . . . Afterwards we will take as much time as we want.”

True to their word, Book 2 opens after lunch, with a long tour of the history and social structures of Utopia, delivered as an extended monologue by Hythloday. We learn not only about the physical and political geogra-

⁷ A second letter to Giles was added to the end of the text, but appeared only in the second, 1517 edition of *Utopia. The Open Utopia*, <http://theopenutopia.org/full-text/more-to-giles-ii/>, note1.

phy of the island, but also about the rigid structure of the society, in which all take their assigned places and circulate between urban occupations and agricultural duties. Travel is regimented, and even local travel requires formal necessary job keeps him from going.” While Hythloday makes much of the fact that the Utopians have few laws, it nevertheless appears that every aspect of daily life is dictated by rules that are almost uniformly followed. Followed, that is, unless you would prefer to be made a slave.

The tour next offers a discussion of Utopian military policy, which essentially turns warfare into a kind of commodities trading system. The Utopian Government hires mercenaries for whatever warfare is deemed necessary and pays them for their services, and when victory is achieved, cost analysis follows with the result that the war is paid for by the defeated enemy in money and in transfers of land and property.

Hythloday ends his tour with a discussion of religion and morality. Religion seems to operate entirely in support of Utopian principles of governance, though it is not, strictly speaking, a state religion. As with laws generally, the rules that religious practice follows seem to operate uniformly though without explicit, positive mandates.

At this point the report of Hythloday's monologue abruptly ends, and More the character suddenly intrudes with the following rather general and almost cryptic conclusion:

When Raphael had ended his tale, there occurred to me quite a few institutions established by the customs and laws of that nation which seemed to me quite absurd, not only in their way of waging war, their religious beliefs and practices, and other institutions as well, but also (and above all) in the very point which is the principal foundation of their whole social structure, namely their common life and subsistence with no exchange of money.

III. The Socio-Economics of UTOPIA

Socio-economics as a discipline is grounded on the assumption that “economics is not a self-contained system, but is embedded in society, polity, culture, and nature.”⁸ It draws on a variety of perspectives, including economics, sociology, political science, philosophy, history, law, and other

⁸ Robert A. Ashford, *What Is Socio-Economics?* AALS Section on Socio-Economics Newsletter (No. 28, Dec. 24, 2011).

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disciplines, to understand competitive behavior as a simply one aspect of human behavior overall. I submit to you that More, as both author and character in UTOPIA, exhibits an intuitive grasp of the socio-economic approach to the study of human behavior.

While Hythloday wants to concentrate on social engineering and the inherent capacity of humankind for order and ethical behavior, sainted Thomas More repeatedly expresses the understanding that the drivers of human behavior are more complex and variegated than Hythloday is willing to acknowledge. Hythloday's tunnel vision is characteristic of so many social critics and analysts who insist that, if only some obstacle were removed – whether it be selfish corporate behavior, or obstructive national policies – human behavior would return to its ideal altruistic roots. The reality is that admirable, ethical behavior is recognizable to the extent that it departs the norm.

A. Social and Economic Inequality

Much of the discussion in both Book 1 and Book 2 is concerned with the problems of social and economic inequality. Do we confront these problems incrementally, like England would as it dealt with the displacing effects enclosures of farmland to advance the Renaissance equivalent of Big Agriculture? Or should we assume, as does Hythloday in describing Utopian policy, that we need to sweep away individual and corporate choice in favor of complete uniformity and regimentation of social roles?

Six months on the land, six months pursuing your useful, designated occupation in settlements – this is the Utopian world of income equality. The result has a certain attractiveness, except if you have ever had personal ambition or passion frustrated (or have ever worked on a farm, for that matter). Compelling everyone to the norm destroys outliers, innovators, and free spirits. That is also More's personal struggle, as he describes it in the Letter to Giles at the beginning of UTOPIA:

I am constantly pleading one case, hearing another, acting as arbitrator, handing down decisions as a judge, visiting one person or another on business or because it is my duty to do so; I am out practically all day dealing with others, and the rest of my time is devoted to my family, *and so I leave nothing for myself, that is for writing. . . .*

When do I write then? And as yet I have said nothing about sleep and nothing at all about eating, and for many that takes up no less time than sleep itself, which consumes almost half our lives. *The only time I get for myself is what I*

steal from sleep and eating. Because that is so little, I progressed slowly, but because it was at least something, I did make progress. . . .⁹

B. Gold and Fiscal Policy

One of the most entertaining threads in the novel is More's discussion of Utopian fiscal policy. The economy is not based on a gold standard; goods and services are valued in terms of their social utility. Gold is treated as a material, particularly suited, because of its malleability, for chamber pots and children's toys. There is much laughter among the Utopians when ambassadors arrive adorned in gold chains and medallions; their value exposed by More as a social construct or fetish.

