THE "TRIAL" OF MARGARET CLITHEROW

by

KATHARINE M. LONGLEY

It was no tragic accident, a fortuitous and unrepeatable set of circumstances, which led to the Crucifixion.

AELRED GRAHAM, "The Christ of Catholicism".

From long before the writing of Aristotle's "Politics", men have known that the laws of society are not merely the creation of that society which may then abrogate or bend them at will. When St Peter proclaimed to the Sanhedrin that "obedience to God comes before obedience to men" (Acts 5.29) he was stating not new revelation but the ancient natural law, which was to be restated by St Thomas Aquinas, St Thomas More and all men of clear mind to this day. The fundamentals of human law are not ours to play with, but are ours to live by and to reflect in our own lives—even to the point of death.

When St Margaret of York, that is Mrs Margaret Clitherow, died in 1586 (a year after 27 Eliz I c 2, the "Act against Jesuits, Seminary Priests and other such like disobedient persons", an act which made it felony to harbour or relieve a priest), she died for her Lord and for his law. Like More before her, she claimed rightly that there was no law in England which could justly touch her, and like him she died innocent before the law. Improper legislation is no law at all, and *a fortiori* the misuse of legal processes and powers: her "trial", immensely more complex than it seems at first, was no trial at all. She died untried, unheard, unconvicted, the victim of national religious politics and local York conspiracy.

But much more, she died a *martyr caritatis* to protect others for the love of Christ and out of care for them. She was the second woman to die in the penal period, the first being Blessed Margaret Pole, Countess of Salisbury, mother of Reginald Pole, later the Cardinal Archbishop of Canterbury (Tower of London, 28th May 1541). It would not be too extravagant to claim that Margaret Clitherow's life and last hours stand in recusant history second only to those of Cardinal John Fisher and Lord Chancellor More. Her "trial" certainly has no rival in martyrology, save only that of More: but this has been obscured till now, when it is here presented in detail for the first time. She was not the only Catholic to die refusing formally to plead: the Benedictine Fr Mark Barkworth (for instance) adopted the same attitude at his arraignment and died without his priesthood having been established (Tyburn, 1601). But her case, for all that, is unique and deeply moving.

The author is Archivist to the Dean and Chapter of York, and is a Catholic. Under the name of Mary Claridge she wrote "Margaret Clitherow" (Burns & Oates, 1966, 30/-; Fordham University Press, $5.00), which is the ruling biography on the subject. It is now being sold by Fr Clement Tigar, S.J., Vice-Postulator of the Cause of the Forty Martyrs, 114 Mount St., W1Y 6AH, at 20/- plus 1/6 postage. The book gives a careful reconstruction of the Saint's early life and background and her last week: but this article goes far beyond those pages and all former printed knowledge in regard to the "trial".

OF the Forty Martyrs of England and Wales now raised to the altar, the great majority were executed after trial. There are a few exceptions. Philip Howard, Earl of Arundel and Surrey, died in prison under sentence of death. Nicholas Owen died under torture. Margaret Clitherow, having

been brought to court, successfully evaded trial by refusing to plead. For her success she paid the terrible penalty prescribed in such cases, that of *peine forte et dure*, or pressing to death.

Close study of the circumstances of Margaret's arrest and arraignment[1] throws much light on her attitude, and confirms the judgment of her confessor, Fr John Mush,[2] that in refusing trial she showed "great wisdom", and "rare and marvellous discretion and charity".

Fr Mush was the first to notice the *artificial* nature of her arraignment, its staginess. "This tragedy", he calls it, and in the sixteenth century the word still connoted the actor's mask. So, too, his satirical interpretation of the names of those who drove her into an impossible situation, is derived from the *Dramatis Personae* of a Morality Play: "by the cruel killing and mischiefs of Meyrs, by the malapert arrogancy of Cheeke, by the violent fury and weight of Hurlston, by the unjust halting of Clynche, by the barbarous sharpness of Roodes, by the uncharitableness of Froste,[3] by the injury of Fawcet, by the craft of Foxe,[3] and finally by the rage and fury of other heretics, this pageant was played, and this martyr's blood was spilled . . . '[4]

At one point, indeed, the scene in court actually degenerated into a blasphemous farce, when the vestments found during the search of Margaret's house, and now ready for production as exhibits, were donned by a couple of "lewd fellows" who scuffled about in them before the judges, and held up unconsecrated altar-breads, all without rebuke. The purpose of the scene was, of course, to break down the defendant's self-control, but it failed; she remained calm and poised, and herself administered a quiet rebuke when asked "how she liked these vestments".

Then the Puritan preacher, Giles Wigginton, was allowed to make a dramatic entrance into the court to intervene on Margaret's behalf, just before the passing of the sentence. It seems as though anything was permitted, at this travesty of a legal process, that might possibly lead to the breaking of Margaret's resistance. The total effect, even to a contemporary, was one of unreality.

A factual analysis of the situation reveals the arrest and arraignment of Margaret Clitherow as a misuse of the procedures of the law, involving other factors besides the desire to stamp out recusancy. Personal ambitions, in the particular circumstances of the losing battle of the City of York with the Council of the North, played a large part in manoeuvring a butcher's wife into the Assize court in March 1586.

[1] "To arraign, is . . . to call the prisoner to the bar of the court, to answer the matter charged upon him in the indictment." (W. Blackstone, "Commentaries on the laws of England", iv (1769), 317.)

[2] Fr Mush's work, "A True Report of the Life and Martyrdom of Mrs Margaret Clitherow", written within three months of her death in 1586, is the basis of all study of the subject. For a list of surviving manuscripts, indicating which have been published, see M. Claridge, "Margaret Clitherow" (1966), Appendix I. See also note 64 below.

[3] "Frost, a minister" and "Fox, Mr Cheke's kinsman", were among those present at Margaret's martyrdom; the identity of the other persons named will become apparent in the course of this article.

[4] "True Report", MS. A, ff. 82v-83r (unpublished passage).

The Council,[5] expanded and reorganized after the Pilgrimage of Grace in 1536, had been intended to curb rebellion and bring justice and order to the lawless and impoverished North. A creation of the royal prerogative, it was given plenary powers, both civil and criminal, far beyond those of any other court in the kingdom, and was itself subject only to the Privy Council. Its commissions, of Oyer and Terminer and of Gaol Delivery, were supplemented by a series of Instructions to its President. The cities within the bounds of its jurisdiction were ordered to obey its commands even to the ignoring of their royal charters. Its headquarters were just outside the city of York, at the King's Manor,[6] formerly the house of the Abbot of the great Benedictine Abbey of St Mary, and so within a Liberty owing nothing to the City. From this administrative stronghold the Council of the North dominated, with more or less of courtesy and tact according to its leadership, the adjacent City in which intense conservatism, feudal links with the great northern lords and pride in the past were tempered by the problems of poverty and loss of trade, increasingly by fear and very gradually by the introduction of new and Protestant ideas.

After the failure of the second great Northern Rebellion in 1569, in which the motives tended much more obviously towards the restoration of the Catholic religion than had those of the confused Pilgrimage of Grace, a determined effort was made to bring the North to heel, by the appointment, first, of Edmund Grindal as Archbishop of York, with extensive powers in the High Commission, and then in 1572 of the Queen's kinsman Henry Hastings, third Earl of Huntingdon, as Lord President of the Council of the North. He was a convinced Protestant supported by, and often the supporter of, the extreme Puritan party, and northern Catholics came to see in him their supreme tyrant. He was, however, loyally aided in carrying out his commission by the more prominent members of his Council, especially those with high legal qualifications, four of whom were in continual attendance at the Manor, and by his Vice-Presidents, who had ample powers to act in his absence. At the time of Margaret Clitherow's arraignment, the Earl of Huntingdon was in fact absent from York and ill, and her death at least cannot be laid to his charge.[7]

The struggle of the Corporation of York for some measure of freedom from the Council reached a climax during the mayoralty of Robert Cripling (1579-80), a man of strongly independent, even eccentric, character, elected after stormy scenes. (A certain Roland Fawcett was questioned about his insulting behaviour at this election.[8]) Cripling tried to bring a test case against an attorney named James Birkby, on the ground that he had broken the terms of his patent of appointment as clerk to the City Sheriffs.

[5] See R. R. Reid, "The King's Council in the North" (1921); F. W. Brooks, "The Council of the North" (1953), and "York and the Council of the North" (1954).

[6] In Elizabethan times this building was known simply as "the Manor".

[7] M. Claire Cross, "The Puritan Earl" (1966), 211-2, 217. Dr Cross has pointed out in "Recusant History", viii, no. 3 ("The Third Earl of Huntingdon and trials of Catholics in the North, 1581-1595") the curious errors of Dr Rachel Reid, who held him responsible both for Margaret's death and the inhuman treatment of her friend Mrs Forster. Cf. Reid, "King's Council", 209-10.

[8] York City archives, House Book xxvii, f. 142r (unpublished).

Birkby, however, also practised before the Council of the North, and immediately brought the Lord Mayor and various members of the Corporation before that court, rigidly opposing them on every point. Finally, Cripling played into the Council's hands by creating a scene in York Minster after a "railing" sermon by the Chancellor, and for this he was imprisoned in the Castle at the command of Lord Eure, Vice-President of the Council. At the end of his term of office he was totally disfranchised on a string of charges, the first being his failure to report recusants. No more was heard of Birkby's invalidated patent, but a few months later he was one of the attorneys appointed to sue Cripling before the Council on another charge.[9]

From this time onwards the increasing subservience of the City to the Council may be traced. It reached, perhaps, its nadir in the mayoralty of Henry May (1586-7), Margaret Clitherow's stepfather. The account of his reception of the Earl of Huntingdon as Lord Lieutenant in September 1586 shows that he consciously symbolised this subjection by lowering the point of the Sword of State, redecorated for the occasion,[10] in his presence; by so doing he reversed the practice of 1581, when, on a similar occasion, Robert Asquith[9A] as Lord Mayor had the sword held with the point upward. (In 1609, after a ruling by the Earl Marshal that this sword should be lowered only in the presence of the monarch, Henry May's account, drawn up as a precedent for the future, was corrected.) Henry May had, however, a great feeling for pageantry and outward show, and tightened up the ceremonial discipline of the City, though at the same time he deprived it of much of its meaning.

