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CHAPTER SIX

THE QUARREL WITH THE KING, 1163-1164

Almost immediately after Thomas's return from Tours he had a serious dispute with the king. On 1 July 1163 Henry, following his military expedition into south Wales, on which he had captured the rebel Rhys ap Gruffydd, held his court at Woodstock, near Oxford, one of his favourite hunting lodges. In attendance were Thomas and the bishops of London and Lincoln (Robert de Chesney); William the king's brother; Earl Reginald of Cornwall, his uncle; William, earl of Gloucester, his cousin, and various officials and barons, including the constable Richard de Humet, the co-justiciar Richard de Lucy, the chamberlain Henry fitzGerold, and Simon fitzPeter, one of the royal justices. This was a close 'family' group, to which Thomas himself had until recently belonged. Important visitors were, besides Rhys, Owain Gwynedd, prince of north Wales, and Malcolm IV, the Maiden, king of Scots. The three 'foreign' rulers were there to do homage to Henry and to his son and heir. Henry had become titular overlord of almost the whole of Britain.¹

With Henry's increasing responsibilities and greater involvement in administration went less extravagance. The removal of Thomas's 'bad' influence may also have contributed to the onset of the new mood. Henry began to believe that more money was going into the coffers of tax-gatherers than into his own: his subjects were being fleeced by a multitude of rapacious officials, both royal and ecclesiastical (he seems not to have interfered with baronial administration); and this he greatly resented. At Woodstock he turned his attention to the general land tax, danegeld, an unpopular levy, since Henry I's reign only intermittently imposed and last collected in 1161-2. In 1163 Henry proposed that a traditional supplementary payment by landowners to the sheriffs and their staffs, sheriff's aid, should be levied at 2s. the hide and paid, not to the sheriffs but into the royal treasury. It would seem that he was proposing to levy danegeld under a new name and at the same time reduce the sheriffs' profits. As Thomas knew full well,

Henry had taken an aid from sheriffs in connection with the Scutage of Toulouse. But an expedient which, as chancellor, he might easily have suggested or supported, as archbishop he resolutely opposed. Sheriff's aid, he said, was a free-will offering to deserving officials, not a royal rent or due. The argument got out of hand. Henry, swearing as usual *par les olz Deu*, by the eyes of God, ordered that these sums should be entered as shrieval debts on the Pipe Rolls. Thomas declared by those very same eyes that not a penny should be paid from his estates or church lands. Thomas carried the day, presumably because the king received little support from the other courtiers present; and Henry was furious.²

Although for Herbert of Bosham the break between king and archbishop was at the time an experience both shattering and completely unforeseen, much later he moralized that no stable personal relationships could be expected at the royal court, in a society rife with envy, falsity and intrigue. Yet Woodstock must have been the occasion when a long-developing rift could be concealed no longer. Henry had been patient. He had allowed Thomas to get a firm grip on Canterbury and establish his authority in the English church. This was a necessary stage in the royal schemes. But he must have been alarmed and saddened by some actions which he would have thought wayward and ungrateful. Thomas cannot be blamed for seeking to be an excellent archbishop. But he was impelled to extremes by two factors. One was his own character. He had obtained an independent power base at last. No more need he be a courtier, a slave to his master's caprice. His pride, even if now put to the service of the church, gave him a dangerous audacity. He had all the failings of the typical parvenu. The other factor was the need, because of his admitted episcopal deficiencies, to out-bishop the rest. He would give Gilbert Foliot no further opportunity for well-directed jibes. He would be *curialis* no longer. Herbert maintains that Thomas would have no clerk in his household who had sworn fealty to the king. He required undivided loyalty. When Henry's patience ran out there would be trouble.³

It is significant that, when Henry confiscated Henry of Essex's lands after his defeat in the ordeal by battle in April, he also retained the honour of Saltwood which the constable had held of the archbishop. One consequence, although possibly not until 1164-5, was the expulsion of the rector of Saltwood, Master Edward Grim, the archbishop's future biographer. After Woodstock Thomas, because of the king's ill-will, lost two important lawsuits. On 22 July Roger de Clare successfully pleaded before the 'Common Bench' at Westminster that he held Tonbridge in chief of the king, and, perhaps later, an inquest found that William de Ros was a royal vassal. Thomas was still trying to recover these three losses in 1170.⁴

Henry also prepared to collect the debts he thought he was owed for

making his chancellor an archbishop. What he required from Thomas was support for the reform of certain abuses he had discovered in the English church. He was particularly dissatisfied with ecclesiastical justice. A vital ingredient in the 'Gregorian' reform movement of the late eleventh century had been the elucidation and enforcement of the law of the church, canon law. And an important aspect of the twelfth-century Renaissance was the development, especially in the church, of organs of government. Law and government grew up together, each nourishing the other. By the middle of the twelfth century the bishop, through his household of clerks and his agents, archdeacons and rural deans, was governing his diocese, both the clergy and the laity, in a much more systematic and purposeful way than ever before. But hardly had he established his authority when he began to lose some of it through the development of appeals to the papal curia.⁵

This new feature was not the result of papal aggression. Although the papacy had become more active in government, and had been using general councils (like that at Tours in 1163) and legates, either resident in a province or dispatched from Rome, to establish and enforce the law and papal policies, it rarely initiated legal proceedings. The pope, as the successor to St Peter, the cornerstone of the whole church and the principal guardian of the law, was appealed to by a growing number of men. The clergy mainly sought the confirmation of their privileges; but judicial appeals from episcopal and archiepiscopal judgments, or in anticipation of them, became increasingly frequent. Even an English baron, Richard of Anstey, at this time (1158-63) pursued a matrimonial case to Rome. But few of these appeals to the papal curia were actually heard and determined at Rome. Usually they were remitted by the pope to be heard by local churchmen, skilled in the law, acting as judges-delegate. In Normandy, Arnulf of Lisieux often acted in this capacity; in England, Roger of York, Gilbert Foliot, Hilary of Chichester, William of Norwich, Bartholomew of Exeter, Roger of Worcester, Laurence, abbot of Westminster, and Baldwin, archdeacon of Totnes.

By 1164 Henry was nursing various grievances about ecclesiastical jurisdiction. The principle was generally acknowledged that the church had a monopoly of authority in cases 'pertaining to religion'. This meant that the whole body of the clergy, including men in minor orders, was subject, almost exclusively, to its own law in both civil and criminal matters. Clerks were to be disciplined for any kind of sin, offence or crime, and also were to litigate, according to canon law in ecclesiastical courts. In addition, the laity was answerable to the church for any infraction of the moral code. There were, of course, disputed areas; and in practice the king drew the boundaries. William I had done so at Lillebonne in 1080. He had both enjoined the Norman church to enforce its laws more stringently and also warned it off certain matters. That was typical. King and bishops worked

together to bolster up each other's authority. If there was a dispute it was over detail, and the king had the last say.⁶

Under Stephen's weak rule, however, there had occurred a considerable and unplanned expansion in the fields of ecclesiastical government and jurisdiction. The old framework had been shaken and was threatened with demolition. By 1164 Henry had become convinced that unlawful encroachment on royal preserves had occurred since the death of his grandfather, Henry 1. In particular he resented church courts hearing land cases. He also did not care for the way in which the church was exercising its jurisdiction. He shared with many bishops and frustrated litigants their dislike of appeals to the papacy. He was at one with the people in his belief that archdeacons and deans were exploiting sin as a way to wealth. And he had come to the conclusion, held also by some of his justiciars, that clerks in holy orders who were guilty of secular crimes were punished too leniently by church courts. These could pass quite severe sentences, including flogging and imprisonment. Their awards of pilgrimage, especially to Jerusalem, came close to outlawry and banishment. But they were debarred from ordering the spilling of blood, which excluded sentences of death and mutilation, as well as, by extension, blinding and branding. Henry probably also thought that the usual method of exculpation awarded to accused clerks – denial of the charge on oath, either unsupported or supported by a specified number of helpers – allowed many clerical criminals to escape punishment altogether. Pre-occupied with the problem of law and order in his dominions, he was anxious that more criminals should be convicted and then drastically punished.

Some of these matters seem to have been on his mind for a long time. In 1158 a burgess of Scarborough had complained to him at York of a rural dean and archdeacon who had taken 22s. from him for withdrawing a charge of adultery which they had brought against his wife. Richard de Lucy had pointed out that Henry's own enactment on the way in which an accusation should be brought had been flouted; and Henry was enraged when John of Canterbury, then treasurer of York, asserted that the king could not punish the dean because he was a clerk. Henry raised the matter with Theobald, but was prevented from pursuing it by more urgent business abroad. He did, however, declare that archdeacons and deans extorted more from the people than he himself drew in revenue; and at Falaise in 1159 he repeated his enactment about the procedure for accusations. More generally, he reissued the decrees of the Council of Lillebonne (1080) probably at Rouen on 25 February 1162.