In this More anticipates the argument, 350 years later, in the Supreme Court's decision in the *Legal Tender Cases*,¹⁰ upholding the creation of currency, in place of gold coins, as legal tender for payment of obligations. The U.S. Constitution gives Congress the authority to "coin Money, regulate the Value thereof, and of foreign Coin. . . ." ¹⁹ "Currency," at least insofar as gold and silver coins are concerned, is under the exclusive control of the Congress.²⁰ Notice that this coinage authority says nothing about *paper currency*.

At least until the Civil War, legal tender essentially meant specie, and paper "money" meant *bank notes*, debt instruments issued by state-chartered banks that would be redeemable in specie. This understanding was about to change, however. Among so many other effects, the war was transformative for money and banking in the United States.²⁴ The

⁹ *Id.* at 4.

¹⁰ 79 U.S. (12 Wall.) 457 (1871). For extended discussion of the *Legal Tender Cases* and related issues, see Michael P. Malloy, *Payment Systems and Harmonization*, in CHRISTIAN CASCANTE, ANDREAS SPAHLINGER & STEPHAN WILSKE (eds.), *GLOBAL WISDOM ON BUSINESS TRANSACTIONS, INTERNATIONAL LAW AND DISPUTE RESOLUTION: Festschrift für Gerhard Wegen* 273-285 (2015).

¹⁹ U.S. Const., art. I, § 8, cl. 5. This authority includes the power to regulate the coins, and to require uniformity and parity in the coinage. *Laycock v. Kenney*, C.A.9 (Or.) 1959, 270 F.2d 580 (9th Cir. 1959), *cert. denied*, 361 U.S. 933. Under the following clause 6, Congress was accorded the authority to provide for the punishment of counterfeiting U.S. securities and coin. The individual states in turn are prohibited from coinage and from issuing bills of credit under U.S. Const., art. I, § 10, cl. 1. *Cf. Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 49 (1820) (dicta, noting that exercise by states of power to coin money or emit bills of credit is prohibited by Constitution).

²⁰ *Briscoe v. Bank of Commonwealth of Kentucky*, 36 U.S. (11 Pet.) 257 (1837).

²⁴ On the the transformation as to banking, see MALLOY, *PRINCIPLES OF BANK REGULATION* § 1.5 (3d ed., West Academic, 2011) (discussing origins of National Bank Act).

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change was exemplified by the *Legal Tender Cases*,²⁵ the consolidated decision of the Supreme Court in *Knox v. Lee* and *Parker v. Davis*, which addressed the constitutionality of a series of enactments beginning in February 1862, when the first act was passed, authorizing the issuance of federal notes and making those notes legal tender for all public and private obligations.

The opinion for the Court, authored by Justice Strong framed the issues for decision as whether the legal tender acts were “constitutional when applied to contracts made before their passage; and, secondly, are they valid as applicable to debts contracted since their enactment?”³² Taking a very aggressive view of the national character of the constitutional government that had enacted the legal tender laws,³³ the Court concluded that these enactments properly applied to existing obligations, whenever created, thus establishing the constitutionality of the federal government’s harmonization of payment law on a national basis. The exigencies of war required the stabilization of the economy, and Congress chose the establishment of federal notes as legal tender as a necessary and proper means to accomplish that objective.³⁴ Thus, lurking behind the quotidian matters of liability for commercial obligations were issues of high policy – the stability and uniformity of fiscal policy. In the Court’s view, and apparently in the view of the Utopians, there is no special status for gold in fiscal policy.

C. Law and Polity in Society

Whatever else it may be, More’s *Utopia* provides us with an interior view of a lawyer’s struggle to uphold the highest values of the law as an institution that supports and informs order in society. Cynics and social activists would doubtless question the value and utility of law. Hythloday, whose name translates as “peddler of lies,” is just such a demagogue. Twice – in Book 1 and Book 2 – he lauds a society where there are very few laws, as if the existence of laws was somehow an impediment to the

²⁵ 79 U.S. (12 Wall.) 457 (1871).

