

EXECUTIONS, THE SHERIFF, AND THE PRESS*

Emmeline Garnett

On 27 May 1868 *The Times* published an unusually detailed article on the execution of Michael Barrett, who had fired the barrel in what came to be known as the 'Clerkenwell Explosion'. An attempt had been made to release two Fenian prisoners by blowing down the wall of the prison yard during exercise time. Suspicion was aroused and there were no prisoners in the exercise yard, but the grossly overestimated amount of explosive killed and injured more than sixty people in the busy street outside. Public outrage, however, was only part of the reason for expending two and a half columns on the execution. The real interest lay in the fact that this would be the last public execution in England. Two days later, the Capital Punishment Amendment Act passed into law.

On Monday the barriers were put up, and on Monday night a fringe of eager sightseers assembled, mostly sitting beneath the beams, but ready on a moment's notice to rise and cling to the front places they had so long waited for. There were the usual cat-calls, comic choruses, dances, and even mock hymns, till towards 2 o'clock, when the gaiety inspired by alcohol faded away as the public houses closed, and popular excitement was not revived till the blackened deal frame which forms the base of the scaffold was drawn out in the dawn, and placed in front of the door from which Barrett was to issue. Its arrival was accompanied with a great cheer, which at once woke up those who had been asleep on doorsteps and under barricades, and who joined in the general acclamation. The arrival of the

* The Garnett family papers in the Lancashire Record Office (DDQ) are as yet uncatalogued. Copies of most of the newspapers quoted were preserved by William Garnett and are at DDQ 92. His diaries are in private hands.

scaffold did much to increase the interest, and through the dawn people began to flock in, the greater portion of the newcomers being young women and little children. Never were these more numerous than on this occasion, and blue velvet hats and huge white feathers lined the great beams which kept the mass from crushing each other in their eagerness to see a man put to death. The crowd was unusually orderly, but it was not a crowd in which one would like to trust. It is said that one sees on the road to the Derby such animals as one never sees elsewhere; so on an execution morning one sees faces that are never seen save round the gallows or near a great fire. Some laughed, some fought, some preached, some gave tracts, and some sang hymns, but what may be called the general good humoured disorder of the crowd remained the same, and there was laughter at the preacher or silence when an open robbery was going on. None could look on the scene, with all its exceptional quietness, without a thankful feeling that this was to be the last public execution in England. Towards 7 o'clock the mass of people was immense. A very wide open space was kept round the gallows by the police but beyond the concourse was dense, stretching up beyond St. Sepulchre's Church, and far back almost into Smithfield—a great surging mass of people which, in spite of the barriers, kept swaying to and fro like waving corn.

The Times was in whole-hearted editorial support of the new Act, and by sending one of its best reporters to the scene it unintentionally illustrated the thinking which had led to the abolition of public executions: it was almost impossible not to romanticize such an occasion.

With the first sound of the bells, came a great hungry roar from the crowd of 'Hats off', till the whole dense, bareheaded mass stood white and ghastly-looking in the morning sun, and the pressure on the barriers increased so that the girls and women in the front ranks began to scream, and struggle to get free. Amid such a scene as this, and before such a dense crowd of white faces, Barrett was executed. His clergyman came first, Barrett mounted the steps with the most perfect firmness. This may seem a stereotyped phrase, but it really means more than is generally imagined. To ascend a ladder with one's arms and hands closely pinioned would be at all times difficult, but to climb a ladder to go to certain death might try the nerves of the boldest. Barrett walked up coolly and boldly. His face was as white as marble, but still he bore himself with firmness, and his demeanour was as far removed from bravado as from fear . . . In another moment Barrett was a dead man. After the bolt was drawn and the drop fell with the loud boom which always echoes from it, Barrett never moved. He died without a struggle.

The Act 'for the carrying out of Capital Punishment within prisons' had been a long time coming. The argument had been cogently stated by Henry Fielding as long ago as 1751.