In return, John of Salisbury in his *Entheticus* (1156-9) and *Policraticus* (1159), both dedicated to Thomas, had drawn attention to the danger to the church from evil ancient customs and to the attacks which tyrants, particularly King Stephen, had made on the jurisdictional privileges of the

clergy (*privilegium fori*). John, however, would confine the privileges to priests and exclude the mass of the clergy in inferior orders. Thus warning shots had been fired by both sides shortly before Thomas became archbishop. He was fully aware of the controversy. Indeed, in 1154-5 he must have been involved in the great dispute over how Archdeacon Osbert of York, accused of the murder of his master, Archbishop William, should be tried. Theobald, although claiming jurisdiction, had been forced to inform the pope, by a letter written by John of Salisbury, that in such cases, 'according to the custom of our nation', trial was in the royal court. But, after Stephen's death, Henry had allowed an ecclesiastical trial. What line, if any, Thomas took is, however, unknown.⁷

The problem of how to treat criminous clerks, that is to say priests and clerks defamed or accused of committing a serious secular crime, a felony, for which, in the case of the laity, the penalty was death or mutilation as well as confiscation of their land and chattels, was becoming tricky. Two contentious issues were emerging: how should they be tried and how punished? In the past bishops had not exerted themselves unduly to protect clerical malefactors haled before a secular tribunal. Of many cases they would have heard nothing; to some they may have turned a blind eye. When necessary, they stripped the criminal of his clerical orders and left him to his fate as a layman. Sometimes, especially when it was an ecclesiastical crime, such as heresy or rebellion against ecclesiastical authority, they actually invited or required the lay power to inflict a corporal punishment. By the second half of the twelfth century, however, some of these attitudes were less easy to maintain. The clergy was becoming more distinct as a separate order in society; theologians were inclining towards the view that holy orders were indelible; knowledge of canon law was spreading; and there was greater administrative efficiency. But, as soon as 'benefit of clergy' emerged as a useful plea for clerical criminals, it not only frustrated and irritated royal and other secular justiciars but also created the impression that the number of criminous clerks was growing fast.⁸

Thomas's biographers cite some cases in which the archbishop was involved and which came to the king's angry notice. According to William fitzStephen, Thomas refused to allow a clerk of Worcester, who had killed a respectable man in order to rape his daughter, to be tried in a lay court and had him put in the bishop's prison so that the royal judges could not get hold of him. Similarly he protected a clerk who had been arrested for the theft of a silver chalice from one of his own churches, St Mary-le-Bow (of the Arches) in Cheapside, London. But he deprived him of his orders and, to mollify the king, had him branded. Herbert cites a case which led the archbishop to make a general rule. A priest in the diocese of Salisbury, accused by the bereaved relatives of homicide, was taken by them and royal

officials before the bishop, Jocelin de Bohun. The accused denied the charge, but failed in the proof decreed by the bishop (probably he either made a mistake in the clearing oath or was unable to produce sufficient oath-helpers). The bishop then prudently consulted Thomas about the next step. The archbishop ruled, and made it a general rule for his whole province, that in no case should a convicted clerk suffer death or mutilation. Instead he should be deprived of all his ecclesiastical benefices, imprisoned in a monastery and there carry out enjoined penances. The duration of the penalty should depend on the rank of the offender and the gravity of the crime. In this case Thomas advised the maximum sentence, life.⁹

In 1163 Henry began to press hard. John of Canterbury, consecrated bishop of Poitiers at the Council of Tours, was already complaining before the end of June of royal restrictions on his jurisdiction. In England the *cause célèbre* occurred immediately after the Council of Woodstock, and was widely reported. Philip de Broi, canon of Bedford and a man of noble birth, when accused of the murder of a knight by the victim's relatives, had purged himself of the crime in the court of his diocesan, the bishop of Lincoln, and the king had accepted the verdict. In 1163, however, Simon fitzPeter, a royal itinerant justice, while holding an assize at Dunstable, attempted to reopen the matter. The canon lost his temper and hurled abuse at the judge; and Simon rode post-haste to London to complain to the king. When Henry threatened immediate and drastic secular penalties for the crimes, Thomas moved to protect his fellow prebendary, whom he must have known quite well. In the end it was agreed that the archbishop should try him for both offences and that a party of bishops and barons chosen by Henry should act as judges or assessors. The canon pleaded guilty to insulting a royal judge, but denied the charge of homicide and protested that he should not be tried a second time for an offence of which he had been acquitted. The archbishop's court accepted both pleas. It sentenced him to the loss of his prebend and all other revenues for two years, with the profits to be distributed to the poor at the king's discretion, to a public whipping in the presence of the judge he had insulted, and possibly to one or two years' banishment. Henry was outraged by the leniency. Here was another clerical criminal saved from the death penalty by his cloth, or, to use the common expression of the time, by his order.¹⁰

Thomas also offended the king in another matter which was to be pronounced on later at Clarendon. The archbishop, in virtue of his claim, obviously contested, to appoint to all vacant churches on the lands of his barons and the convent of Christ Church, gave the church of Eynsford (Kent) to a certain clerk named Lawrence. The lord of the manor, William, objected and expelled the clerk's agents. Thomas, without consulting or even notifying Henry, excommunicated William, who complained to the

king. Henry, by means of a writ, ordered Thomas to absolve William. The archbishop replied that absolution, like excommunication, was a matter for him not for the king. Henry answered that it was a royal prerogative that tenants-in-chief should not be excommunicated without his consent. There was a blazing quarrel over this, and in the end Thomas gave way. He had violated an undoubted 'ancestral custom'.¹¹

By the autumn of 1163 Henry had three main grievances against Thomas and sometimes the other bishops and their officials: the protection of clerical criminals from their 'proper', i.e. lay, punishment; inordinate and irregular persecution of the laity for moral offences; and, more generally, disregard for the ancient customs which governed relations between the royal and ecclesiastical authorities. He was taking advice from his experts in the three branches of law considered relevant, ecclesiastical, civil (i.e. Roman) and royal; and his main legal argument was to be that English royal laws or customs were not repugnant to divine law. This he undertook to prove by reference to the ecclesiastical law books. The most recent and systematic compilation of canon law was the monk Gratian's *Concordia Discordantium Canonum*, more briefly his *Decretum*, published about 1140 at Bologna. A typical product of the twelfth-century Renaissance, it was an encyclopaedia of the old law of the church, organized according to the latest scholastic methods, the citing of apparently discordant authorities, followed by a magisterial resolution of the problem. Important commentaries on it, *summae*, had been provided by Roland (Alexander III) and Rufinus (c. 1157-9). It, therefore, furnished texts for all occasions and every point of view, and during the quarrel was cited by Thomas and Henry alike. But also by that time it was in some parts being superseded by new case law being created by judicial opinions and judgments issued by the pope and his curia, known as the decretals, a movement in which Alexander also played a large and formative role. With ecclesiastical law changing rapidly in order to meet new conditions in government and society, litigants had much room for manoeuvre.¹²

Henry's indignation was aggravated by Thomas's 'betrayal' and 'ingratitude'. He had been grossly deceived and badly let down. Thomas's defence for his changed stance was that he was defending the rights of the church, in all its parts, against evil customs, abuses and the violence and injustice of secular power. As long as he kept matters under control and did not provoke the king too far, he could be assured of the support not only of his professional advisers, the *eruditi*, but also of the other bishops and higher clergy. They accepted the basic principles on which he was taking his stand and were anxious not to lose the liberties they had gained during Stephen's reign. But very few of the beneficed clergy who had sworn fealty to the king and few even of the archbishop's clerks were prepared to go to extremes.