³² *Legal Tender Cases*, 79 U.S. at 529.

³³ *Id.* at 533-534.

³⁴ *Id.* at 540-541. While the *Legal Tender Cases* do not have the high-gloss reputation of *McCulloch v. Maryland*, scholarship has emerged that argues that these later cases, rather than *McCulloch*, are the key to understanding current interpretations of the necessary and proper clause. See, e.g., Magliocca, *A New Approach to Congressional Power: Revisiting the Legal Tender Cases*, 95 GEO. L.J. 119 (2006). See also Dam, *The Legal Tender Cases*, 1981 SUP. CT. REV. 367 (focusing on financial details).

natural virtue of humanity, rather than a bulwark against the perfidy of human nature. In Book 1 he lauds “the Utopians who have very few laws and yet manage so well that virtue is rewarded. . . .”¹¹ Again in Book 2, we are told

They have very few laws, for very few suffice for *persons trained as they are*. Indeed, one of their primary charges against other nations is that endless volumes of law and interpretations are not sufficient. . . . Moreover, they ban absolutely all lawyers as clever practitioners and sly interpreters of the law.¹²

As is evident in today's cries of social activists and business leaders against regulation and legal requirements, Hythloday's attitude is as current today as it was in More's time.¹³ This is a circular fallacy, assuming that the prevalence of law is somehow a *cause* of corruption, rather than a societal response to it. One might dismiss this attitude as one based on the fantasy of a people naturally conforming to whatever role society might design for them, but the construct is more ominous than that. What is this “training” to which Hythloday alludes, that leaves the populace so obedient that few formal laws are necessary? The training is, I fear, very much in line with the regimentation, mercenary warfare, and slave culture that underlie the commonwealth of Utopia. As socio-economics understands, you do not see the full picture if we isolate social planning and economics from legal constructs and those of other disciplines.

More's response to this demagogic dismissal of law display two aspects. First, having allowed Hythloday to express his views in full, More simply tells us at the end that “quite a few institutions established by the customs and laws of [Utopia] . . . seemed to me quite absurd. . . .”¹⁴ Second, and perhaps more emotively persuasive, the author's expressed anxiety about living a productive and effective life of service offers its own repudiation of the fantasy of a commonwealth without laws

D. Economics of War

Warfare in Utopia is both manipulative and dehumanizing, though it is arguably good economics. War is an instrument of territorial expansion

¹¹ *Miller Translation* at 46.

¹² *Id.* at 101 (emphasis added).

¹³ On contemporary “legislative minimalism” and its roots in works like More's *Utopia*, see Sohoni (2012).

¹⁴ *Miller Translation* at 134.

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and economic policy. Optimizing utility, the Utopians use mercenaries to fight their battles, well calculated for the financial gain of the commonwealth. The prevalent cause of war is expansionist; where the commonwealth sees territory that is underdeveloped by its inhabitants, it will annex and colonize it. Resistance by the inhabitants will trigger remorseless, aggressive warfare and the exile or enslavement of the local population. Here again, economic and political analysis detached from law and sociology leads to disturbing ends – in this case, colonialism and aggression. Remember this example, on the next occasion that some advocate for “responsible leadership” talks about creating utopian conditions.

IV. Conclusion

The novel *UTOPIA* is one of those cultural artifacts that is “most often cited, least often read.” In this regard, it is like Orwell’s *NINETEEN EIGHTY-FOUR* or Beethoven Fifth Symphony; we know it without necessarily knowing it. Approaching More’s text with a critical eye, one begins to see that it is more complex and discerning than a casual reader might imagine.

Part of the difficulty in confronting this work must be attributed to the sly and ironic style More employs in writing it. Does More the character identify directly with More the author? Or does Hythloday act as the spokesman for More the author? Hythloday, that peddler of lies, holds centerstage throughout, except in the introductory letter and the very end of Book 2, where More the character wraps him up and puts him away by telling us that Hythloday’s descriptions seemed “quite absurd.”

Who is speaking for More? I would suggest that, taken as an integrated whole, it is the book itself rather than any one of the characters who express More’s view. That there is a function for law, that a talented individual has a personal responsibility to society, that regimenting people and ignoring their individual potential is wrong and wasteful – these are the socio-economic lessons we can learn from this book.