No hero sees death as the alternative which may attend his undertaking

with less terror, nor meets it in the field with more imaginary glory. The day appointed by law for the thief's shame is the day of glory in his own opinion. The procession to Tyburn, and his last moments there, are all triumphant, attended with the compassion of the meek and tender-hearted, and with the applause, admiration and envy of the bold and hardened . . . How far such an example is from being an object of terror, especially those for whose use it is principally intended, I leave to the consideration of every rational man . . . If the executions were so contrived that few could be present at them, they would be much more shocking and terrible to the crowd without doors than at present, as well as much more dreadful to the criminals themselves, who would thus die in the presence only of their enemies; and when the boldest of them would find no cordial to keep up his spirits, nor any breath to flatter his ambition.¹

Public opinion was not yet ready to follow the writer: it was hardly likely that it would, as long as human life was so cheapened by the grotesque overuse of the death penalty. Seventy years later, in 1826, there were still two hundred offences punishable by death, which during the course of the next thirty years were whittled down to four. 'In 1832 this punishment was abolished in the case of horse and cattle stealing, and in 1835 in the case of letter stealing and sacrilege. In 1837 it was abolished for forgery, for certain cases of attempts to murder, for certain cases of burglary, robbery and piracy, for injuries to houses and ships, for offences against the Riot Acts, rescuing persons going to execution, seducing soldiers from their allegiance, administering seditious oaths, slave-trading, and certain forms of smuggling accompanied by violence. In 1841 it was abolished for certain cases of forgery, embezzlement, and riotous demolition of houses and churches, for rape, and abusing girls under ten. In 1861, by the consolidating Acts, it was abolished for robbery with violence, attempts to murder, arson and sodomy.'² There remained only murder, treason, arson in dockyards and arsenals, and piracy with violence. Effectively, there remained only murder.³

It was inevitable that as public opinion created the climate for these changes, it would also revolt from scenes of public

1 Henry Fielding, *An inquiry into the causes of the late increase in robbers* (London, 1751).

2 W. S. Holdsworth, *History of English Law* (12 vols, London, 1922-66), XV, p. 163.

3 Offences Against the Person Act, 1861, 24 & 25 Vic. c. 100.

execution. It is surprising to find how many people at the time would willingly have gone further and outlawed all capital punishment: in 1861 over 100 M.P.s voted for abolition. In 1868 came the Act that has been referred to, 'to provide for carrying out of Capital Punishment within prisons, commonly called The Capital Punishment Amendment Act' and it is with certain developments resulting from the Act that this article is concerned.

The Act provided that execution was to be carried out inside the prison in which the offender was confined, and that the persons present were to be 'the Sheriff charged with the Execution, and the Gaoler, Chaplain and Surgeon of the Prison, and other such officers of the Prison as the Sheriff requires'. It was further enacted that 'Any Justice of the Peace for the County, Borough, or other Jurisdiction to which the Prison belongs, and such relatives of the Prisoner or other Persons as it seems to the Sheriff or the Visiting Justices proper to admit within the Prison for the Purpose, may also be present at the Execution'. Where appropriate, personal presence could be delegated, and in particular, from the beginning, sheriffs were usually represented by their under-sheriffs. The surgeon was to sign a certificate of death immediately, the coroner to hold an inquest within twenty-four hours, the public to be notified by announcements on the prison gates. The body was to be buried inside the gaol unless there was no space, in which case the home secretary's permission must be sought to bury elsewhere. In addition, the home secretary 'shall from time to time make such Rules and Regulations to be observed on Execution of Judgment of Death in every Prison as he may from Time to Time deem expedient for the Purpose as well of guarding against any Abuse in such Execution as also of giving greater Solemnity to the same, and of making known without the Prison Walls the Fact that Execution is taking place'. These last requirements, as every reader of *Tess of the d'Urbervilles* will remember, were usually fulfilled by the raising of a black flag, and in some places by the tolling of the prison bell.

Although as the senior official, the governor of the prison was the key figure in organizing an execution, the high sheriff of the year, holder of that ancient office independent of possible political or bureaucratic pressure, was ultimately

responsible. 'Where judgment of death has been passed upon a convict at any court of assize or any sessions of oyer and terminer or gaol delivery held for any county or riding or division or other part of a county, the sheriff of such county shall be charged with the execution of such judgment.'⁴ No execution therefore could take place without his presence or that of his proper delegate, and with him remained control of those to be present.