The bishops suspected Thomas's motives and competence, and, because of his background, regarded him as an unsuitable leader. They would follow him only warily. But nothing had yet got out of hand. Gilbert Foliot supported his metropolitan strongly in his attempt to prevent Roger of York having his cross carried before him in the southern province.¹³

In October Henry summoned an old-fashioned general assembly of the church to Westminster. It may well have opened with the translation of St Edward the Confessor to his reconstructed shrine in the abbey church, an ecclesiastical ceremony which took place on 13 October. The king and some of the greatest nobles carried the coffin on their shoulders through the cloisters in the presence of Thomas and all his suffragans, except the old Robert of Bath, reinforced by three Norman prelates, Rotrou of Evreux, soon to be archbishop of Rouen, Achard of Avranches, an English theologian, and Arnulf of Lisieux. At the end of this ceremony, a triumph for the abbey and for the monarchy, Thomas took as fee the only useful trophy he could find, the gravestone to which, it was believed, St Wulfstan of Worcester's staff had adhered when he was unjustly threatened with deposition by a Westminster synod, driven by William the Conqueror. It might defend him too against enemies, traitors and tyrants.¹⁴

When the council opened its proceedings, Henry aired his grievances; and, when he was heard unsympathetically, he asked the bishops if they would observe the ancient customs of the realm. This was the plank on which William Rufus and Henry I had taken their stand against the innovating Anselm; and it did, indeed, provide a firm position for the royalists. But also, as Anselm had shown, it could be challenged in argument and deed. Ancient customs were probably bad customs: they had to be tested against the laws of God. No bishop could give his assent to royal customs repugnant to those. And at Westminster the bishops stood firm behind Thomas and would only agree to the customs, 'saving their order', that is to say, with the reservation that anything contrary to canon law was excluded from their assent.¹⁵ The council lasted for one day, and next morning Henry disgraced Thomas publicly by removing Prince Henry from his tutorship and depriving him of all the custodies and honours he had received as chancellor. He then left London suddenly for the Midlands. The break was still not absolute. Soon Thomas was summoned to an interview at Northampton, where they met in a field. As their horses were frisky and they could not get close enough to each other to talk, they had to change mounts. But there was no change of heart.¹⁶

The complete loss of royal favour must have been a great blow to Thomas's pride. The biographers, however, are not much concerned with his personal feelings at this time. Indeed, they deal with the events of the year which preceded the Council of Northampton (October 1164) in a rather muted

and juristic way. None of them, it seems, not even Herbert of Bosham, believed that the issues, at least in detail, justified so great an upheaval: given the will, they could have been settled by compromise. The personal quarrel, which had taken over, was not necessarily to Thomas's credit or to the advantage of the church. With Thomas hurt and defiant and Henry embittered and revengeful, an honourable solution was out of the question.

Henry, advised by Arnulf of Lisieux, brought every possible pressure to bear on Thomas so as to force him to accept the ancient customs of the realm. By approaching the bishops individually he attracted many, perhaps most, of them to his side. The biographers name no exception. The aim of the moderates was to support or devise some scheme whereby clerical criminals could be severely punished without contravening canon law; and some of them were more expert in the subject than Thomas. Hilary of Chichester visited him at his manor of Teynham (Kent) to explain their attitude and attempt a reconciliation, but without success. On at least two occasions the pope appealed to Gilbert Foliot to work for a settlement.¹⁷

There also started after the Council of Westminster that web of diplomacy and litigation which is charted in the collections of Thomas's correspondence, and which involved principally the pope and cardinals and Louis of France, and also the German emperor and the princes of the Netherlands. In 1163-4 Henry used Arnulf of Lisieux and the bishop's friend, a royal clerk, Richard of Ilchester, archdeacon of Poitiers, as envoys to the papal curia at Sens. Thomas employed his clerks, Masters Henry of Houghton, Hervey of London and John of Salisbury, and also relied on John, bishop of Poitiers. The negotiations of both king and archbishop were conducted in secrecy; but if Henry's behaviour was underhand, Thomas's was close to treasonable. For an archbishop of Canterbury to conduct clandestine negotiations with the pope was contrary to the ancient customs of the kingdom; to establish an understanding with the king's enemy, the king of France, was even more criminal.¹⁸

As the secret diplomacy was concealed by fairly unrevealing letters of introduction and credence, its ramifications can only be reconstructed in outline. The main aim of the royal envoys in 1163-4 was to destroy Thomas's position, by obtaining from the pope toleration, if not recognition, of the English customs and a legation for Roger of York, by virtue of which he would be Thomas's superior. Thomas's agents sought to combat this and all other aggressive moves, including Roger's presumption in having his cross carried before him in the province of Canterbury, Gilbert Foliot's refusal to repeat his profession of obedience to Canterbury and Clarembald of St Augustine's refusal to make one. In addition, Thomas had begun to prepare to go into exile. He corresponded with Henry, archbishop of Rheims, the brother of Louis VII. The king and the count of Soissons offered

him a refuge; and John of Poitiers wrote of joining him in exile. It is likely that Thomas, by dramatizing situations, by foreseeing the worst and making provision for it, helped it to come about.¹⁹

Only the secular sword was sharp. The great efforts made by both sides to manipulate papal authority rarely came to anything. Alexander, born at Siena of a noble Tuscan family, and roughly a contemporary of Thomas's, was a distinguished canon lawyer and theologian and a man of fine intelligence. As pope, with at first only fragile authority and slender resources, he was anxious to keep every possible friend, and certainly his more important supporters. Faced with new disasters in Italy, he could not afford seriously to offend Henry, but doled out concessions as sparingly and belatedly as he could. He was prepared to disappoint everyone, some a little, some a lot, in order to preserve the *status quo*. Fully aware of his long-term objectives, he nevertheless was forced to look for non-committal temporary solutions. Resourceful and diplomatic, he answered Henry's indignant appeal to history and Thomas's reliance on principles with dilatory evasiveness. In this he was helped by that effective brake on action, the judicial appeal. It was a labour of Sisyphus to obtain a definitive judgment in an ecclesiastical case. This is a standing feature of 'the Becket affair'. None of the issues which arose between the parties in 1163 came to final solution before the martyrdom. To take as an example the case of Roger's cross. In July 1162 he obtained papal confirmation of his right 'as exercised by his predecessors'. In 1163 Thomas secured a papal prohibition preventing Roger from having his cross carried in the southern province. Roger then appealed to the papal court against this action. In January 1164 Alexander suspended Roger's right, until the case should be concluded. But after Thomas's death he reversed that ruling, although again pending a definitive sentence. Disputes could become conveniently entangled in the labyrinth of jurisdictional procedure.²⁰

From the point of view of the papal curia, Thomas was a liability, even a menace. There was little merit in his cause and all could see that he was a trouble-maker. He had to be restrained. All the same, Alexander was not going to deliver an archbishop bound and gagged to a king who was intent on using papal difficulties to strengthen his own authority at the expense of the church's. Thomas could be of some use to the pope as well as to Louis VII. Alexander could always hold him in reserve, even if on slender rations.

In 1163 Alexander played desperately for time. On 26 October he advised Thomas to go to Canterbury and remain there quietly instead of dashing round the country. He then sent to England a Cistercian abbot, Philip of Aumône in Blois, who had been prior of Clairvaux under St Bernard, to urge moderation and flexibility on Thomas; and Philip, armed with letters

from the pope and cardinals, and taking with him Robert of Melun, elect of Hereford, who might be expected to have some influence over Thomas, and John, count of Vendôme, one of the king's military captains, at a meeting at Harrow begged him not to rock the boat when it was already in danger of shipwreck. In the circumstances he could properly dissimulate and temporize. Thomas was also given, in order to save his face and spare his pride, various assurances, principally that Henry required only his verbal assent to the customs. Overcome by all this pressure, he went with the abbot to the king at Woodstock and promised, without expressed reservation, to observe the customs of the realm. Henry seems to have been on his best behaviour, and to have spared Thomas any humiliation. But it was the last flicker of royal goodwill. On 22 December Thomas at Canterbury performed his first episcopal consecration, Robert of Melun to Hereford. Henry, with typical cruelty, chose to spend his Christmas at Berkhamsted, which he had taken from Thomas.²¹

The king had decided – perhaps he had given Thomas full warning at Woodstock – that, because the archbishop had opposed him publicly on the customs at Westminster, he must likewise signify his adherence to them in public. A council of the magnates was therefore summoned to Clarendon, east of Salisbury, late in January 1164. It was probably as complete a collection of the higher clergy, major barons and royal officials as could be assembled. All the archbishops and bishops were there except Walter of Rochester, the old Robert of Bath and Hugh of Durham. Ten out of a theoretical total of fifteen earls were present, and the roll of barons is impressive. The council was in no way packed. Names prominent in Thomas's story are Prince Henry, the two justiciars, the earl of Leicester and Richard de Lucy, Simon fitzPeter, Richer de Laigle, his former patron, John the Marshal, Alan de Neville, who was to imprison one of his chaplains in 1166, and Hugh de Morville, one of his murderers.²²