In this *milieu* an ambitious man might expect to rise by toadying to the Lord President; this was the setting for the arrest of Margaret Clitherow. Her arraignment was the result of a deliberate plot to undermine her constancy. Fr Mush accused her enemies of "contriving her death",[11] but he misjudged them; the scandal of her death was the last thing they expected or desired. They were trying to contrive, not the death, but the apostasy of "the only woman in the north parts", as the Councillor Hurlestone described Margaret Clitherow. She, however, had "had good experience of their subtleties" and could see no other course open to her than to refuse to plead. Her attitude infuriated the Council; the only champion she had in court, save one, was the judge who passed sentence upon her, for he was free from hatred of the Faith, and as an outsider he was also unaffected by the personal considerations that to some extent motivated almost everyone else involved.

[9] Id., f. 239v (unpublished). Birkby was Lord Mayor in 1588-9. On 15th July 1586, four months after Margaret Clitherow's death, Robert Cripling and his wife appeared before the court of Quarter Sessions on a charge of recusancy. (York City archives, York and Ainsty Quarter Sessions Book iv, 1583-6.)

[9A] Spelt "Askwith" by himself, it seems from the House Books and his monument.

[10] The great Sword of State of the City of York bears the name of Henry May to this day. See C. Oman, "The Civic plate and insignia of the City of York. I: The Insignia", in *The Connoisseur*, Oct. 1967, 70-1.

[11] "True Report", MS. A, f. 85r (unpublished).

What we call "history" is a faded and threadbare canvas compared with the rich tapestry of life. The background to Fr Mush's biography of Margaret Clitherow is the social life of the close-knit oligarchy of merchants and craftsmen who governed the City of York. Margaret had many "worldly friends". After her condemnation, every day "there came to her either ministers or some of her kinsfolk both men and women", but apart from her brother George Middleton,[12] a draper, a member of the Common Council, one of the City Chamberlains in 1580, active in the affairs of the parish of St Martin, Coney Street, it is impossible to identify her kinsfolk, for her mother's family remains unknown. Somewhere in the roll-call of officers, ex-officers and Aldermen of the City, it is almost certain to lie. Even so, in that roll-call may be identified the names of many of her husband's relatives and friends, and, of course, Henry May, her step-father, happened to be Lord Mayor in 1586. Margaret Clitherow was surrounded by people who, without appreciation of her spiritual stature, were very well acquainted with her.

Much of the inhumanity that strikes the reader of Margaret's story was provided by one man, the senior Sheriff of the City for that year, Roland Fawcett, tailor, draper and innholder. It was the Sheriffs of York who were sent by the Council to search Margaret's house (in circumstances rightly described by Fr Mush as deceitful), accompanied by at least one "ruffian bearing a sword and buckler", and in addition to their duties they stole two or three mattresses from her. (Whether it was the same men who later that day took Margaret from the King's Manor to a cell in the Castle is not known, but whoever was in charge seems to have allowed her to become the sport of the scoundrels who ducked her in the River Ouse as a scold; she arrived at the Castle "in so wet a bath, that she was glad to borrow all kinds of apparel to shift her with".[13] This at last explains how Margaret came by her soaking, and the fact that she did not explain it herself gives us a further glimpse into the soul of the "Pearl of York".)

It was the Sheriffs and their companions in the search who took a half-Flemish twelve-year-old boy whom they found in Margaret's house sharing her own children's lessons, stripped him, "and with rods threatened him, standing naked amongst them, unless he would tell them all they asked". He broke down, "and brought them to the priest's chamber, wherein was a conveyance for books and church stuff, which he revealed". And so the prosecution obtained its single witness against Margaret Clitherow.

The Sheriffs may have done no more than their duty in taking Margaret through the streets after sentence, with her arms bound, and accompanied by halberdiers, but Fawcett's suggestion the next day that he should "cause a quest of women to pass upon her" to test whether she

[12] Margaret's other brother, Thomas Middleton, a tile- and brick-maker, is difficult to trace with certainty after 1582. Her sister Alice married a locksmith, Thomas Hutchinson, and had two children by 1560.

[13] In 1581 a ducking stool had been set in St George's Close by the river and near the Castle, "for common scolders and punishment of offenders". (Ho. Bk. xxviii, f. 5r.)

was pregnant sickened Judge Clench, who changed the "jury of matrons",[14] the Mrs Gamps who examined female criminals to decide whether they could claim the "benefit of the *venter*" as a respite from the death sentence, into "four honest women which know her well". Fawcett's own wife was pregnant at the time.

The Sheriffs were officially responsible for Margaret's execution, but the junior, William Gibson,[15] was quite unable to watch it; "abhorring the cruel fact", he "stood weeping at the door". Fawcett, on the other hand, set about his appalling duties with a zest that can only be described as sadistic. He hustled Margaret over the bridge from her prison to the Toll-booth, and told her, "Mistress Clitherow, you must remember and confess that you die for treason", which brought the response, "No, no, Master Sheriff, I die for the love of my Lord Jesu".

"Then Fawcett commanded her to put off her apparel; 'For you must die,' said he, 'naked, as judgment was pronounced against you'."

This, Margaret had confessed to a friend, had shocked her more than the sentence of death itself, and now she and the four women appointed to see her die—no Papists these—united in a common sense of shame, "requested on their knees that she might die in her smock, and that for the honour of womanhood they would not see her naked; but they would not grant it". Fawcett did, however, allow the women to undress her, while the men turned away their faces.

She lay down on the ground "very quickly", "the door was laid upon her, her hands she joined towards her face. Then the Sheriff said, 'Nay, you must have your hands bound.' . . . Then the two sergeants parted them. . ." Yet four sergeants were present; these were the two attached to Roland Fawcett.

The final indignity came after her death; her body remained under the weights for six hours, and then "the sergeants and catchpolls were commanded to bury her body at midnight in an obscure and filthy corner of the city",[16] and they chose a spot "beside a dunghill",[17] in "a place of contempt".[18]

[14] John Humffreys Parry, Sergeant at Law, giving evidence before the Capital Punishment Commission on 4th March 1865, described the only occasion in his life when he saw a jury of matrons empanelled. "The old ladies had, according to custom, a glass of gin each and some bread and cheese, and examined the woman in gaol, and they declared her not to be pregnant". They were wrong.

[15] Both Fawcett and Gibson were in trouble at this time with the High Commission, being involved in separate cases of usury. (Borthwick Institute, High Commission Act Book xi, 17th and 20th Jan., 21st Feb., 11th Apr. 1586.)

[16] "True Report", MS. F, f. 38r (unpublished).

[17] An anonymous work, written in 1586 and transcribed by Fr Christopher Grene, S.J., in his *Collectanea* E (p. 364); Fr John Morris, S.J., gave it the title, "A Yorkshire recusant's relation", and published most of it in "The Troubles of our Catholic forefathers", iii (1877), 65-102. Fr Morris conjectured (id., 359) that the writer was Fr John Mush, who was known to have written such a work, but as the author of the "True Report" is described in the "Relation", for reasons of prudence, as "a friend of ours" (id., 86), Fr Morris hesitated to make the attribution. The style is, however, identical with that of the "True Report", and there could scarcely be two persons with Fr Mush's powers of vituperation.

[18] Term used in the ancient manuscript note, now lost, for long kept with the Bar Convent relic of Margaret Clitherow. (Fr H. J. Coleridge, S.J., "St Mary's Convent, Micklegate Bar, York" (1887), 384.)

Roland Fawcett had been no stranger to Margaret Clitherow when he came knocking at her door; on the contrary, he may even have been chosen to open the attack in order to disarm suspicion. The wills of his contemporaries throw further light on the position. In 1598 his son Roland (baptized at St Helen's, Stonegate, on 22nd July 1586[18a]) received the bequest of a "little gilt bowl" from his godfather Robert Man. Robert Man was a wealthy clerk or attorney, formerly in the office of Thomas Eynns, Secretary to the Council of the North.[19] Man had been the close friend of a scrivener, Edward Turner,[20] whose election as a Sheriff of York in 1562 had been quashed at the request of Eynns on the ground that "Turner was a clerk so meet and necessary for dispatch of matters before the . . . honourable Council that they in no wise could want [i.e., do without] his daily attendance".[21] This Edward Turner, together with Thomas Jackson (Lord Mayor in 1589-90), had been appointed by Margaret's father, Thomas Middleton, in 1560 as supervisors of his will. (They are distinguishable from other persons of the same names by the references in Edward Turner's will to "my well-beloved cousin, Mr Henry May", who had married Margaret's widowed mother, and "my cousin, Thomas Jackson".) Jackson was an attorney before the Council and is frequently mentioned together with this Edward Turner; he was a supervisor of Henry May's will also. Edward Turner's father, like Margaret's, had been a waxchandler.

This was the social circle in which Margaret's mother had moved for years; it was on the fringe of the Council of the North. It included Robert Man, and Robert Man's circle included Roland Fawcett. It is evident that Roland Fawcett was included in Edward Turner's circle also, for in 1621 Turner's son Lancelot bequeathed £10 to Fawcett's daughter Isabel. There is a link, too, between Fawcett and Margaret's husband, John Clitherow. In September 1582, at the church of St Michael le Belfrey, John Clitherow stood godfather to a son of Christopher Smithson, draper. (The wife of Edward Fawcett, a notary, perhaps a relative of Roland, was godmother.) In May 1583 Christopher Smithson was godfather and the wife of Roland Fawcett godmother, to the son of Cuthbert Watson, at the same church. There is a connection, also, between Christopher Smithson and the widow of Edward Turner;[22] York society was very closely interrelated, and by the fifteen-eighties the majority of the ruling families had friends or relatives working for the Council of the North. For a member of one of these families to oppose the Council required immense strength of will.

[18a] Parish Register, in the Borthwick Institute.

[19] Eynns died in 1578; the witnesses to his will were Edward Turner and Robert Man, both legatees.

[20] See R. Davies, "Pope: additional facts concerning his maternal ancestry" (1858). Edward Turner was the great-great-grandfather of the poet Alexander Pope. He died in 1580.

[21] Ho. Bk. xxiii, f. 66r. The Edward Turner who was Sheriff in 1571-2 was another man, a weaver and innholder.

[22] Mrs Jane Turner (will proved 11th Dec. 1588) left 2s. to her goddaughter Elline Drinkell, daughter of William Drinkell. Christopher Smithson (will proved 9th Mar. 1591) left to his "gossip and old acquaintance William Drynkell" his best hat and an English crown "for remembrance".

What personal motives impelled Roland Fawcett to set about his abominable duties at Margaret's execution with such enthusiasm and attention to detail will never be known, but the fact that he stood on the edge, if no closer, of her father's circle of friends and also of her husband's, must have some relevance. One of his duties as Sheriff was to pick the juries for the City Assizes, and this Margaret would have known, for her own father had been Sheriff in 1564-5. It is extremely important, for a correct assessment of Margaret's attitude at her arraignment, to realise that had she pleaded she would have faced a Grand Jury of twenty-four and then a Petty Jury of twelve substantial citizens, every one of whom, probably, would have been well known to her, hand-picked by Roland Fawcett and the weaker Gibson. She saw them as so many souls on the brink of damnation; as well might she expect justice from a jury picked by Judas Iscariot.