The point of the presence of the sheriff and other non-officials was to secure the prisoner's right to a death in which the rules were scrupulously observed. Nineteenth-century England had the liveliest mistrust of officials and bureaucracy, believing all such positions open to the temptations of abuse unless they were very closely watched. It is not therefore surprising to find that there was a strong segment of informed opinion which believed it was 'a very serious thing to enact a law by which private death should under any circumstances be inflicted'. 'If this extreme punishment were inflicted at all', in the words of a Liberal M.P., 'it should be in the face of the sun and the eye of the people . . . His own opinion was that it was impolitic to administer the punishment of death at all, but so long as it was administered it should be in public.'⁵ Such opinion felt that the roaring mob, however distasteful, had a real part to play in ensuring that the rules were kept and that no scandalous situation could escape unseen.

After 1868, I cannot find a case, though there may well have been some, where the relations of a condemned person exercised their right to request to be present at the execution. If the local justices ever did so, it was rarely, and probably for very particular reasons. The role of public observer was taken up, quite naturally, by the press. At first, this was regularly allowed and seemed to answer well. It carried on the tradition that at public executions reporters could request passes to be allowed inside the gaol to see the prisoner pinioned, because at this, his last quiet moment, before stepping outside into the tumult surrounding the gallows, a man might confess, or protest his innocence, or exonerate a colleague, and these

4 Sheriffs Act, 1887, 50 & 51 Vic. c. 55.

5 *Hansard*, 20 Feb. 1868.

effectively last words were of public interest; though they could alter nothing, it was felt that they might ensure that the criminal died with his record straight in the public mind.

Apart from the anxieties surrounding private, or as its opponents called it, 'secret' execution, there was some feeling of distrust also about the method, which since the development of the more merciful 'long drop', was no longer strictly in accordance with the laws of the country. 'Hanged by the neck until you be dead', it could be said, was the sentence, not dislocation of the vertebrae. The rapidity of the new method, however, was generally approved, and the anxieties concerned errors in estimating the length of drop to be used, which varied with the height and weight of the prisoner. One of twelve reporters allowed into Newgate on 8 September 1868, for the execution of Alexander Mackay, the first at this prison since the Act, reported 'The sufferings of the murderer were dreadful, but on this we will not dwell, except in so far as to say that in the opinion of those present the fall given was not sufficient to secure instantaneous death.'⁶

It may be thought that there was good reason for the public to be informed of such failures, as well as those more macabre though less inhuman occasions when the drop was too long and the head was pulled off the body, as happened in Dublin in 1870. The Act was then two years old, but this was the first execution in Dublin under it, and in spite of much anxious discussion, the officials overestimated, and gave a drop of fourteen feet, as the press duly reported.⁷ In 1873 at Liverpool, in the presence of six reporters, the rope broke, and James Connors had to wait ten minutes for another rope to be brought and the job completed, in spite of his impassioned pleas that he ought not to go through the ordeal again.⁸ In 1885 a man was actually reprieved after three attempts failed.⁹

It is not clear when establishment opinion, though probably not public opinion, began to favour the exclusion of the press. The reason is plain enough. Some newspapers were boasting

6 *The Times*, 9 Sept. 1868.

7 *The Times*, 29 Jul. 1870.

8 *The Times*, 9 Sept. 1873.

9 *Report of Royal Commission on Capital Punishment*, 1953, P.P. Cmd. 8932.

circulation by lurid and detailed accounts of a murderer's last days, hours, and minutes, negating, it was felt, the whole point of having private executions in the first place. 'Column after column of gallows garbage' (this from *The Porcupine*, a Liverpool journal) 'were dished up to gratify the worst forms of depraved curiosity'.¹⁰ And it castigated in particular the three Liverpool morning papers, *Daily Post*, *Daily Courier*, and *Liverpool Mercury*. Lancashire had a high murder rate and a lively provincial press.

In 1877 the situation was complicated by the Prison Act of that year.¹¹ The 1868 Act had allowed access to such 'persons as it seems fit to the Sheriff or the Visiting Justices proper to admit'. The Prison Act replaced the power of the visiting justices by the new prison commissioners, responsible to the Home Office. The power to allow access implies the power to refuse access. There was potential confusion in a situation where two authorities had such powers.