Henry demanded that, because disputes had arisen between, on the one hand, the clergy and, on the other, royal justices and the barons about their various rights and dignities, all the bishops should give their assent, expressly, absolutely and unconditionally, to the customs and privileges which his ancestor, Henry I, and his barons had observed. This uncompromising demand was greeted with dismay, and Thomas prevaricated. But he was gradually worn down. Henry was furious at his reluctance and made terrible threats. Two earls, the justiciar, Robert of Leicester, and Reginald of Cornwall, the king's uncle, used menacing words. Then two Knights Templar, Richard of Hastings, the English provincial master, and Hostes of St Omer, the same men who had delivered the Vexin castles to Henry in 1160 and had been expelled from France by Louis for this 'treachery', used the soft approach. Like Philip of Aumône, they said he

must bow to necessity for the general good of the church. Although Gilbert Foliot in 1166 maintained that all ten bishops supported their metropolitan unswervingly, it is possible that Jocelin of Salisbury and William of Norwich begged him to submit lest they, who were already in Henry's bad books, should be further punished by the king; and it is unlikely that the others offered him much comfort or active support. They must have felt that the situation was entirely of his making; he had led them into this impasse and must now get them out of it. The barons, it seems, were hostile to a man. Not surprisingly the archbishop gave way. In 1166 Gilbert Foliot taunted, 'Only the leader fled the field.' John of Salisbury, followed by several other biographers, thought that he surrendered because he feared imprisonment, even death. Thomas made a solemn declaration in the hearing of the whole council that he would observe the laws and customs of the kingdom in good faith. He then, as Henry required, ordered the other bishops to do likewise. And this they did.

The king then decreed that a party of the more ancient and wiser barons should go apart with some royal clerks and 'make a recognition' of the customs - discover and declare what were the usages which the bishops had promised to observe. Such sworn recognitions were a familiar part of Anglo-Norman judicial and administrative proceedings, and the procedure would have surprised no one. Towards nightfall, which in January would have been about 4 o'clock, the elders emerged with a preliminary list of customs. We are not told whether they had had before them a draft, prepared in advance by the clerks; but this seems the only possible *modus operandi*. Their findings were then recited to the council. Part way through the recital Thomas interrupted. He said he was too young to know the ancient customs and was also only a recent archbishop. He would have to take advice on the findings and think about them. An adjournment to the following day was then agreed, perhaps so that a written record of the customs declared could be produced.²³

This was done. In 1166 at Vézelay Thomas named, and excommunicated, Richard de Lucy and Jocelin de Balliol for having been 'promoters of royal tyranny and the fabricators of those heretical iniquities'. However that may be, royal clerks duly presented the recognitors' report in the form of a chirograph, dated 29 January. With this type of document, which was appropriate for a settlement or treaty, the text was written out two or three times on the same parchment, with the word CYROGRAPHUM separating the copies. By cutting horizontally through the segregating word, two or three authentic and identifiable copies became available for distribution among the interested parties. As a chirograph was usually drawn up after the 'final concord', it was not sealed. But at Clarendon the schedule of sixteen clauses recorded on the chirograph had not been agreed in advance;

and at the resumed meeting of the council Henry asked Thomas to append his seal.²⁴

It is almost certain that the bishops managed to dissuade Henry from requiring them to seal the document. But their argument was that they were already bound hand and foot. It was never disputed at Northampton in October, or thereafter, that the two archbishops and the bishops had given their solemn undertaking on their word as priests, in good faith (*bona fide*), without deceit, and according to law (*legitime*), to observe the customs of the kingdom, especially as declared at Woodstock, and that they had done so on Thomas's personal order. They had also seen him accept a copy of the Constitutions; and everyone knew that acceptance of a document meant its recognition and approval. Hence their outrage and lasting grievance when Thomas reneged. He had forced them to act against their consciences, and then, adding insult to injury, had wriggled out of his own obligation. They were not impressed when at Northampton he explained that he had merely accepted the document so that he could study it and reject anything that was harmful to the church, for, he claimed outrageously, the reservation 'in good faith, without deceit, and according to law' meant 'saving the honour of the church'. Nor were they moved by his admission that perhaps also his flesh had been weak.²⁵

Most of the biographers agreed with the archbishop that, in consenting to the Constitutions, he had done wrong. But, with hindsight, they could see that he had fallen only so that he could rise again. He was like St Peter who had denied Christ, David who had committed adultery and murder. But, if we renounce hindsight, it is clear that this was probably the lowest point Thomas ever reached. He had let everybody down, the king, the bishops, the church, above all himself. It was at this time that his clerks began to ask permission to leave his service. The first to go were Robert Foliot and Jordan of Melbourne, both archdeacons. As the dejected party rode from Clarendon to Winchester, Thomas was upbraided by some of his company. He suspended himself from priestly duties, imposed penance on himself and sent an account of the events to the pope. It may well have been at this point that he completed the change in his garments and demeanour which most of the biographers, but not Anonymous II, place earlier in his episcopate.²⁶

The sixteen ancient customs declared at Clarendon are expressly recognized as being only a few of the important customs and dignities possessed by holy mother church, the lord king and the barons of the kingdom. They were selected presumably because they had a bearing on current matters at issue between the church and the secular authorities, and they form a heterogeneous and badly organized anthology. The declaration that clerks who held baronies of the king owed him all the usual feudal services, particu-

larly attendance at court, except those irreconcilable with their order (clause 11) may have been a useful reminder to Thomas and any other prelate who was becoming too independent of the king. Henry referred to it at the Council of Northampton in October.²⁷ Some other of the Conqueror's regulations, which had already been disputed by Anselm in the reigns of William II and Henry I, reappear. The immunity of barons and royal officials from sentences of excommunication without prior royal consent is reaffirmed (7, cf. 10), and they were protected from loss of manpower by the custom that sons of villeins should not be ordained without the consent of the lord of the manor (16). Royal control of traffic between the kingdom and the papal curia (14) is made even more pointed by an attempt to limit judicial appeals to Rome (8). Henry I's concordat with Paschal II underlies the procedure laid down for episcopal elections, and the royal right to the custody of vacant bishoprics and abbeys is clearly stated (12).

Some of the judicial clauses redefine the boundary between the two authorities, warning the church off hearing disputes over land, except when held in free alms (9), and over advowsons (1) and cases of debt (15). Others attempt to reform abuses prevalent in church courts, especially archidiaconal, by a return to ideal earlier practices (5, 6, 10, 13, 14). Of these, clause 5, as a result of the sentences of excommunication promulgated by Thomas in 1166-70 and the penalties imposed by the pope after the murder, became especially contentious: to obtain (conditional) absolution excommunicates should not be required to give any sort of security, particularly on oath, for their future good behaviour, only security that they would submit to the judgment of the church.

Of more immediate importance, clause 3 regulates the procedure for the trial of criminous clerks. It is extremely concise, but can be safely expanded and expounded as follows. A clerk accused of a felony is to appear in the royal court when summoned and plead (make an answer) to the charge. If he pleads (instead of the normal Guilty or Not Guilty) that he is a clerk and should not be tried by a lay court, the court will decide where he is to stand trial. If it is decided to hand him over to the bishop (*traditio curiae*), so that he may be tried according to canon law, a royal official will go with him to watch the proceedings on behalf of the king. Finally, if the accused pleads or is found guilty in the ecclesiastical court, he is no longer to be protected by the church (i.e. he is to be degraded from his orders, rearrested and taken back to the king's court for imposition of the secular penalty).²⁸

There are here two threats to clerical immunity. There was to be no automatic release of the clerk to the church christian; and, as we know from later practice, on some charges, for example breach of the forest laws, the clerk would be tried and punished in the royal court. But, more important,

a procedure was envisaged which circumvented clerical immunity. The guilty clerk was to be degraded and then punished as a layman.