Margaret had feared that her house would be searched while her husband was in attendance upon the Council, and so it fell out. Now the Council had a pursuivant and other officers of their own, and normally preferred to trust their own staff to make arrests, particularly in cases of recusancy.[23] There was no great urgency in Margaret's case for the day and time chosen for the search—the afternoon of a weekday in Lent—indicate no strong desire to catch a priest saying Mass. (Farce and "pageant" would have had no place at Margaret's arraignment then.) If the Council's pursuivant was otherwise occupied, could they not have postponed the search until it could be made without risking a crisis with the Corporation of York? The crucial question is, Why did the Council send *the two Sheriffs of York* to make the search while they had John Clitherow at the Manor?

Having found evidence in a secret room that someone was being hidden, not in Margaret's house but her next-door neighbour's, to which she had access, and having also found great quantities of "church stuff", vestments, plate, pictures, books and "singing-breads", it was no doubt correct for the Sheriffs to take their prisoners before the Council, for there was *prima facie* evidence that Margaret had broken the bonds upon which she had been released from prison 18 months before; one of these bonds was no doubt to the High Commission,[24] and another may well have been to the Council. But this does not explain the use of the Sheriffs to make the search.

Suppose they had found evidence of a less serious nature; would they have taken Margaret before the Lord Mayor, her stepfather, who was *ex officio* Chairman of the Court of Quarter Sessions for the City?[25] Did

[23] F. W. Brooks, "Council of the North", 20.

[24] See Bond of 6th May 1584 (Borthwick Institute R.As. 30/103), most of which is quoted in my "Margaret Clitherow", 105-6. Another is given in W. R. Trimble, "The Catholic laity in Elizabethan England, 1558-1603" (1964), 108-9.

[25] On 15th August 1581 Mrs Vavasour's house was raided by the two Sheriffs for that year, with three Aldermen (James Birkby, Christopher Maltby and Henry May), and a priest taken saying Mass, and all his congregation, were brought before the Lord Mayor, William Robinson. (Morris, "Troubles", iii, 311-2.) When tried before the court of Quarter Sessions for the City on 4th Oct. 1581, most of these people refused to answer; against their names is the note, "nihil dic[it]". (York & Ainsty Q.S. Bk. iii.)

they set out with this possibility in mind? (Sessions for the City were held *the next day*.[25a]) If Fawcett was so keen a hunter of recusants, might he not have been wiser to search this house during the few months that had elapsed between his own election as Sheriff and Henry May's election as Lord Mayor?[26] But Fr Mush says the Sheriffs were sent by the Council, and the Council, in the absence of their President, the Earl of Huntingdon, would scarcely have been so foolish as to have the house of the Lord Mayor's stepdaughter searched in this way unless *with the connivance of the Lord Mayor himself*.

The timing of the search and other circumstances point to this as the truth. While Margaret's mother, Henry May's wife, lived, he may have hesitated to attack her daughter, though he had had no hesitation in searching the house of her friend Mrs Vavasour.[27] But Jane May had died the previous summer, and Henry had made an honest woman of Anne Thomson, who was now his "Lady".[28]

Henry May was a social climber; Margaret's mother, according to Fr Mush, had "taken him from the beggar's staff", and he owed his rise to the office of Lord Mayor entirely to her wealth. Nothing is known of his origins, but that he was a man of great intelligence and ruthless energy, intent on ingratiating himself with the Lord President of the Council, may be seen from the record of his mayoralty.[29] (The Earl of Huntingdon was anxious that the problem of the poor should be solved; one of Henry May's first actions as Lord Mayor was to order all inhabitants who had any undertenants in their houses, to turn them out. He might be expected to show no more compassion in dealing with recusancy in his own family.)

Margaret Clitherow was arrested on Thursday, 10th March 1586. The Lent Assizes, the first of Henry May's mayoralty, were due to open on the following Monday. This left sufficient time for the Council to engage in a war of nerves with Margaret before bringing her into court, which was

[25a] York & Ainsty Q.S. Bk. iv, 11th March 28 Eliz. I [1586].

[26] The Sheriffs were elected on 21st September, the Lord Mayor on 3rd February.

[27] Mrs Dorothy Vavasour, wife of Dr Thomas Vavasour (fifth son of Sir Peter Vavasour of Spaldington) had entertained, about February 1581, the future martyr, Fr Edmund Campion, S.J., but Margaret Clitherow was imprisoned in the Castle at this time so did not meet him. (Cross, "Puritan Earl", 240, from Huntington Library, H.A. 4140.)

In 1571 Dr Vavasour's house was described as "by the common school house" in Ogleforth ("Cal. S.P. Dom. Add. 1566-1579" (1871), 369), but by 1576 his family had moved to the parish of Holy Trinity, King's Court, or Christ Church. (Morris, "Troubles", iii, 237.) R. H. Skaife's MS. "Civic officials of York and Parliamentary representatives" (3 vols. in York City Library) reveals, in the pedigree of Dr Thomas Vavasour, that the later house had a frontage of 59 feet on the east side of the present King's Square, and extended for 116 feet down St Andrewgate on its north side. The name of the house in 1627 was "Duke Gill Hall, heretofore called the King's Court". This historic house, in which Mrs Vavasour ran her "maternity home", where St Margaret Clitherow was instructed in the Faith and St Edmund Campion said Mass, probably stood on the site of the palace of the tenth century Eric Bloodaxe which gave its name to the church, Holy Trinity, King's Court, and to the present King's Square, and also determined part of the parish boundary.

[28] "True Report", MS. A, f. 68v (unpublished).

[29] "York civic records", ed. by A. Raine, viii (1953) (Yorks. Arch. Soc. rec. ser. cxix), 114-132; and more fully in Ho. Bk. xxix.

duly done by passing on alarming rumours as to the charge against her and the outcome of her trial.

That Margaret's arraignment was an attempt to frighten her into a spectacular apostasy that would forward her stepfather's career is also indicated by the astonishing fact that although the secret room was found in her "next neighbour's house", that neighbour was never arrested, and his or her identity remains unknown.[30] This would have been gross dereliction of duty on the part of those zealous Sheriffs, had they not been very sure of their instructions. Their search was not aimed at catching priests or punishing their harbourers in general, but at catching one woman, Margaret Clitherow, and giving her a good fright.[31]

That her martyrdom was the result of a trick that misfired is indicated also by Henry May's subsequent behaviour. When he found her adamant, he went on his knees to her, "with great show of sorrow and affection, by all flattery alluring her to do something against her conscience". But when the tragedy was played and his year of office had been blotted with his stepdaughter's blood, he spread the story that she had chosen this death as a form of suicide, being unable to face the shame of exposure as an adulteress; he went so far as to accuse her of sexual perversions.[32] Later, too, he seems to have quarrelled with the Sheriffs and their sergeants.[33]

One further fact points to the timing of Margaret's arrest having been deliberately chosen to suit her stepfather's interests; in 1580 it had been agreed that "the Judges and the Clerk of Assize shall yearly from henceforth dine at the Lord Mayor's place two times in the year, . . . on Monday in Lent Assize Week, and on Monday in Lammas Assize Week". The purpose was immediately shown to be to give the Lord Mayor an opportunity to discuss with the judges various business relating to the city's concerns.[34] The whole city must have been aware of this custom, and Margaret with them, and this too would put her on her guard. It is difficult to believe that Henry May made no attempt to mention his stepdaughter's case on this occasion, at least to the junior judge.

For the junior judge, Sergeant Rodes,[35] was no stranger to the city; his appointment was entirely contrary to the spirit of the law, which

30 See note 91 below. The neighbour was not Margaret's cell-mate Anne Tesh, who lived in the parish of St Mary Bishophill Junior, on the other side of the river. (Morris, "Troubles", iii, 255.)

31 Similarly, parents have been known to bring troublesome children before a juvenile court as beyond parental control and then to have been horrified when they have been committed to the care of a County Council.

32 "True Report", MS. A, f. 68r (unpublished).

33 Ho. Bk. xxix, ff. 118v-119r (22nd August 1586), 133v (3rd October 1586).

34 Ho. Bk. xxvii, ff. 223v, 225r.

35 "Dictionary of national biography"; E. Foss, "A Biographical dictionary of the judges of England" (1870); J. & J. B. Burke, "A Genealogical and heraldic history of the extinct and dormant baronetcies of England" (1838), 448-9; J. Hunter, "South Yorkshire", ii (1831), 129-30.

required an Assize judge to have no interests in his circuit.[36] For 11 years, since 1574, he had been one of the salaried, legal members of the Council of the North, resident at the King's Manor,[37] and he was still a Councillor.[38] Newly made a Justice of the Common Pleas, in 1585, he was now coming to York as judge for the second time since his appointment.

Fr Mush, who evidently had channels of information by which he received some of the gossip current at the Manor, repeats a story that Rodes "at his coming to York this Lent Assizes . . . greatly reproved the Council"[39] for having executed Marmaduke Bowes the previous November on the charge of harbouring a priest, "saying that by law they did great wrong, and ought not to have condemned him upon the evidence of an infamous person". Mush alleges that the Council retaliated by bringing Margaret Clitherow before the Assize judges with a single witness against her, and that a child, a foreign boy. This theory, however, will not stand; the Councillors were not to foresee that Margaret would refuse to plead, and had she done so, there would have been a number of witnesses against her.

There seems little doubt, however, from the prominent part taken by Rodes at Margaret's arraignment, that Fr Mush rightly reported his desire "to show his authority above this Council, in his controlling humour". He was a domineering bully, throwing his weight about as a new judge before his old colleagues on the Council.

The case of Robert Bickerdike,[40] tried at the next York Assizes at Lammas 1586, shows Francis Rodes even more obviously in an ambiguous position, acting in both his capacities simultaneously. Bickerdike was twice acquitted at the courts held for the City, first at the Quarter Sessions in 1585,[41] on a charge of aiding a priest and for indiscreet speech, and then at the Lammas Assizes, 1586,[42] before Judges Clench and Rodes,

36 Under a series of Acts down to 33 Hen. VIII, no man of law was to be a judge of Assize in his own "country", that is, the county of his birth or residence. Rodes's family were settled in Derbyshire; in 1583 he had begun to build a large house at Barlborough, between Rotherham and Chesterfield, two miles from the West Riding county boundary. (It is now a Jesuit preparatory school. I am deeply indebted to Fr Bernard Brown, S.J., for drawing my attention to this fact.) The house is fully described by Mark Girouard in "Archaeological Journal", cxviii (1961), 223-7. Though residing just outside Yorkshire, Rodes built up extensive estates in the county, in the parishes of Darfield and Hickleton (Hunter, "South Yorks.", ii (1831), 130, 135); these he settled on two of his younger sons.