A search has not so far revealed at what date, or in what form, the then home secretary, Richard Assheton Cross (1823–1914), swung his weight behind excluding the press from executions. That he did so in the latter months of 1878 or early 1879 is clear from the comments of the press and others referring to 'the new rules'. The *Lancaster Guardian* of 12 February 1879, explaining why its account of the execution at Lancaster of William M'Guinness had to rely on information from a 'trustworthy' source, referred to 'an order from the Home Office applicable in all these cases' denying access to reporters.

In March 1879 a new high sheriff took office in Lancashire. William Garnett of Quernmore Park (1851–1929) was high sheriff for the year 1879–80. He was very young, having inherited from his father, William James Garnett, in 1873 at the age of twenty-two. In January 1879 he and his young wife were guests of Lord Winmarleigh at a house-party at Winmarleigh. Lord Winmarleigh, lately John Wilson-Patten (1802–92), was an old friend and parliamentary colleague of William James Garnett, and had presumably, in that small and close social circle, known William all his life. He was also

10 *The Porcupine*, 24 May 1879.

11 Prison Act, 1877, 40 & 41 Vic. c. 21.

fifty years the young man's senior. Therefore his offer of the shrievalty carried much weight, although common sense spoke against acceptance of an office whose honour was balanced by its expense. The pressure applied, and the obvious need for a quick answer, implies that the authorities had been disappointed in some other candidate, but there is no direct evidence for this.

7th Jan. . . . Lord Winmarleigh asked me if I would accept the office of High Sheriff of Lancashire for this year. I asked him for time to consider. He gave me till tomorrow morning.

8th Jan. . . . Told Lord Winmarleigh that I hardly thought I ought to take such an onerous duty as that of High Sheriff on my shoulders, as it would tend to hamper my estate still more than it is at present. I told him all about how I was circumstanced. And at last I asked him to let me consult J. Sharp, my lawyer. He said Yes, and would give me till Friday. I must write my answer to Lord W. on Friday afternoon: of course I told B[ertha] and we thought it over carefully and thought we ought not to incur the *expense*.¹²

After discussing the matter with John Sharp, who had been his grandfather's and father's solicitor and was one of his most respected old friends, he agreed, and wrote his acceptance to Lord Winmarleigh. It was his twenty-eighth birthday.

Introspection is not a feature of William Garnett's diaries. His period, his education, his social class, all militated against the exploration of feeling, but more than once he confessed the nervousness attendant on this extremely public and ceremonial position, the summit of a country gentleman's ambition. Just before his swearing-in he suffered several days of acute stomach pains, which, in his diary at any rate, he did not attribute to any particular cause.

The sheriff's main role, which had faded in importance with the establishment of a national constabulary, and had become encrusted over the years with much formal and semi-formal entertaining, was historically an important one: to protect the assize judges and allow them to carry out their duties in safety. 'In the time of the assizes a court of quarter sessions in the county may direct a sufficient number of police constables to be employed to keep order in and within the precincts of the court of assize, and the chief constable shall comply with such direction, but if such direction is not given

12 William Garnett's diary, 7-8 Jan. 1879.

the sheriff shall have a sufficient number of men servants in liveries attending upon him for the purpose of so keeping order and of protecting the judges of assize.¹³

The young sheriff's first official function, therefore, in full panoply and escorted by his 'javelin men', was on 24 April 1879 at Manchester. (During the year he would have four assizes at Manchester, four at Liverpool, and probably three at Lancaster.) 'Dressed and at 4 met the Judge at the station—a very trying ordeal in my D[eputy] L[ieutenant]'s uniform. The Judge is Stephen, a big burly man of very commanding presence and of very clever calibre. Took him to the Courts and opened the Commission . . . Like the "Turn out" very much! The liveries are very nice and handsome, not gaudy, all very dignified. Holme [the family butler and valet, who had known him since his nursery days] says that everybody says mine is the best "turn out" since Major Starkie's shrievalty, and his only excelled mine, in that he had outriders and I've none. But my liveries best his. This is very satisfactory not because I best Starkie but because it shows that the whole thing is up to the mark: Deacon is quite satisfied!