The most useful approach to any of the clauses of the Constitutions is to try to answer two questions: was it a true record of an ancient custom, and was it contrary to canon law? A fairly satisfactory blanket answer can be given to the first. Thomas had pleaded that he did not know the ancient customs of the kingdom. Herbert of Bosham pointed out that the king was even younger and probably even more ignorant. The recognitors had been asked to cast their minds back more than thirty years; and, although it is unlikely that they simply invented some of the customs in order to harm the archbishop and enslave the church, as Herbert alleges, their recollection may have been influenced here and there by current disputes. All the same, the historicity of the customs declared was never seriously challenged by Thomas and his adherents. Thomas may have been a new archbishop, but as an archiepiscopal clerk and archdeacon and as royal chancellor and justice he must have had a good working knowledge of legal practices over at least twenty years. It is, therefore, most significant that he and his supporters contented themselves with stigmatizing the ancient customs as ancient abuses and quoting Gratian's dictum that the Lord never said, 'I am the custom', but 'I am the truth'.²⁹

In general, then, the Constitutions were genuine ancient customs of the realm. And, even if some of the more controversial clauses were contrary to canon law as currently expounded, they could, as in the past, continue to be tolerated by the church, or could be allowed, in whole or in part, to the king by papal dispensation. This is how the investiture quarrel had been settled by Paschal II and Henry I in 1106. If we direct our attention to clause 3, which was at the heart of the quarrel in 1164, it would seem that Thomas took not a strictly legal stand but rather a moral or theological one. And for a very good reason: he was unable to base his case squarely on the legal authorities. In defence of the custom, royalists could have appealed to Justinian's 83rd and 123rd Novel, available in Vacarius's textbook of Roman law, *Liber Pauperum*. And they found Gratian's *Decretum*, as then interpreted, almost equally comforting.³⁰

Gratian states unequivocally that clerks were not to be tried in a secular court. But English custom only breached that rule exceptionally, and with ecclesiastical connivance. Gratian himself allowed exceptions and also drew the important distinction between ecclesiastical and secular crimes. The former were the exclusive preserve of the church, but the latter could lead to punishment by secular judges, and roughly by the method acknowledged to be English custom. Consequently, the Bolognese decretists, Gratian's pupils and followers, in the coherent theory of clerical immunity they created between 1140 and 1170, allowed a clerk, convicted of a secular crime in

a church court and deprived of his orders, to be handed over to the lay authority for punishment (*traditio curiae*), particularly if the crime was enormous. For example, Alexander III, when Master Roland, argued in his *Summa* on the *Decretum* that, in the case of a clerk accused of a secular crime, no one should drag him before a secular judge until the clerk's bishop had deposed him. It would seem, therefore, that the only objection a Bolognese master of the period could have made to clause 3 of the Constitutions was the initial arraignment of a clerk in the secular court, an event which, owing to the development of royal sweeps for criminals, could hardly be avoided and in any case was a matter of minor importance.

Thomas, however, opposed the procedure sketched in clause 3 very strongly and, advised no doubt by one or more of his *eruditi*, most likely Herbert of Bosham, relied on the prophet Nahum, 1: 9. As he quoted this in the Old Latin version of the Greek Septuagint (LXX) text, 'Non iudicabit deus bis in idipsum' (God himself will not judge twice in the same business), he was most likely drawing on a section in Gratian's *Decretum* concerned with penitence, where the text occurs repeatedly.³¹ It is used by the canonist to support the thesis that penitence washes away sin, and that those punished sufficiently in this world will not be punished again in the next. Almost always, it seems, in Gratian and the Gloss the reference is to a second judgment or punishment after death, not in an earthly tribunal. But the principle could be variously applied. It can be read elsewhere in Gratian that, for this reason, a man on the gallows should not be refused the last sacrament. In 1149 Pope Eugenius III had forbidden Archbishop Theobald to take money from some lay servants of St Augustine's, Canterbury, for absolving them from a sentence of excommunication he had imposed, 'for men should not be punished twice for the same offence'.³² Thomas's application of Nahum 1: 9 to the handing over of a man from one court to another was, however, an innovation; and experienced canon lawyers, like Alexander III, were at first astonished and sceptical.

Indeed, the archbishop's formulation did not attract much support in his lifetime and has at all times been ridiculed by commentators favourable to the king. It does not seem that the procedure declared at Clarendon involved a double trial or judgment, although it certainly required a double punishment: the clerk found guilty in the ecclesiastical court was to suffer first the ecclesiastical penalty of degradation and then the secular penalty of mutilation or death. Thomas and his apologists held that unfrocking was a sufficiently severe punishment by itself. The only concession they would offer was that, if the degraded clerk should offend again, he could this second time be treated as a layman.

Double punishment is a common feature in many societies (e.g. loss of job and punishment in a public court); but in modern times the first penalty

is often cited in court in mitigation of the second, and objections on principle are not uncommon. In the twelfth century, however, double punishment by church and state was the basic feature of their co-operation. The theory of the Two Swords was accepted by everyone. The king expected the church to excommunicate his enemies before he could get at them himself; and the church required the king to provide physical means for enforcing its spiritual penalties – in the case of heretics and sometimes rebels, to eradicate them by combustion. Thomas had been present at the papal Council of Rheims in 1148 when the heretic Eon de l'Etoile and his followers were tried and condemned. Eon was sentenced to life imprisonment, but his followers were delivered to the lay court and then to the flames.³³ To abolish the possibility of a second secular punishment would be most inconvenient to the church, as everyone in 1164 not blinded by passion could see. If the king were to withdraw his co-operation with the ecclesiastical authorities, refuse to unsheathe his sword, the church's government would be almost entirely ineffective.

Yet Thomas did right to hesitate before accepting the procedure laid down in clause 3. A custom which may in the past have been sporadic and operated usually only when to the advantage of the church, was being turned into a rule. In the light of the new theology, it was hard to tolerate the execution of a priest who earlier that day had had the power to perform the miracle of the Mass. It was a very sudden change of character. In a case like that of Philip de Broi's, it could have shocked. But Thomas's precipitate and unqualified rejection of the procedure was not only unwise; it was also unrealistic. Most clerical criminals subject to the regulation were not benefited priests, but men indistinguishable from laymen until they advanced this useful plea, clerks in minor orders, married men, engaged in secular business. There was room for discrimination. Subtlety, however, was not one of Thomas's qualities; and the legal case he developed against the procedure, although clever in its use of an impressive text as a slogan, was ill considered and, when considered, unconvincing.

The wisdom of Henry's actions can also be questioned. His requirement, probably after semi-official assurances to the contrary, that Thomas and the bishops should assent publicly to the customs was provocative, and his committal of these to writing was rash. His mother, the Empress Matilda, is reported to have expressed the view, when shown the Constitutions at Rouen the following Christmas, that, although the church needed reform and some of the customs were sensible, Henry had been unwise to publish them since it was an innovation to force bishops to swear to observe the customs of the realm. Yet, we may think, once Thomas had agreed to observe the customs, the recording followed inevitably. If there was to be a real settlement, it would have to be based, not on diplomatic evasions,

but on definite terms; and, if the king meant business, the customs had first to be elucidated. Any canon lawyer could have told him that: it was what the church had been doing for a century. Wherever government was reactivated, unwritten custom was being replaced by *ius scriptum*. It was an age of record, and it was quite unrealistic of Thomas's biographers to quote the legal tag, 'Only things published (*expressa*) can cause injury; those remaining unpublished do not.'³⁴ Henry must be given credit for seriousness of purpose. The Constitutions presuppose, and give several instances of, fruitful co-operation between church and state. But they were intentionally old-fashioned in outlook. They view the king as the real head and master of the English church. The ultimate decision always lies with him; the liberties of the church are what he concedes. Moreover, because in 1164 Henry was also motivated by ill-will and the desire to humiliate Thomas, and because he regarded the situation, with the archbishop isolated and the pope in dire straits, as exceptionally propitious, an opportunity which might never recur, he overplayed his hand. It would have been more prudent to try to get his way on a few important, but limited, issues, especially technical matters like criminous clerks, which were amenable to practical solutions, rather than produce a wide-ranging schedule of royal prerogatives and baronial rights as a sort of offensive manifesto. But it is common practice to claim a lot in order to gain something. Litigants have to make a choice. Medieval man never understated his case. With hindsight Henry too can be vindicated.