37 Cross, "Puritan Earl", 161-3.

38 Reid, "King's Council", 495. As Assize judge, Rodes would be a Councillor in any case.

39 "True Report", MS. A, f. 81r; Morris gives "reprehended".

40 Ven Robert Bickerdike, martyred at York in the summer of 1586; the exact date is uncertain.

41 York & Ainsty Q.S. Bk. iv (23rd July 1585).

42 Mrs Anne Tesh was acquitted at the same Assizes on a charge of harbouring priests, being merely fined a hundred marks for hearing Mass. (Morris, "Troubles", iii, 90 (the "Yorkshire recusant's relation"), from Fr Grene's MS. E, p. 186.) It was unusual for a sixteenth century jury to ignore the judge's direction in this way; evidently for a time after Margaret Clitherow's appalling death the city juries were loath to convict.

apparently on the same charges. Martin Birkhead, who held the very important post of Attorney to the Council, "said he would frame a new indictment against him, whereupon they removed him to the Castle (for until that time he was prisoner on the bridge). Being arraigned again in the Castle", at the Assizes for the County, before the same judges, Clench and Rodes, "and indicted upon the same articles whereof he was acquitted before, Rodes said to the jury, 'This traitor had too favourable and too scrupulous a jury in the town, but I trust you will look otherwise to him, being the Queen's enemy and a notorious traitor'. Upon which daily Rodes's and Birkhead's earnest pursuit, the jury forthwith found him guilty of high treason". Questioned about this case afterwards, Rodes "in great dudgeon" said, "We are not sent hither to scan and dispute the statutes, but to give judgment against offenders".[43] Rodes is the key figure here, for whereas Clench was his fellow-judge, Birkhead was an officer of the Council.[44]

Martin Birkhead must have played a large part in the deaths of Fr Hugh Taylor and Marmaduke Bowes at York in November 1585, as prosecutor before the Council,[45] and it was perhaps he who framed Margaret Clitherow's indictment. Marmaduke Bowes was the first, and Margaret Clitherow the second, victim of the clause in the Act of 1585[46] that made it felony for any person to harbour or maintain any priest ordained "in the parts beyond the seas" since 1559. (Margaret was, too, the first woman to die for the Faith in England under Elizabeth I.) It is instructive to observe that Martin Birkhead was one of the Members for Ripon in the Parliament that passed the notorious Act; having helped to create the crime he returned to York to put the Act into effect.

The Council's (non-legal) Secretary, Henry Cheke, who also took part in Margaret's arraignment, and urged the judge to let her die, had represented Boroughbridge in this Parliament. He was the eldest son of Cecil's old Cambridge tutor, Sir John Cheke, whose sister had been Cecil's first wife; his father, one of the first generation of Protestant scholars, had been tutor to Edward VI, and also to the Earl of Huntingdon, who had shared the young King's studies and his opinions.[47]

Less is known of the other two legal members of the Council who examined Margaret and attended her arraignment, Lawrence Meeres[48] and

[43] Morris, "Troubles", iii, 91, from Fr Grene's MS. E, pp. 187-8.

[44] The following October, Rodes took part in the trial of Mary Queen of Scots at Fotheringay.

[45] The Council had also condemned Fr James Thompson (executed 28th November 1582) and Fr Richard Thirkeld (29th May 1583), and were to condemn many more Catholics before the court, too, fell victim to Parliamentary displeasure.

[46] An Act against Jesuits, seminary priests and such other like disobedient persons (27 Eliz I, c 2).

[47] *D.N.B.*; J. Strype, "The Life of the learned Sir John Cheke" (1821), 140-5; Cross, "Puritan Earl", 9-11.

[48] See Harleian Soc. li, "Lincolnshire pedigrees" (1903), 663, and further references in Morris, "Troubles", iii. It was probably Lawrence Meeres's elder brother Anthony who fled abroad in 1556 rather than face Cardinal Pole's visitation of the diocese of Lincoln. (Strype, "Ecclesiastical memorials", III, pt. 2 (1822), 390.)

Ralph Hurlestone.[49] Meeres, like Rodes, had been a Reader at Gray's Inn, and he became Recorder of Berwick. (It may not be without significance that Rodes had been a contemporary at Gray's Inn of the infamous Richard Topcliffe.)[50]

The Vice-President, too, William, second Baron Evers or Eure, has left comparatively little mark on the sands of time, no doubt because all the records of the Council of the North have been missing for 300 years. He had no legal qualifications, but was a zealous hunter of Catholics, and had arrested Fr Hugh Taylor himself after searching a Catholic house.[51] (He also sent the obstreperous Lord Mayor, Robert Cripling, to prison without waiting for the Privy Council's order to that effect.[52]) It will be seen later that the final responsibility for Margaret's death was probably his.

The organization of the Council of the North having been imposed upon the existing pattern of the Assizes, all members of the Council were named in the single commission read at the opening of the Assizes, and all had the right to sit on the Bench with the judges. On the other hand, the Assize judges for the time being were *ex officio* members of the Council.[53]

The Council sat first as a civil, then as a criminal, court, four times a year, with power to try every type of case, including treason[54] and felony, whereas the Assizes were held only twice a year, in Lent and at Lammas (late July-early August). The Council could have arraigned Margaret Clitherow themselves, but would not have left her to await trial at their next session, when the Assizes were due to start within a few days; they did, however, take the preliminary hearing.

So the scene was set for the opening of the York Lent Assizes, 1586. In the morning, while Margaret "made herself ready", the two judges entered the Common Hall[55] in Coney Street, preceded by Henry May as Lord Mayor, with the swordbearer and macebearer and the Lord Mayor's six "esquires", and accompanied by the two Sheriffs and their four sergeants and many ceremonial officers and halberdiers. The morning was occupied with traditional ceremonies and the reading of the Commission. Dinner

[49] See Harleian Soc. lix, "Visitation of Cheshire, 1613" (1909), and further references in Morris, "Troubles", iii. Possibly he is the Randal Hurlestone, a disappointed lessee of the collegiate lands of Manchester, who in 1581 charged the Bishop of Chester with withholding funds. (Strype, "The Life and acts of Matthew Parker", iii (1831), 137; J. R. Dasent, "Acts of the Privy Council", n.s. xii (1896), 346; "The Episcopal see of Manchester: the foundations of Manchester", i (1848), 114-5.)

[50] J. Foster, "The Register of admissions to Gray's Inn, 1521-1889" (1889), 14, 20.

[51] Morris, "Troubles", iii, 84, from Fr Grene's MS. E, p. 181.

[52] Ho. Bk. xxvii, f. 215v; Dasent, *A.P.C.*, n.s. xi (1895), 377.

[53] Reid, "King's Council", 493.

[54] Id., 283. M. C. Cross, in "Recusant History", viii, no. 3, 141, is incorrect in stating that the Council had no power to try treason cases, and in "The Puritan Earl", 161, 184, she whittles down their powers. They had the full range of power of both the common law courts and the prerogative courts. (See Reid, "King's Council", 149, 262, 285, 296, etc.)

[55] The modern Guildhall has been rebuilt as a replica of the ancient Guild or Common Hall, destroyed during the Second World War.

at the Lord Mayor's house,[56] Margaret's old home, was over by one o'clock, and soon the cry went up, "Call Margaret Clitherow".

She came, wearing her big hat, token of her status as a merchant's wife, and a cause of offence in itself. She came looking as unlike a figure in stained glass as any one of us might. She came, "a woman, and not skilful in the temporal laws", but one of great intelligence, upon which alone, humanly speaking, she had to rely, in an age when the defendant on a criminal charge was not allowed counsel. She looked around the familiar and crowded Common Hall, at the well-known faces of the Councillors, of Sergeant Rodes flaunting his new judge's robes, of her stepfather in a place of honour, with the two Sheriffs who had arrested her, and among them all she saw a face that was unfamiliar, the face of the senior judge, John Clench.

Clench had roots in Yorkshire, for his grandfather, also John Clench, had belonged to Leeds. He had been admitted to Lincoln's Inn under Mary, and so was a younger man than Rodes, who had entered Gray's Inn in 1549. In 1574 Clench had been appointed as "town counsel" to the Borough of Ipswich, and later became its first Recorder. He was made a judge in 1581, as Baron of the Exchequer, and in 1584 became a Justice of the Queen's Bench. His monument in Holbrook Church, Suffolk, and his portrait, both show him as a sad and serious-looking man.[57] To rise so high in the legal profession is not a happy lot.

Although Fr Mush reports that Rodes, arguing for Margaret's death, told his fellow-judge, "Brother Clench, you are too merciful in these causes",[58] Clench had in fact, as Assize judge on the Northern circuit, already condemned to death several of Margaret Clitherow's confessors, Fathers Lacey and Kirkman, and probably Fr Hart as well. Yet he was slow to condemn and inclined to hesitate, whether from weakness, compassion, or the common lawyer's distaste for the creation of new crimes by statute, it is impossible to tell.[59]

When Judge Clench encountered, in March 1586, the provincial butcher's wife whose fame was to outlast his own by many centuries, he had been a judge for five years. It was nearly 30 years since he had heard the Collect of the Mass for a Female Martyr, which began, "*Deus, qui inter cetera potentiae tuae miracula etiam in sexu fragili victoriam martyrii contulisti . . .*" "O God, among the wonders of your power you have granted even to the weaker sex the triumph of martyrdom . . ."

Heaven turned its starlight eyes upon the scene as well.

[56] The "Lord Mayor's place", where the judges dined, was his own house; there was no Mansion House until 1726.

[57] *D.N.B.*; Foss, "Judges of England"; R. L. Cross, "Justice in Ipswich", published by Ipswich Corporation (1968), 14-5; W. A. Copinger, "The Manors of Suffolk", vi (1910), 65-6.

[58] "True Report", MS. G, f. 56v has "you are so merciful in these causes"; this is not a sixteenth century idiom. MS. A has "you are too merciful in these cases".

[59] Fr Richard Holtby, S.J., gives us a glimpse of Judge Clench at the Lammas Assizes, 1592, at Newcastle, trying in the company of the Earl of Huntingdon, the Dean of Durham, the Mayor of Newcastle and others the case of Fathers Lampton and Waterson. When the jury demanded the statute book "that they might proceed the more assuredly", it was not Clench but his junior, Sergeant Snagge, who told them that "the law was clear enough". (Morris, "Troubles", iii, 223.)

The only record of the legal proceedings is that given in Fr Mush's "True Report of the Life and Martyrdom of Mrs Margaret Clitherow", since the Assize records for the Northern circuit survive only from 1607. The account of Margaret's arraignment, pieced together by Fr Mush[60] from the reports of various people who were present, stands not only as a vivid narrative but as a classic example of the procedure described 200 years later by Blackstone as applied in cases of felony in which the accused refused to plead. Here may be found the centuries-old *trina admonitio,* the triple warning—in actual fact, one way or another, Judge Clench warned, even pleaded with Margaret Clitherow no less than seven times—also the "respite of a few hours", in this case a whole night. It cannot be said that the law was administered harshly by Judge Clench; it was the law itself that was brutal and inhumane. Palgrave, who cites Lingard's account of Margaret Clitherow's death as evidence that "this execution was attended with fearful horror", says that "the subject is one, amongst others, which shews that the English law . . . must forfeit many of the enconiums of humanity, which have so long passed current amongst us".[61]

The following account of Margaret's arraignment, here printed for the first time, differs in some small respects from that printed by Fr Morris.[62] It is taken from a newly discovered, late sixteenth or early seventeenth century manuscript of chapters XVIII-XX of Fr Mush's "True Report" which was bought in York in the last century and has been in the Minster Library since 1890;[63] this has proved to be so close to the manuscript at Oscott (in the Peter Mowle collection, complete by 1595), that it is possible that one was copied from the other. I have modernised the spelling and punctuation and corrected a few obvious errors.[64]

[60] Or perhaps by that detached, intelligent and courageous prisoner, the draper William Hutton, the "Prisoner in Ousebridge Kidcote", who used to write Mrs Vavasour's letters for her. (Morris, "Troubles", iii, 299-315.)

[61] Sir F. Palgrave, "The Rise and progress of the English Commonwealth", ii (1832), cxci. Palgrave is the authority on this penalty.

[62] "Troubles", iii, 360-440.

[63] Add. MS. 151. (This volume contains other, unpublished, Catholic material.)

[64] I have used the text of the same MS., G, in quotations from chapters XVIII-XX of the "True Report" throughout this article.

The following letters were used, in Appendix I of my "Margaret Clitherow", to distinguish the manuscripts of the "True Report":

A. Late sixteenth century, published, but not in its entirety, by Fr Morris. (Formerly in the possession of the Middleton family, and now of the R.C. diocese of Middlesbrough.)

B. Seventeenth century transcript. (Bar Convent, York.) Published with alterations and omissions, by William Nicholson in his "Life and death of Margaret Clitherow, the martyr of York" [1849]. Nicholson's statements about his "faithful transcript" are most confusing, and his (erroneous) remark that "the original of the present manuscript is in the possession of . . . Peter Middleton, Esq.", meaning that B was copied from A, misled me into thinking that Mr Middleton might have possessed a second MS. Nicholson nowhere states that the Bar Convent MS. is his source; we owe this information to Fr Morris ("Troubles", iii, 357-8).

C. Eighteenth century transcript. (County Record Office, Beverley.)

D. Pre-1595, chapters XVIII-XX. (St Mary's College, Oscott.)

E. Transcript among the Alban Butler MSS., Archbishop's House, Birmingham. (Missing.)

(*Continued on next page*)

The 14th day of March, being Monday, after dinner, the prisoner was brought from the Castle to the Common Hall in York, before the two judges, Mr Clench and Mr Rodes, divers of the Council above named[65] *sitting with them on the Bench.*

Her indictment was read, that she had harboured and maintained Jesuits and seminary priests, traitors to the Queen's Majesty's laws, and that she had heard Mass, and suchlike. Then Judge Clench stood up and said, "Margaret Clitherow, how say you? Are you guilty of this indictment or no?"

The prisoner about to answer, they commanded her to put off her hat, and then she said mildly,[66] *with a bold and smiling countenance, "I know no offence whereof I should confess myself guilty".*

The judge said, "Yes, you have offended the Queen's Majesty's laws forasmuch as you have harboured and maintained Jesuits and priests, enemies to her Majesty".

The prisoner answered, "I neither know nor have harboured any such persons. God defend I should harbour or maintain those which are not the Queen's friends".

The judge said, "How will you be tried?"

She answered, "Having made no offence, I need no trial".

They said, 'You have offended the statute, and therefore you must be tried", and often asked her how she would be tried.

The prisoner answered, "If you say I have offended, and that I must be tried, I will be tried by none but by God and your own consciences".

The judge said, "No, you cannot do so, for we sit here", quoth he, "to see justice and law, and therefore you must be tried by the country".[67]

The woman still appealed to God and their consciences. Then they brought forth two chalices, [and] divers pictures, and in mockery put two vestments and other church gear upon two lewd fellows' backs, and in derision the one began to pull and dally with the other, scoffing on the bench before the judges and Council, holding up singing breads, and said to the prisoner, "Behold thy gods in whom thou believest".

(*Continued from previous page*)

F. Early seventeenth century. (Vatican Library, Barberini Latini, Codex 3555.)

To these may now be added :

G. Late sixteenth-early seventeenth century, chapters XVIII-XX. (Very close to D.) (York Minster Library, Add. MS. 151.)

All the accounts of the trial are essentially the same; the only significant difference seems to be, "I thank God I may suffer any death for this good cause", not "I think I may suffer . . ." as given by Morris from A.

I take this opportunity to correct what is almost certainly an error in A, followed by Morris, who (p. 377) has "Some little imperfections reigned in her". MS. F, f. 6r has "Some little imperfections remained in her".

65 The Councillors had been listed (MS. G, f. 50r) as Lord Eure (Vice-President), Meeres, Hurlestone and Cheke.

66 MS. A. (MS. G has "boldly".)

67 The "country" was the jury, chosen from the defendant's own district.

They asked her how she liked these vestments.

The prisoner said, "I like them well if they were on their backs that know how to use them to God's honour, as they were made".

The Judge Clench stood up and asked her in whom she believed.

"I believe," quoth she, "in God".

"In what God?" quoth the judge.

"I believe," quoth she, "in God the Father, God the Son, and God the Holy Ghost; in these Three Persons and One God I fully believe, and by the death, passion and mercy[68] *of Christ Jesus I must be saved".*

The judge said, "You say well", and said no more.

After a while the judge said to her again, "Margaret Clitherow, how say you yet? Are you contented to be tried by God and the country?"

The prisoner answered, "No".

The judge said, "Good woman, consider well what you do; if you refuse to be tried by the country, you make yourself guilty and accessory to your own death, for we cannot try you but by order of law. You need not fear this kind of trial, for I think the country cannot find you guilty upon the slender evidence of one child".

But she still refused. They asked her further if her husband were not privy to her doings in keeping priests.

[She answered,] "No, God knoweth I could never get my husband in that good case that he were worthy to know or come in place where they were to serve God".

The judge said, "We must proceed by law against you, which will condemn you to a sharp death for want of trial".

She said cheerfully, "God's will be done. I thank God I may suffer any death for this good cause".

Some of them said, seeing her joy, that she was mad, and possessed with a smiling spirit. Mr Rodes also railed against her, and on the Catholic faith and priests, so did the other Councillors also, and Mr Hurlestone openly before them said, "It is not for religion that thou harbourest priests, but for whoredom", and furiously uttered suchlike slanders, sitting on the Bench; as Mr Cheke and Mr Meeres also reported after she was taken, that priest[s] resorted to none but such as were comely and beautiful young women, to satisfy their lusts.

The Bench brake up that night without pronouncing sentence against her, and she was brought from the Hall with a great troop of men and halberts, with a most cheerful countenance, dealing silver on both sides the streets, to John Trewe's house on the bridge, where she was shut up in a close parlour.

The same night came to the prisoner as she was praying upon her knees, Parson Wigginton, a Puritan preacher of notorious qualities, and ministered talk unto her, as their fashion is. The woman regarded him

[68] MS. A has "passion, death and merits".

very little, and desired him not to trouble her, "for your fruits," quoth she, "are correspondent to your doctrine". And so he departed. All that night she remained in that parlour.

The next day following, about eight of the clock, she was carried again to the Common Hall, and standing at the bar, the judge said unto her, "Margaret Clitherow, how say you yet? Yesternight we passed you over without judgment, which we might have pronounced against you if we would; we did it not, hoping you would be something more conformable and put yourself to the country, for otherwise you must needs have the law. We see nothing why you should refuse; here is but small witness against you, and the country will consider your cause".

"Indeed," saith the prisoner, "I think you have no witness against me but children, which with an apple and a rod you may cause to say what you will".

They said, "It is plain that you have had priests in your house by these things which are found".

The prisoner answered and said, "As for good Catholic priests, I know no cause why I should refuse them as long as I live. They come only to do me and others good".

Mr Rodes, Hurlestone, and others said they were all traitors, rascals, and deceivers of the Queen's subjects.

The woman said, 'God forgive you. You would not speak so of them if you knew them".

They said, "You would detest them yourself if you knew their treasons and wickedness as we know them".

The prisoner said, "I know them for virtuous men, sent by God only to save our souls".

These speeches she uttered very boldly and with great modesty.

Then Judge Clench said, "What say you? Will you put yourself to the country, yea or no?"

The woman said, "I see no cause why I should in this matter do so. I refer my cause to God and your conscience. Do what you think good".

All the people about her condemned her of great obstinacy and folly, that she would not yield, and on every hand persuaded her to refer herself to the country, which could not find her guilty, as they said, upon such slender evidence; but she would not.

"Well, then," said the judge, "we must pronounce sentence against you. Mercy lieth in our hands, and in the country's also, if you put your trial to them; otherwise you must have the law".

The Puritan preacher Wigginton stood up and called to the judge and Bench, saying, "My lord, give me leave to speak". But the great murmuring and noise in the Hall would not suffer him to be heard; yet he continued still calling that he might speak, and the judge commanded silence to hear him.

Then he said, "My lord, take heed what you do. You sit here to do justice; this woman's case is touching life and death. You ought not, either by God's law or man's, to judge her to die, upon this slender witness of a boy, no, nor unless you have two or three substantial men of very good credit to give evidence against her. Therefore look to it, my lord, this gear goeth sore".[69]

The judge answered, "I may do it by law".

"By what law?" quoth Wigginton.

"By the Queen's law," saith the judge.

"It may well be," quoth Wigginton, "but you cannot do it by God's law", and said no more.