The Council of Clarendon ended untidily with Thomas racked by the problem of whether or not to confirm and seal the Constitutions. Further pressure was put on him by the arrival of Rotrou de Beaumont, bishop of Evreux and royal justiciar in Normandy, to advise the king on a number of matters.³⁵ Rotrou, uncle of the then earl of Warwick and cousin of the earl of Leicester, the justiciar in England, was a man of great influence, who, when archbishop of Rouen, played an important part in Thomas's affairs. King and bishop travelled from Porchester to Woodstock, and it was probably there that they interviewed Thomas and persuaded him to write to the pope asking him to confirm the English customs. Although this action clearly worried the biographers, it was the only possible escape route open to Thomas, and can hardly be considered cowardly or dishonourable. But it was also, for all the parties, a desperate manoeuvre. And, although Alexander avoided the trap by neither confirming nor officially condemning the customs *en bloc*, Thomas was as a result left in an even worse position. He decided to stand and fight on his own. And it may well be that it was at this point that he suspended himself from service at the altar as punishment for his earlier weakness.³⁶

It was also the point of no return for Henry. Not only had the events

at Clarendon and their aftermath hardened his attitude towards Thomas, he had also had to swallow the bitter fruit of another of Thomas's ungrateful obstructions. On 30 January his brother William, his constant companion and close friend, but disliked by Thomas, died at Rouen, broken-hearted it was believed because the archbishop had refused, on the grounds of consanguinity, to allow him to marry the countess of Surrey, the widow of William of Boulogne, King Stephen's younger son. In 1164, perhaps in April, Henry gave her in marriage instead to his illegitimate brother, Hamelin. But it was a grievance which was never forgotten by the royalists. Richard le Bret struck the final blow at the martyrdom 'in memory of his lord, William the king's brother'.³⁷

Henry began to injure Thomas in all ways he could. In 1163-4 Thomas had neither a papally confirmed primacy nor a papal legation. Therefore, if either office, especially the latter, could be obtained for York, Thomas could be put in humiliating subordination to his rival. But Henry's negotiations with Alexander during the winter months through Arnulf of Lisieux and Richard of Ilchester came to nought, and the royal clerks, John of Oxford and Geoffrey Ridel, were hardly more successful at the end of February 1164. They drove Alexander to pronounce on some matters, but the pronouncements were of baffling insufficiency, in detail and in sum, to all concerned. The pope refused to confirm the Constitutions, but in compensation granted a legation to Roger of York and declined to declare Canterbury's primacy. Moreover, he did nothing about the 'disobedience' to Canterbury of the bishop of London and the abbot of St Augustine's. But he also excluded Thomas's person, and perhaps more, from the new legate's authority. Consequently, towards the end of May, a fresh set of royal emissaries returned the legatine commission unused in an unsuccessful attempt to better its terms. On that day, however, Alexander heard that the anti-pope, Victor IV, had died and was in no conciliatory mood. All the same, by 1170 Roger was certainly 'legate of the Holy See' and had probably held the office continuously.³⁸

Diplomatic failures did not deter Henry from enforcing observance of the Constitutions in the kingdom, particularly clause 3. He dispatched itinerant justices to sweep for criminals, probably using juries of presentment in a way which anticipated the Assize of Clarendon of 1166, and demanded the degradation and return to the secular court of all priests and clerks caught in the net. Thomas, driven to defiance, forbade this practice on pain of excommunication.³⁹

King and archbishop still met occasionally on great ceremonial occasions; and one such was the dedication of Reading Abbey on 19 April 1164. This foundation of Henry I's, where he was buried, and where Henry II had his infant son William interred in 1156, was regarded by the Plantagenet

as a family shrine. It also had a relic of the highest class. In 1125 the widowed empress Matilda, Henry 1's daughter, had brought back from Germany among her treasures the hand of St James, once at Venice and more recently in the imperial chapel. This she gave to Reading. In 1157 Frederick Barbarossa had asked Henry for its return. But on 17 July of that year, at a great council at Northampton, where, incidentally, Silvester, abbot of St Augustine's, had made his profession to Theobald, Henry and Thomas had concocted a splendid letter of refusal, and dispatched, through the agency of Master Heribert and the royal clerk William, an enormous tent instead. As Master Heribert was almost certainly Herbert of Bosham, the clerk must have had interesting thoughts as he attended Thomas at the dedication of Reading seven years later. Perhaps he was already affecting German fashions in dress, in the circumstances a strange eccentricity. Also present at the ceremony, besides the king and the nobles, were ten English bishops, including Henry of Winchester, who had purloined the hand of St James during his brother's reign. Thomas granted an indulgence of twenty days to all those who visited the shrine.⁴⁰

In the winter of 1163-4 John of Salisbury had left Thomas to go and live in France. The affair is cloaked in secrecy; but, reading between the lines, it would seem that he went on the archbishop's instructions to act as his agent, to spy and recruit allies, while posing as a scholar at Paris. He may well have been paving the way for Thomas should he decide to go to the papal curia at Sens to defend his cause or escape from the Angevin dominions. John was always a moderating influence on the archbishop. In what may have been his earliest report from France, he begged him to seek the king's grace if he could do it without offending God; and his absence from the household helps to explain why Thomas, in the hands of zealots like Herbert of Bosham, rushed to his doom. John's light-hearted gossip on royal and papal affairs in France and the doings of others who might be involved in the archbishop's fate is a pleasant relief. There was talk, he said, of the pope coming to England and carrying out a belated coronation of the young Henry, even pushing Thomas out of Canterbury. He had had an interesting chat with Louis VII about his daughter in England. And Paris was as marvellous as ever. It is clear that John would not spend his exile in sackcloth and ashes.⁴¹

Another of Thomas's clerks, Reginald, archdeacon of Salisbury, 'the Lombard', Bishop Jocelin's son, likewise had gone to live in France by June 1164. By November he was well in with the French king and the pope, and, according to Guernes, had been made by Louis abbot of Corbeil. It would seem that the archbishop's diplomatic activity in France was even greater than the king's, and, because illicit, distorted by all the paraphernalia of espionage, secret messengers, coded names, lost or destroyed communica-

tions, guarded news, misinformation and rumour. Two letters to Thomas from the summer of 1164, one from John, bishop of Poitiers, the other from the archbishop's nuncio, possibly Hervey, show these features well.⁴²

Thomas's last recorded public engagement as archbishop in this period was the consecration of Roger as bishop of Worcester on 23 August at Canterbury. It was probably after this, and possibly provoked by having the gates of Woodstock shut in his face when he tried to have an interview with the king, that he decided to follow John and Reginald to France and consult the pope. From his manor of Aldington, near Hythe, he went with a few companions down to Romney, where he managed to hire a small boat. But the sailors, led by Adam of Charing, hereditary farmer of that episcopal manor, whom Thomas was to excommunicate in 1169, soon repented of what might turn out to be a treasonable act; and the wind too may have been unfavourable. At dawn Thomas found himself once again on the Kentish shore. After this he was admitted, perhaps summoned, to Woodstock, where Henry is reported to have asked reproachfully, 'Why do you want to leave my land? Don't you think it can hold us both?'⁴³

Thomas, by attempting to leave England without Henry's permission, had, of course, violated one of the ancient customs as recently declared at Clarendon, and was clearly 'in the king's mercy'. By losing patience he had delivered himself into the king's hands. Edward Grim and his copyists were no doubt right in thinking that Henry was relieved that the escape bid had failed – even if their suggestion that he had feared a papal interdict on his kingdom if the archbishop had managed to reach Sens seems far-fetched. Thomas in England could be tormented; Thomas in France would be of use to Louis and Alexander. Henry, unlike William Rufus and Henry I, who did little to prevent Anselm going into exile, did all he could to stop Thomas escaping.

For reasons unknown, Henry did not charge Thomas with this breach of the customs, but used a feudal case and then financial suits to bring the chastened archbishop down. As we have noticed, Thomas had fallen foul of an important military servant of the Angevins, John fitzGilbert the marshal, one of the witnesses to the Constitutions of Clarendon. This brave soldier had lost an eye in the empress's service, and his son, William the Marshal, the mirror of chivalry, was to rise through royal favour to become earl of Pembroke and one of the greatest magnates in England. John had brought a suit in the archbishop's honorial court for possession of a parcel of land pertaining to the archbishop's demesne manor of Pagham in Sussex. When he failed to get judgment in his favour, he appealed, on the grounds of denial of justice, to the court of the archbishop's feudal superior, the king. Thomas, however, when summoned to answer the charge in the royal court on 14 September, did not put in a personal appearance, and, although

most of the biographers tried to minimize the matter, clearly did not send a proper or adequate excuse (*essoin*). He was then cited through the sheriff of Kent to answer John's complaint at a council of the magnates summoned to meet at Northampton on Tuesday, 6 October, with the original purpose, it seems, of dealing with the rebellion in Wales. As he did not receive a personal summons to this assembly, he was from the start treated not as an archbishop or royal counsellor but as a baron accused of wrongful behaviour.⁴⁴

Thomas's trial on various charges at the council held in Northampton castle had as precedents the trials of William of St Calais, bishop of Durham, at Salisbury in 1088 and of Archbishop Anselm at Rockingham in 1095. In each the outcome depended on where the sympathy of the magnates, both secular and ecclesiastical, lay: in 1088 William Rufus had an easy run, in 1095 he was less successful. In all cases the defendant disputed the competence of the court to try him; in all there were procedural difficulties; and in 1095 and 1164 the bench of bishops groaned at being placed between the anvil and the hammer. All the cases aroused great interest and were well reported by sympathizers of the accused. Among Thomas's biographers, William fitzStephen and Herbert of Bosham were in attendance on their master throughout the proceedings, and later described them in detail. Ralf of Diss (*Diceto*), the chronicler, then archdeacon of London, was also present, and wept abundantly on the final day; but his account of the court is noticeably dry.⁴⁵