The judge, yet desirous to shift the thorn out of his own conscience into the country's, and falsely thinking that if the jury found her guilty his hands should be clean from her blood, said again, "Good woman, I pray you put yourself unto the country. Here is no evidence but a boy against you, and whatsoever they do, yet we may show mercy afterward".

The woman[70] *still refused it.*

Then Rodes said, "Why stand you all the day about this naughty, wilful woman? Let us dispatch her".

Then the judge said, "If you will not put your cause to the country, this must be your judgment. You must return from whence you came, and there, in the lowest part of the prison, be stripped naked, laid on your back next to the ground, and as much weight laid upon you as you are able to bear, and so continue three days without any food except a little barley bread and puddle water, and the third day to be pressed to death, your hands and feet tied to posts, and a sharp stone under your back".

The woman, standing without any fear or change of countenance, mildly said, "If this judgment be according to your conscience, I pray God send you a better judgment before Him.[71] *Yet I thank God heartily for this".*

"Nay," saith the judge, "I do it according to law, and I tell you this must be your judgment unless you put yourself to be tried by the country. Consider, if you have husband and children[72] *to care for; cast not yourself away".*

She said, "I would to God both my husband and children might suffer death with me for this good cause".

[69] i.e., This is a serious matter.

[70] MS. G : "The woman she . . ."

[71] MS. A. (MS. G has "God".)

[72] Margaret Clitherow had at least four children. (See my "Margaret Clitherow", App. III.) William and Thomas Clitherow, who have been supposed to be her sons, were the sons of John Clitherow by his first wife Matilda Mudd; both were converts. (William became a priest and Thomas died in prison for the Faith.) Contrary to popular belief, no son of Margaret's became a priest; her son Henry tried his vocation in two or three different orders and died sadly, "*mente motus*", and presumably still young. Her daughter Anne became an Augustinian Canoness Regular of the Lateran at St Ursula's, Louvain. The identity of the other children is uncertain.

77

Perſecutiones aduerſus Catholicos à Proteſtantibus Caluiniſtis excitæ in Anglia.

Et tua femineum commendat gloria ſexum,
Dura nec in ſummis animo demiſſa virago
Supplicijs, tenerámque tui non pondera molem
Corporis, iniecti non turbauere molares:
Quin, ait, his totos membris imponite montes,
Spiritus innocua tranſcendet ad aſtra ruina.

The martyrdom of St Margaret Clitherow, as portrayed the year after her death by the martyrologist Richard Verstegan in his *Theatrum crudelitatum haereticorum nostri temporis*, published in Antwerp in 1587.

The letters indicate, A, Margaret Clitherow; B, Thomas Bell, suspended by his feet in York Castle for days at a time; C, entrance to an underground cell; D, imprisoned Catholics.

The verse tribute may perhaps not unfittingly be rendered thus :

"In thee, also, the female sex is praised.
Who, anguish past, to heights of heaven is raised.
Whose courage failed not, harshest threats to hear,
Nor shrank thy flesh the greatest weights to bear.
Nay, heavier loads put on me yet, she said,
Till freed, her soul its ruined mansion fled."

(*Photograph by courtesy of the John Rylands Library, Manchester.*)

Upon which words the heretics reported after, that she would have hanged her husband and children if she could.

After this sentence pronounced, the judge asked her once again, "How yet, Margaret Clitherow? Are you contented to put yourself upon the trial of the country? Although we have given sentence against you according to law, yet will we show mercy, if you will anything help yourself".

Then she lifted up her eyes and hands towards heaven and said, with a cheerful countenance, "God be thanked, all that he shall send me shall be welcome. I am not worthy so good a death as this is. I have deserved death, I must needs confess, for mine offences to God, but not for anything I am accused of".

Then the judge bade the sheriffs look unto her, who pinioned her arms with a cord. Then she looked first at the one arm[73] *and after at the other, smiling to herself, and joyful to be bound for Christ's sake; at which they all raged against her.*

The sheriffs brought her with halberts to the bridge again, where she was shut in a parlour with one Yoward, a prisoner, and his wife, two evil disposed heretics. Some of the Council sent to mark her countenance as she was carried forth of the Hall, but she departed from thence through the street with a joyful countenance, whereat[74] *some said, "It must needs be that she receiveth comfort from the Holy Ghost", for all were astonished to see her of so good cheer. Some said it was not so, but that she was possessed with a merry devil, and that she sought her own death.*

The two sheriffs of York brought her betwixt them, she dealing money on both sides as she could, being pinioned.

After this none was permitted to speak with her but ministers and such as were appointed by the Council.

Margaret Clitherow had evaded trial by a human judge, but her trial in the divine crucible was about to begin. For another ten days her constancy was tested by a continuous stream of visitors, and the alternatives presented to her now were no longer, to plead or not to plead, but quite simply, apostasy or death. Even a last meeting with her husband was denied her unless she would "yield unto something", go to church or hear a sermon, but she replied, "God's will be done, for I will not offend God and my conscience to speak with him"; so she did not see him again. Instead, "her hat she sent before she died unto her husband in token of her loving duty towards him, honouring him as her head".

Her actions became increasingly symbolic, and therefore capable of direct interpretation without the frequent ambiguities of language. Finally, it was as a bride that she stepped out of prison for the short journey "to her marriage, as she called it". "*For the marriage of the Lamb is come: and his wife hath prepared herself.*"

[73] MS. A. (MS. G omits "arm".)

[74] MS. A. (MS. G has "whereas".)

It is unfortunate, in the absence of the official records of the arraignment, that Fr Mush's account should be vague just where it most needed to be precise. Without the exact terms of the indictment, which in law had to have "a precise and sufficient certainty",[75] it is impossible to judge how far the entire proceedings were illegal.

Fr Mush had the best of reasons to be vague; a specifically-worded indictment would have included his own name, revealed by the Flemish boy as that of the priest Margaret had harboured, for he had actually been in her house when the Sheriffs arrived to search it. If the indictment did include his name, then the arraignment was illegal, for he was still at liberty,[76] and "by the old common law the accessory could not be arraigned till the principal was attainted".[77] It is, however, difficult to believe that Judge Clench, whom Queen Elizabeth called her "good judge" and who, on Fr Mush's own showing, was deeply concerned at Margaret's plight, would have allowed the indictment to stand if its wording had not been adequate. He said himself to Margaret, "It is plain that you have had priests in your house by these things which are found",[78] and possibly, with the addition of the words, "whose names are unknown", the indictment was just sufficient to bring her into court.

The judge himself, as a common lawyer, was in something of a dilemma. The charge was so recent an innovation of statute law that this was perhaps the first indictment for "harbouring" that had come before him. The making of harbouring priests into a felony was itself anomalous, for to be a priest ordained overseas and returned to England had been made treason, and accessories in treason cases should have been treated as traitors too.[79] (This had, in fact, been the provision of the original Bill, but the House of Lords, with more clemency than legal expertise, had reduced the charge of harbouring to felony.[80])

The judge, however, had to administer the law as it stood. The record of Margaret's arraignment, if it survived, would stop short with the indictment; by her simple refusal to plead, her giving "answers foreign to the purpose, or with such matter as is not allowable",[81] she technically "stood mute". The 24 members of the Grand Jury, who would have found the indictment a "true bill" upon which trial could proceed, were left with no part to play. It was an older law that was administered.

75 Blackstone, "Commentaries", iv, 301.

76 Fr Francis Ingleby, the other priest named by the Flemish boy, was probably still at liberty also, for he was not tried until Whitsun, by the Council. (Morris, "Troubles", iii, 87, from Fr Grene's MS E, p. 184.)

77 Blackstone, "Commentaries", iv, 318.

78 It is, however, clear from various references in the "True Report" that "these things" were actually found in "the next neighbour's house"; this would have been revealed in the evidence had Margaret allowed the trial to start.

79 G. Jacob, "A New law dictionary" (1756), headings Accessary, Treason.

80 Sir J. E. Neale, "Elizabeth I and her Parliaments, 1584-1601" (1957), 38. The sentence was thereby reduced from hanging, drawing and quartering, for a man, or drawing and burning, for a woman, to simple hanging; but the evidence of one witness was sufficient to obtain a verdict, whereas at least two witnesses were required for treason.

81 Blackstone, "Commentaries", iv, 319.

Why did Margaret Clitherow refuse to plead? Lingard, writing before any version of the "True Report", other than the "Abstract" of 1619, had been published, stated that she refused to plead guilty because she knew that no sufficient proof could be brought against her, or not guilty, because she deemed such a plea equivalent to a falsehood.[82] This cannot be true, for she had pleaded "Not guilty" to the charge of non-attendance at her parish church, when tried at Quarter Sessions in 1583.[83] She was familiar with the procedure of arraignment and understood the formal nature of the plea.

Fr Mush repeats the reasons Margaret gave to "a very friend", Mrs Vavasour, in the same prison with her on Ouse Bridge: "Alas! if I should have put myself to the country, evidence must needs have come against me, which I know none could give but only my children and servants. And it would have been more grievous to me than a thousand death[s], if I should have seen any of them brought forth before me to give evidence against me. Secondly, I knew well that the country must needs have found me guilty to please the Council, which earnestly seek my blood; and then all they had been accessory to my death, and damnably offended God. I thought it therefore in the way of charity on my[84] part to hinder the country from such a sin; and since it must needs be done, to cause as few to do it as might be; and that was the judge himself".[85]

To take her second reason first, the root of it lay in her utter conviction that the Council was determined on her death. (Even before she was called to court, she expected to hang, and in fact a "messenger" had been sent to tell her that she would.) Without the records of the Council of the North, it is impossible to know how often Margaret had appeared before them. After her arrest on this occasion, she had "moved their fury vehemently against her" and they had uttered "cruel threats and railings". Fr Mush had warned her, after the passing of the Act, that she "must prepare her neck for the rope". The swift execution of Marmaduke Bowes, tried by the Council alone on a charge of harbouring, had shown that the Act was to be taken seriously, and in her own case, the fact that the Council permitted her execution showed how correct her instinct was. She did not hold out in the hope of receiving a reprieve; every word and action showed that she had rightly judged the chances to be nil. Before her arrest she had said, "They pick quarrels at me, and they will never cease until they have me again, but God's will be done". After her condemnation, she told the Councillors who visited her, "You have me now, do your will".

Judge Clench, having insisted that if she were with child he would not "for a thousand pounds" let her die, had eventually "referred all to the Council, and willed them to do their own discretion; and at his departure he commanded to stay the execution till Friday after . . . and then to do

[82] Fr T. A. McGoldrick, "Blessed Margaret Clitherow", 15, n 1, quoting from the 4th edition of Lingard's "History of England" (1837-9).

[83] York & Ainsty Q.S. Bk. iii (8th March 1583).

[84] MS. A has "in part".

[85] MS. A, f. 75r. (Morris, "Troubles", iii, 436.)

as they thought good, if in the meantime they heard not from him to the contrary".

The onus for the decision did, then, rest with the Council, and in the past they had reprieved without applying to, or even informing the Assize judges.[86]

One cannot know whether the Earl of Huntingdon was informed of what was going on; Fr Mush particularly says that at this period he was usually absent from the criminal trials.[87] If responsibility for the carrying out of the sentence is to be placed upon one man, it must be upon the Vice-President, Lord Eure, who had the same powers as the President in his absence.[88] The extraordinarily domestic nature of the tragedy is brought home by the fact that this man from 1569 to 1572 had had a house in Margaret's childhood parish of St Martin, Coney Street.[89] He must have known Margaret Middleton as a girl, for he and her stepfather were two of the wealthiest parishioners of St Martin's.

Margaret's first reason for refusing to plead was to prevent her children and servants from giving evidence against her. We need add nothing to her own statement here, except that her servants would be children too. Yet another motive for silence lay in the fact that the secret room and the "privy conveyance", or hiding-place, had been constructed not in Margaret's house, but her neighbour's. As soon as evidence was given this fact would be revealed and her neighbour would find himself or herself facing the same choice, of death or apostasy. The continental tradition of Margaret's martyrdom gives as the single reason for her refusal "to answer as they wished or to name anyone else" as her unwillingness "to be the cause of another's death or to bring him to the misfortune of such terrible sufferings and to give him occasion for the shipwreck of his faith".[90] Fr Mush, writing within three months of her death, did not dare to mention this neighbour, who would still be expecting arrest, and he recommended his readers to study Margaret's life rather "than curiously to know

[86] Reid, "King's Council", 340, n 1. In this case, in 1561, the Council had been told that they were exceeding their commission.

[87] Morris, "Troubles", iii, 83: "When they intend to make us away, the tyrant himself seldom of late hath sitten on the bench to condemn us, but some of his vice-presidents . . ." (Fr Grene's MS. E, p. 180.)

[88] Reid, "King's Council", 247.

[89] Assessments for the salary of the parish clerk of St Martin, Coney Street, 1570-2. (At present in York Minster Library.) Lord Eure appears in this parish again in 1585-6. (Churchwardens' Accounts, in Borthwick Institute.)

[90] Richard Verstegan, *Theatrum crudelitatum haereticorum nostri temporis* (1587), 76. "*Et cum ex voluntate eorum respondere nollet, nec quenquam nominare (ne alicui mortis esset causa, neve in tantas cruciatuum miserias traheret, ac naufragii in fide occasionem daret) morti admodum crudeli adiudicata est . . .*" This account is copied verbatim in the "*Concertatio ecclesiae catholicae in Anglia*" of Fr John Bridgewater, S.J. (Treves, 1588).

Bishop Challoner uses the traditions of both Bridgewater and Mush on this point: "She refused to plead, that she might not bring others into danger by her conviction, or be accessory to the jurymen's sins in condemning the innocent" ("Memoirs of missionary priests", ed. by Fr J. H. Pollen, S.J. (1924), 119.)

in what sort she obtained . . . a glorious[90a] death". Curiosity on this point might still endanger the person who owed his life to Margaret's silence.[91]

To those who urged her to apostasy and accused her of despair and of indifference to her family, Margaret had this to say:[92] "You charge me wrong. I die[93] not desperately nor willingly procure mine own death, for being not found guilty of such crimes as were laid against me, and yet condemned to die, I could not but rejoice, my cause being God's quarrel. Neither did I fear the terror of the sentence of death, but was ashamed on their behalfs to hear such shameful words uttered in that audience, as to strip me naked and to press[94] me to death amongst men, which methought for womanhood sake[95] they might have concealed. As for my husband, know you that I love him next unto God in this world, and I have a care over my children as a mother ought to have. I trust I have done my duty unto them, to bring them up in the fear of God, and so I trust I am dis-

[90a] "True Report", MS. A, f. 46r. (Morris gives "virtuous".)

[91] John Clitherow was a tenant of the Dean and Chapter of York, and the history of his house may be traced in their archives, until it can be identified, allowing for the re-numbering of the houses, with the present nos. 10-11 Shambles. These houses, made into two by 1731, and refronted in brick by 1847 (Dean & Chapter muniments, E 4 c) are now of two storeys only. They are on the opposite side of the street from the shrine at no. 35 Shambles. A house on the south side of Little Shambles (probably not no. 3, "traditionally" connected with Margaret Clitherow, but no. 2), was also leased to John Clitherow; in 1628 it is described as a stable. (Dean & Chapter muniments, W d, f. 84 v.) This house was among those demolished of recent years.

It is only fair to mention that R. H. Skaife claimed to have found John Clitherow occupying a house on the corner of Shambles and Pavement; he gives no source, and it has not yet been traced. This house, however, would be in St Crux parish, not Christ Church, the parish in which John Clitherow was living by 1572 (Ho. Bk. xxv, f. 38r).

The tenants of the Dean and Chapter and their rents are entered in the Fabric Rolls year after year in exactly the same order, and this seems to indicate the order in which the houses stand in the street. (The name of John Clitherow appears absolutely regularly from 1569 (E 3/51) to 1639 (E 3/64)—the occupier by then was the grandson of Margaret's husband—always third in the list, paying a rent of 16s.) From 1576 (E 3/54) down to at least 1587 (E 3/61), William Calverd, another butcher, is listed next to John Clitherow, on the north.

After the death of John Clitherow's sister Mary in 1571, administration of her goods was granted (15th Nov. 1572) to her brother Edmund together with William "Caverd" and Millicent Caverd alias Clitheroo, her sister. Millicent Calvert was still alive in November 1603 when probate of her husband's will was granted to her. (On 21st June 1573 another William Calverte married another, unidentified, member of the Clitherow family, Alice "Clitherall", at St Crux Church.)

If Margaret Clitherow died to protect her husband's sister, his apparent failure to act is more easily explained. But Millicent Calvert is not known as a recusant, and the "next neighbour's house" may equally well have been Humphrey Smith's, adjoining John Clitherow's on the south (E 3/60-1), or it may have lain in Colliergate, backing on to the Clitherows'.

On the other hand, Millicent Calvert, Margaret's sister-in-law, is perhaps to be identified with "the sister of Mrs Clitherow" whose acquaintance was made by the boy John Jackson in York about the year 1593. "*Alteram cognovi feminam prope nos habitantem, quae soror fuit dominae Clytherow, devotissimam catholicam . . .*" (Catholic Record Society, liv, "The *Responsa Scholarum* of the English College, Rome. Pt. I, 1598-1621" (1962), 124, 126.)

[92] MS. G.

[93] MS. A. (MS. G has "did".)

[94] MS. A. (MS. G has "and oppress".)

[95] MS. A. (MS. G omits "sake".)

charged of them. And for this cause I am willing to offer them freely to God that sent me them, rather than I will yield one jot from my faith. I confess death is fearful and flesh is frail, yet I mind by God's assistance to spend my blood in this faith as willingly as ever I put my pap in my child's mouth, and desire not to have my death deferred".

After that declaration, it is strange to find that one of the modern, even one of the official,[96] explanations of her refusal to plead is a desire to save her property from forfeiture for her children's sake. Fr Mush particularly mentions Margaret's attitude to wealth and to her children's inheritance: "For riches she desired none, but prayed God that her children might have virtuous and Catholic education, which only she wished to be their portions".[97] And on her husband's business losses she said, "God giveth, and he hath taken them away again; farewell they, for I will not be sorry for the loss of any temporal matters".[98]

The explanation is quite new, and does Margaret Clitherow a gross injustice, making her in effect the martyr not of God but of Mammon. Margaret admitted she was "not skilful in the temporal laws", and it is unlikely that she would know the legal consequences of her sentence.[99] It seems to have been very rarely carried out in York.[100]

The suggestion that Margaret had a maternal, but nevertheless a worldly, motive for refusing to plead, arises, I think, from Fr John Gerard's reference to the reason for the deferring of execution of the same sentence on Mrs Jane Wiseman in 1598. He says of the Privy Councillors, "What they were after was her property for the Queen. And had she been executed, this would have gone, not to the Queen, but to her son". But Fr Gerard, writing about the year 1609, says that Mrs Wiseman was following the example of Margaret Clitherow both in motive and action, and he gives Margaret's motive as "She knew that the jury were certain to declare her guilty in order to please the judge, and she wanted to spare their consciences. She knew they would be fully aware of the injustice".[101]

96 ". . . she refused to plead, in order to save her children's inheritance and the conscience of the jury." ("Forty Martyrs", 6.)

97 MS. A, f. 37r. (Morris, "Troubles", iii, 399, has "portion".)

98 Morris, id., 400.

99 As early as 1577 William Harrison, in his "Description of England", which appeared as part of Holinshed's "Chronicle", had described the punishment of pressing and declared that felons standing mute "commonly hold their peace, thereby to save their goods unto their wives and children, which if they were attainted, should be confiscated to the prince". But Margaret Clitherow's tastes in reading tended towards the New Testament, the "Imitation of Christ", and William Perin's "Spiritual Exercises", not to the works of Protestant historians, nor does it seem likely, from what we know of John Clitherow, that he would read this book aloud to his family.

100 The only other case known in York is that of Walter Calverley of Calverley, Esquire, who murdered two of his children and attempted to murder his wife, refused to plead at his arraignment, and was pressed to death at the Castle in 1605; this, Dr Whitaker thought, was "an act of reparation". (T. D. Whitaker, "Loidis and Elmete", ii (1816), 220.)

101 "John Gerard: the autobiography of an Elizabethan"; translated by Fr Philip Caraman, S.J. 2nd edn. (1956), 53.

No doubt it is easier to believe that Margaret had a concrete and material reason for her action, and one that normally motivated the choice of standing mute, but the suggestion depreciates immensely her spiritual worth and her supernatural outlook, and it should never have been made.