Thomas took a large retinue from Harrow to Northampton. He is reported as having almost forty clerks besides chaplains and monks as well as his military escort of knights and the noble boys of his household. On his arrival on the appointed day he found the king away hawking and his own lodgings occupied by royal squires under William de Courcy, a royal steward and seneschal of Normandy. He himself took up residence in the Cluniac priory of St Andrew. His first action was to ask the king to order William de Courcy out, and Henry obliged. As John the Marshal was also absent from court on royal business, nothing could be done on the Wednesday. But the court got down to business on Thursday, 8 October, when Thomas was charged with contempt of the king because he had ignored the royal summons to attend court on 14 September. There seems to have been a general feeling among the bishops and barons that Thomas was at least technically in the wrong, and he was condemned for his contumacy to forfeiture of all his moveable possessions at the mercy of the king. After a dispute over who should declare the judgment, the duty was imposed on Henry of Winchester. Thomas was only brought to accept the sentence by the unanimous pressure of the bishops, who wanted the whole business settled with the minimum of fuss and were willing, except for London,

to stand surety for payment of the fine. No doubt they expected that it would be commuted to a 'reasonable' monetary penalty, as was usual in such cases. But when Thomas had recovered from the shock of his condemnation, he complained bitterly of the monstrous severity of the sentence, and was so outraged by the conduct of the bishops that he said privately that he would in due course suspend them all for having had the temerity to pass judgment on their own archbishop.⁴⁶

Eventually, probably early in 1165, Alexander quashed this sentence on the general grounds that a superior should not be judged by inferiors, particularly subordinates, and that the church should not suffer loss through the fault of an individual. Moreover, confiscation of all moveable property was contrary to justice and ecclesiastical custom, especially since Thomas possessed no moveables beyond those belonging to the church. Gilbert Foliot, however, in 1166 blamed Thomas for having submitted to the judgment of a secular court.⁴⁷

To return to Northampton, after this defeat Thomas had his one and only success. When called upon to answer to the charge of denying justice to John the Marshal, he refused on several grounds, probably those which he had pleaded by proxy when originally summoned: that John had no good claim to the land, that he had failed in his proof, that the appeal was a novelty and that John's oath in support of it was null, because he had sworn it not on the Gospels but on a service book. In this matter the sympathy of the magnates, who would not have cared for such appeals from honorial courts, was with Thomas. And Henry was forced to let the case drop. This should have ended the proceedings against the archbishop. But Henry, either because of a deep-laid scheme or, much more likely, because he would not accept defeat, began to air a series of other grievances – Thomas's failure to repay royal loans and his retention of royal revenues while chancellor, and, finally, his contempt for the oath he had taken at Clarendon to observe the ancient customs of the realm. The court sat on Friday and the following Tuesday, 13 October. On Saturday the parties took counsel; Sunday was a holiday; and on Monday Thomas was ill of some stomach disorder.⁴⁸

It is possible that Henry asked as early as Thursday for the accounts of the custodies which Thomas had held as chancellor. The archbishop replied that he had not been cited on this matter and was unprepared. He refused throughout on those grounds to make a formal answer to this charge, but said, off the record, that he had spent all the profits and much more on the king's business, and everything he had done had been with the king's authority. Moreover, he had been given acquittance before his consecration of all claims against him as chancellor. Everyone knew by this time that Henry intended Thomas's humiliation and ruin. If judgment on these debts

should be given against the archbishop, the debtor would have to produce sureties for payment, and, indeed, starting with the bishops, he provided a series of pledges. The machinery for enforcement was distraint, first on the debtor's (or sureties') moveable goods, then, if necessary, on his or their land, and finally on his person, that is to say he could be imprisoned. As the royal pressure grew, many courtiers, including Thomas, believed that Henry was aiming at his arrest. Before the end there were rumours of penalties even more severe.

The king seems to have started with two successes. William fitzStephen believed that he got the court's judgment in respect of £300 owed from the custody of Eye and Berkhamsted, and that Thomas named William, earl of Gloucester, the king's cousin, the magnanimous William of Eynesford, and one other as his sureties. As regards the royal loans and guarantees on the Toulouse campaign, which Thomas claimed had been gifts, Herbert of Bosham thought that on the Friday both barons and bishops decided that Thomas should repay one sum of £500, and that five men offered to stand surety at £100 apiece. But when Thomas was required to account for all the custodies which had passed through his hands, and the amount involved was estimated at £30,000, some bishops thought that Thomas could escape only by throwing himself on Henry's mercy and offering to pay a heavy fine. But they seem to have been proved wrong. According to William fitzStephen, on the Saturday Thomas offered the king 2,000 marks which Henry of Winchester had offered to find, and the king refused it.⁴⁹

Thomas consulted his suffragan bishops as a body on several occasions. They were unanimous in declining to support him actively. Most thought that he had brought the disaster on himself and that he was paying for his vainglory and arrogance as chancellor. Just as in 1088 and 1095, prudent colleagues urged the 'martyr' to submit, in 1164 in order to save the church and them from even worse treatment. Why should they, the English church and the papal cause have to suffer because of Thomas's secular and sinful past? Some bishops, including a few who wished him well, advised him to offer the king his resignation: this humiliation would satisfy the tyrant. A few, principally Gilbert of London and Hilary of Chichester, who had been his friends, became his enemies. Roger of York played as discreetly as possible for his own hand. Thomas's household was naturally split between a minority of fanatical supporters and the main body of moderates and time-servers. Among the former was Herbert of Bosham, among the latter William fitzStephen. After Friday Thomas was no longer visited in his lodgings by nobles and knights.⁵⁰

The hiatus between Friday and Tuesday only exacerbated the quarrel. Henry became more and more impatient, and he believed that Thomas's illness on the Monday was put on. The archbishop was warned that the

king was threatening imprisonment or death and that some courtiers were plotting to kill him. It is difficult to know how seriously the threats were intended. No doubt Henry made some rash and angry remarks (as at Christmas 1170), doubtless there were irresponsible courtiers who talked even more foolishly. But it was almost unheard of for a bishop to be imprisoned by a king, especially on a trumped-up 'civil' charge, and out of the question for an archbishop to be sentenced by the royal court to death. And though it is possible, although most unlikely, that the highly contentious clause 3 of the Constitutions of Clarendon might have been invoked, Arnulf of Lisieux informed Thomas in March 1165 that Henry had not had the slightest intention of going beyond threats – indeed, it was because he did not intend to proceed to extremities that he was forced to such mimic violence. Thomas, however, isolated and undoubtedly abused, believed in the truth of the rumours, and during the weekend he must have put the final touches to his contingency plan to escape abroad. He was to use the services of Gilbert of Sempringham's order of canons, and recruited two guides, Robert de Cave and Scaiman, possibly from the Gilbertine priory at Lincoln. His life was to assume clandestine features from which he could never completely break free. But if the threats caused his nervous prostration on the Monday, by Tuesday he had recovered his strength and nerved himself for battle. Convinced that he could not make peace on honourable terms, he resolved to go down fighting.⁵¹

Tuesday, 13 October, started with Thomas meeting the bishops, presumably in the priory where he lodged. He found them dispirited, full of warnings that he was about to be charged with perjury and treachery for violating the royal customs, particularly the Constitutions of Clarendon, and desperately anxious that he should submit to the king. Thomas complained angrily of their desertion and of their having twice passed judgment on him. He forbade them to do so again, especially on a criminal charge, and appealed to the pope against the possibility. He also ordered them, if he should be subjected to physical coercion, to excommunicate the aggressors. Gilbert of London immediately made a counter-appeal to the pope. Then all the bishops, except Henry of Winchester and Jocelin of Salisbury, who remained to comfort him, left for the king's court.⁵²

Thomas's next act of defiance was to celebrate a votive Mass to the proto-martyr St Stephen, with its Introit, 'Princes also did sit and speak against me' (Psalm 118=119: 23), and afterwards to secrete the Eucharist on his person. He also proposed going to court still fully vested and girt with the pallium, but was dissuaded by some Knights Templar. Instead, he took his cross from the bearer when he reached the castle and advanced with it in his hands. The bishops who awaited his arrival recognized the gesture as provocative – unsheathing the spiritual sword – and tried to disarm him.

Worcester offered to carry it for him, London tried to snatch it from his hands. But to no avail. Gilbert Foliot in his exasperation exclaimed, 'A fool he always was, and a fool he'll always be.' Thomas then sat as usual in the outer chamber, attended by a few clerks, including Herbert of Bosham, John Planeta, Hugh de Nonant and William fitzStephen, while the king conferred with the bishops and his other counsellors in an upper room.⁵³

The bishops told Henry what had taken place at St Andrew's earlier that morning, and the king sent down earls and barons to ask Thomas whether he had indeed made that appeal and prohibition, and to remind him that he was the king's liege vassal and had sworn him fealty. He had also sworn at Clarendon to preserve the royal rights and dignities and had recognized that bishops should take part in all judgments in the king's court, save those which involved the shedding of blood. Further, they asked if he was ready to give surety that he would render the accounts of his chancellorship and accept the court's judgment in the case. Thomas refused this demand, elaborating the reasons he had already given; and he admitted that he had made the appeal and prohibition, which he justified and renewed. He placed his person and the church of Canterbury under the protection of God and the Holy See.

The biographers believed – they were deprived of firsthand information – that, when these answers were reported in the upper chamber, the barons were indignant and the bishops dismayed. The Constitutions of Clarendon were invoked and it was decided that the court should condemn the archbishop. But since no formal judgment was declared in open court, the biographers were uncertain of what was decided. Most likely it was intended to condemn Thomas both for refusing to render account and for violating his oath to observe the Constitutions. The latter judgment would have made the archbishop – as in the case of the bishop of Durham in 1088 – guilty of perjury and treason, and would have justified – as with Odo of Bayeux in 1082 – a sentence of imprisonment. Indeed, Roger of Howden believed that this was the judgment of the barons. The bishops, therefore, their reluctance intensified by Thomas's prohibition, tried to escape further participation in the court's judgments. Henry agreed to a dual procedure. The bishops, for their part, were to appeal to the pope against Thomas on the grounds of his perjury and were to do their best to persuade Alexander to depose him. They went down to initiate their ecclesiastical process, and Thomas accepted it, but justified his behaviour, very much like Anselm when placed in a similar position in 1097, by arguing that he had accepted nothing at Clarendon except *bona fide*, by which he meant 'according to his conscience', and that there was always in such clerical undertakings the inescapable reservation 'saving the honour of the church'.⁵⁴

When, however, the barons, led by the justiciar, the earl of Leicester,

went down in their turn, Thomas refused to accept their judgment. He had been cited to court only in the case of John the Marshal; there had been no pleading in any other case; and, anyhow, barons were incompetent to judge an archbishop. While the justiciar faltered, Thomas rose, went out of the chamber and passed through the hall to shouts of 'perjurer' and 'traitor'. Among his revilers were Hamelin, the king's illegitimate brother, Ranulf de Broc and Hugh Wake of Bourne. Ranulf, hereditary doorkeeper of the king's chamber and keeper of the royal whores, was, with his clan, the *Brokeis*, to play an important part in the archbishop's life and death. Thomas answered their taunts with abuse: Hamelin was a servile bastard; a kinsman of Ranulf had been hanged for a crime. Miraculously Thomas and his clerks managed to escape from the castle through a locked gate, for which his servant, Peter *de Muntorio*, found the key. Mounting their horses, they reached the sanctuary of St Andrew's. William fitzStephen remembered that in the confusion Herbert of Bosham could not get on his horse and that Thomas carried him away on his. Herbert himself does not mention this mishap.⁵⁵

The trial had come to a tumultuous end. In the months that followed king and archbishop shaped their views of what had happened. For Henry, the ungrateful and forsworn archbishop had been tried for financial embezzlement while in his service, had refused to produce accounts and had therefore been justly condemned. He was a convicted criminal on the run. On the very eve of their reconciliation at Fréteval in July 1170, Henry, when discussing the matter with the king of France, referred to Thomas as a thief. Thomas, for his part, was outraged by the unheard of humiliations to which an archbishop of Canterbury had been subjected: he had been treated as a layman, judged and condemned by his sons in God and persecuted by those who were seeking to destroy the liberties of the church by invoking evil customs which they claimed were 'ancestral'. In short, he was a martyr for the liberty of the church. Neither view can be dismissed out of hand. Both were held by respectable observers before the martyrdom.

To redress the bias of the biographers and chroniclers who wrote after that event, attention should be given to an account of the reign completed in 1169, the poem *Draco Normannicus* by Stephen of Rouen, a monk of Bec. The hero is Henry and one of the villains is Thomas. As chancellor he was guilty of peculation. As archbishop he was a rogue plantation, not only insufficiently educated but also 'the faithless heir of that triple cheat, Simon Magus'. He bought his pallium, and, it is suggested, other sacred offices too. When he fled to France, because accused of theft, he told lies to the pope at Sens and then adhered to and encouraged Henry's greatest enemies. In short, he was a criminal and traitor. The patriotic Norman monk could not stand him.⁵⁶

Although after the conclusion of the trial at Northampton, Henry, at the request of the bishop of Hereford, had it proclaimed that no one was to do Thomas harm, rumours of intended violence were rife. While the archbishop was at dinner, the bishops of London and Chichester, still convinced that the king could be bought off, arrived with a new proposal. If Thomas were to offer him his manors of Otford and Wingham (in 1086 worth £60 and £100 a year respectively) as sureties for paying the fines, everything could be arranged. Thomas replied in fury, 'The king is holding the manor of Higham, which rightly belongs to Canterbury. And although I have not the slightest hope of recovering it, I would not offer even that in order to recover his favour.' The two bishops indignantly withdrew. After dinner all the archbishop's knights tearfully renounced their homage and, with the archbishop's permission, left his service. The noble boys being educated in his household also departed. Herbert of Bosham did not blame any of these, but could not condone the desertion of some of the clerks. Thomas then sent the bishops of Rochester, Hereford and Worcester to Henry to ask for a safe conduct for his journey from court. When they reported that the king, whom they had found in a good humour, had replied that he would consider the matter on the following day, Thomas concluded that all was lost and put into effect the escape plan he had prepared.⁵⁷

Herbert of Bosham was dispatched to Canterbury to collect as much as he could of the archiepiscopal rents which had been due at Michaelmas and then go with the money to St Bertin's monastery at St Omer, where he was to await his master. At Northampton fresh horses were obtained and held ready; the town gates were reconnoitred; and a bed was prepared for Thomas behind the high altar of the priory church. After the office of Prime and the recital of the litany, that is to say, about 7 o'clock, just before dawn on Wednesday, 14 October, Thomas was ready to go. He deliberately left behind his usually inseparable priestly stole (temporarily suspending himself from priestly functions) and took only his pallium and seals, symbols of his governmental authority.⁵⁸ Under the additional cover of a rainstorm, the small party, the archbishop with one servant, Roger de Bray, and the two Gilbertine lay-brethren,⁵⁹ left the town by the unguarded north gate and rode hard for Lincoln. This was doubtless to put his enemies, who would have expected him to travel south, off the scent. After a few hours sleep at Grantham, the party did the last 25 of the 83 miles' journey, and went into hiding with James, a fuller, a friend of one of the guides, who probably lived by the river. Thomas then travelled by boat down the Witham towards, or to, Boston, a distance of some 35 miles, lurking in Gilbertine priories and granges, including 'the Hermitage' (perhaps Catley) and Haverholme, in the fenland to the west of Boston.

When he was confident that his trail had not been picked up, he moved

cautiously towards the Channel ports, disguised as a Gilbertine lay-brother, and answering to the name of Christian or Dereman. When he reached the Gilbertine priory of Chicksands in Bedfordshire, he recruited the chaplain Gilbert, presumably to serve as a guide on the most dangerous section. They now rode only at night and laid up by day. Finally they reached the Canterbury manor of Eastry, close to Sandwich, the archiepiscopal port he intended to use. On Monday, 2 November, almost three weeks after he had fled from Northampton, a little before dawn he embarked in a small boat, and in the afternoon landed on the beach at Oye, between Marck and Gravelines, not far from Dunkerque, in the county of Flanders. He was outside Henry's jurisdiction. St Omer was some 40 kilometres south. He was on the road to Sens. Royalist bishops, such as Arnulf of Lisieux and Gilbert Foliot, maintained that Thomas had never been in danger and had not been pursued. Henry himself always protested that Thomas had simply bolted. Intentions are seldom consistent and justifications rarely entirely true.⁶⁰