So much attention has been given to Margaret's refusal to plead that the significance of some of the words she actually uttered, "such matter as is not allowable", has been overlooked. She could equally well have avoided bringing others into "shipwreck" by maintaining an obstinate silence. Fr Mush says Margaret knew her cause "to be so just and godly that neither any human law could justly reprove it, nor any profane judge be competent by any pretence of equity to deal against her for her religious works and Christian duty".[102] In other words, she challenged the right of the state to make such laws and of the court to try her. She was in effect making the same point as St Thomas More, after his own condemnation 50 years earlier: "This Indictment is grounded upon an Act of Parliament directly repugnant to the laws of God and his Holy Church . . .; it is therefore in law, amongst Christian men, insufficient to charge any Christian man".[103]

The cult of St Thomas More, already part of the recusant tradition, must lie behind Margaret's attitude.[104]

Margaret's execution had the curious result of uniting intellectually two men who were poles apart, Fr John Mush and Giles Wigginton. It sent Fr Mush to the law books, to Stanford's "Pleas of the Crown"[105] and to the Statute of Westminster of 1275 which first introduced the practice of "*prison forte et dure*" as a means of dealing with "*les felons escriez*", "notorious felons and which openly be of evil name"[106] who refused trial when arraigned; they were to be thrown into "strong and hard Imprisonment".[107] Here they might gradually starve to death. (The practice of loading such prisoners with weights was introduced some time between 1357 and 1407; the sharp stone was intended to bring a merciful and swift release. Daines Barrington[108] supposes that the purpose of the innovation "arose from the anxiety of the Justices of gaol delivery to leave the assize town as soon as they could".[109])

102 Morris, "Troubles", iii, 85. (Fr Grene's MS. E, p. 182.)

103 E. E. Reynolds, "The Trial of St Thomas More" (1964), 121.

104 Within two years of More's death another Catholic lawyer, Robert Aske, was saying that "all men much murmured at" the royal supremacy "and said it could not stand with God's law". (Fr Philip Hughes, "The Reformation in England", i (1952), 311.)

105 *Les Plees del Coron . . . composees per le tres reverend Iudge Monsieur Guilliaulme Staunforde . . .* Editions in 1560, 1567, 1574, 1583, etc. Fr Mush refers to this work in his anonymous "Relation". (Morris, "Troubles", iii, 86; Fr Grene's MS. E, p. 183.)

106 "The Statutes of the Realm", i (1810), 29.

107 The Statute adds: "*Mes ceo nest mie a entendre por prisons qui sunt pris pur legiere suspeciun*". "But this is not to be understood of such Prisoners as be taken [of] light suspicion."

108 D. Barrington, "Observations on the . . . statutes . . ." (1766).

109 Palgrave, "English Commonwealth", ii, cxc.

As Fr Mush points out, Margaret Clitherow was not a notorious delinquent; the exact degree of her contravention of the new law had still to be judged by the evidence. He pursues the subject in many unpublished pages, but misses the point, as Wigginton did, by supposing that the evidence of the Flemish boy was all that could be called, although the boy was evidently the only witness named in the documents before the judge. But examination of the original grounds for passing the sentence of *peine forte et dure* led him to the conclusion that in this case, at least, it was illegal.[110] (Blackstone, writing nearly 200 years later, when the sentence was still occasionally imposed in all its brutality, referred to "doubts that may be conceived of its legality".[111])

Giles Wigginton reached the same conclusion by a much simpler process, telling the judge, "You ought not, either by God's law or man's, to judge her to die . . ." Fr Mush was glad to avail himself of this unexpected witness for the defence, although he characteristically calls Wigginton "Balaam's ass"!

Fr Mush was theoretically correct in stating that the sentence was illegal, but it had become customary, and it was probably not more illegal in the case of Margaret Clitherow than in many another. (Women had never been exempted from it, and between 1607 and 1616, out of 32 persons who died in this way in the county of Middlesex, three were women.[112])

Judge Clench had probably never thought about the origin and history of the penalty. He missed a great opportunity to strike a blow for humanity when he passed the sentence, but the training of a common lawyer in the sixteenth century would not dispose him to this kind of gesture. Moreover, Fr Mush's own narrative shows that he passed the sentence *provisionally*, hoping that thereby Margaret would be frightened into pleading. This was a personal act of mercy; statutes and text-books make no allowance for his "Although we have given sentence against you according to law, yet will we show mercy, if you will anything help yourself". (The sentence could have been avoided by pleading, which was not an act of apostasy; later, its execution might have been avoided only by such an act.) Judge

110 The gist of ff. 76r-80v (mostly unpublished) of MS. A, also Morris, "Troubles", iii, 86 (Fr Grene's MS. E, p. 183), is an attack on Judge Clench for pronouncing the sentence upon a person who was not a "notorious felon", in the absence of sufficient evidence to find her Guilty if she had pleaded. The relevant passage in Staunforde, "*Les Plees del Coron*" (1567), 150, continues, "*per que lessa le Iuge pour le meliour satisfaction de ce statut, et le discharge de son duty: examiner le evidence que prova le prisonier culpable del fact, avant que il proceda al ce iugement du pain fort et dure*". Fr Mush is not fair to Judge Clench, who was satisfied that the "church stuff" found was sufficient evidence of Margaret's guilt. He did not learn that it had not actually been found in Margaret's house, for no witnesses were called; that was the chief reason for Margaret's refusal to plead. Moreover, her ambiguous statements about "good Catholic priests" could be taken as amounting to a confession.

111 Blackstone, "Commentaries", iv, 323. The penalty was not abolished until 1772 (12 Geo. III, c 20).

112 L. Radzinowicz, "A History of English criminal law and its administration from 1750", i (1948), 141, n 15, quoting J. C. Jeaffreson, "Middlesex county records".

Clench also gave Margaret a week's stay of execution in the hope that she would change her mind.

Both the judges and the Council had power to reprieve, but of them all it is clear that only Clench had the desire. He lacked the courage. Have we not all at some time sympathized with Pilate?

The penal legislation against Catholics, soon to be extended to Protestant nonconformists, in a political situation that had drifted into mortal crisis, led to a deeper study of the principles underlying Church and State. It fell to the real protagonists in the undeclared war of religion, the Puritans and the Catholics, to consider, with St Thomas More, the fundamental difference between Law and laws, and at this point to draw closer together in opposition to an erastian state.

Judge Clench, in passing the sentence in this case, may have lost the Queen's favour. Although he lived to be the oldest judge of his time, he never received a knighthood, nor, apparently, any other honour.[113] Elizabeth I, another woman caught in the toils of a man's world and fighting for her life,[114] was a feminist who must have been horrified when she heard that this sentence had been carried out, for religion, on a woman who was possibly pregnant. Later the execution of Margaret Ward was reported to have "offended the Queen's womanly and tender heart" for she had "recently pardoned two women who shewed outstanding constancy at their trial".[115] It was actually at the Queen's command that Mrs Wiseman was reprieved in 1598; she "rebuked the justices for cruelty and said she should not die".[116] So Jane Wiseman missed the crown of martyrdom, and Margaret Clitherow alone of the English and Welsh Martyrs was pressed to death.

Margaret Clitherow died, she said, "to God's glory and the advancement of his Catholic Church". Four hundred years later we can look back upon the history of the Church in England since her death, and see, if we will, a large area of it as directly resulting, not merely from the inspiration of her life[117] and death, but from the intercession of the Martyrs for their enemies and their descendants.

In 1626 Lord Eure, grandson of the Vice-President who allowed Margaret to die, is said to have been a "Convict Popish Recusant";[118] and his son Ralph Eure also died a recusant in 1640.[119]

113 *D.N.B.*

114 "I know no creature that breatheth whose life standeth hourly in more peril for it [i.e., religion] than mine own . . ." Queen Elizabeth I addressing Parliament, 29th March 1585. (Neale, "Parliaments, 1584-1601", 100.)

115 Fr L. E. Whatmore, "Blessed Margaret Ward", 15, translating from a Latin letter from Fr Henry Garnet, S.J., to Aquaviva, 29th Oct. 1588.

116 "John Gerard", 232.

117 The memory of Margaret's apostolic activities among the women of York may well have influenced Fr Mush years later when he was confessor and friend of Mary Ward, the first person to succeed in founding a truly active order for women. Anglican nuns in active orders may be considered part of the same complex tradition.

118 "The Parliamentary . . . history of England", vii (1751), 287-8.

119 G.E.C., "The Complete peerage" (new revised edn., 1910-59), heading Eure.

This is interesting, but the history of the descendants of Francis Rodes is startling. In 1626 his granddaughter Lennox Rodes married Marmaduke Langdale, who in 1658 became the first Baron Langdale of Holme on Spalding Moor. (Her mother, Frances, daughter of Marmaduke Constable of Wassand in the parish of Sigglesthorne, the third wife of Sir John Rodes, had previously, in 1585 at the church of St Michael le Belfrey, York, married that same Henry Cheke, who as Secretary to the Council of the North took part in Margaret's "trial". On his death she married the son of his friend Francis Rodes.)[120]

The first Baron Langdale is thought to have become a Catholic; his son certainly did, and through him the Catholic descendants of Francis Rodes may be traced, men and women who for generations founded and endowed missions, built and maintained chapels, paid double Land Tax, accepted their inability to hold public office or to sit in the House of Lords, sent their children abroad for their education and produced innumerable priests and nuns. To say that today they are as the sands of the sea would be an exaggeration, but their contribution towards "the advancement of the Catholic Church" in this country has been incalculable. They included the saintly layman, Charles Langdale, who fought in the Victorian Parliament for Catholic rights lost in the Elizabethan, and they include today the Duke of Norfolk.

Fr Mush, towards the end of his "True Report", asks Margaret's "murderers", "Can your own blood or your posterity's wash away the reproach of this same turpitude?"[121] We cannot keep Heaven's balance-sheet, but looking back from this distance of time, for ourselves we may judge that the rancour of the martyrdoms has been washed out, leaving only the joy. As Gregory Martin wrote in his preface to the Rheims New Testament: "We repine not in tribulation but ever love them that hate us, pitying their case and rejoicing in our own. For neither we see during this life how much good they do us, nor know how many of them shall be (as we heartily desire they all may be) saved: Our Lord and Saviour having paid the same price by His death for them and for us. Love all, therefore, pray for all".

120 Burke, "Extinct and dormant baronetcies", 449; J. Foster, "Pedigrees of the county families of Yorkshire", iii, North and East Riding (1874), Pedigree of Constable of Flambrough, etc.

G.E.C., "Complete peerage", heading Langdale, gives the mother of Lennox Rodes not as Frances but Catherine, confusing her, apparently, with her own mother, Catherine, daughter of John Holme of Paull Holme, who married (1) Marmaduke Constable, (2) John Moore of York. (In the registers of St Michael le Belfrey, Frances Constable appears as "daughter to Mr More, lawyer", i.e. step-daughter.)

121 MS. A, f. 84r (unpublished).

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All wills and other testamentary documents mentioned are in the Borthwick Institute of Historical Research, York. K.M.L.