The next day was his first grand jury dinner: 'Felt very nervous but managed very fairly: Rather an undertaking . . . Old Smith the landlord provided me with a very good dinner indeed—Mr. Deacon seems very well satisfied, and he knows what a spread like this should be.' It was a blow that John Sharp had been taken seriously ill, and died a few weeks later, and so was never able to fill the position of under-sheriff. His son William Sharp took the post instead, but probably had little relevant experience, and William Garnett's real mentors seem to have been Wilson and Deacon of Preston, the acting under-sheriffs. He records long talks with Mr Deacon, learning the ropes of the job, and long attentive days in court. The greater and more time-consuming part of the shrieval duty was ceremonial: the giving and receiving of dinners, particularly dinners to the various grand juries, and the formal welcoming and entertainment of the assize judges. Young Mrs Garnett played very little part. The judicial world was for men only, but even the social occasions—the opening of a park, school prize-givings, going round factories and

13 *Sheriffs Act, 1887, 50 & 51 Vic. c. 55.*

reformatories, and the like—she rarely attended. She suffered from extreme shyness and was for most of the year, at the age of twenty-one, pregnant with her third child.

The chief responsibility to be considered, apart from all the ceremonial, was the statutory attendance at executions. Sheriffs of smaller rural counties might hope to get through their year without any capital offences, but there was no such hope in Lancashire with its concentrated urban populations. 1879–80 saw at least eight murderers brought to trial in the county and five of them hanged. Attendance was usually delegated to the under-sheriff, but William Garnett attended one execution in person. This in itself may have been customary; it would have been very important to him, as to most men of his position at the time, to show that one did not shirk unpleasant duty.

The spring assizes of 1879, in various parts of the country, dealt with a crop of murders, resulting in four sentences to be carried out at the end of May, one at Taunton, one at York, one at Manchester, and one at Liverpool. Reporters were refused admittance to all of them, so William Garnett, who in later life was always very proud of his part in the movement to exclude the press, was not a solitary pioneer, though as sheriff of the county with the highest incidence of executions, he could not help but be in the limelight. In fact, at this point, it is difficult to identify who was taking what decisions. A question was put in the House of Commons, asking for a copy of the 'new rules' to be laid on the table, to which Sir Matthew White Ridley, for the Home Office, said that there were no new rules, and in proper politician's fashion went on to answer a question that had not been asked. So far as he knew, he said, no reporters had sought admission to coroners' inquests.¹⁴

At the beginning of May, William Garnett raised the matter with the Home Office, apparently unprompted, and enquired as to his exact powers, but his diary does not even mention the correspondence, much less the thinking which led up to it. The idea was no doubt one which he had discussed at length with Messrs Wilson and Deacon, perhaps also with some of the legal dignitaries he had seen so much of during the assizes,

14 *Hansard*, 13 Mar. 1879.

but whence it had come in the first place, and with what degree of pressure, there is no way of knowing. It is entirely in character, however, that having made up his mind on a course of action, he would stick with it.

The Home Office appeared to be on his side, but not anxious to be too obvious in the matter, and if they had sponsored the idea it had been done tactfully through intermediaries. 'Mr. Cross sympathises with, and will gladly co-operate with you in the object which you have in view of preventing the publication of sensational reports as to the last few days of prisoners under sentence of execution . . . The power to determine who shall be present at the execution itself is vested in the Sheriff and Prison Commissioners, but the Prison Commissioners have been instructed to leave this matter exclusively in the hands of the Sheriff.'¹⁵

Up front, one may say, it was 'entirely in the hands of the Sheriff'. A diary entry on 27 May: 'Sent a telegram to Wm. Sharp, to give strict orders about the execution (and the press) tomorrow morning of Thomas Johnson'. But it must have been more than coincidence that on the 26th and 27th, reporters had been excluded from the executions of Catherine Churchill at Taunton and John Davey at York.¹⁶ A few days before, the *Manchester Guardian* noted a change. 'It has, we are informed, been decided not to grant any orders in future for the admission of reporters to executions. The order which as to Lancashire reaches us officially, is no doubt of general application.'¹⁷ No explanation is given of 'we are informed' and 'officially', but the fact that the London *Globe* copied the paragraph shows that there was no general release of any such decision. Perhaps the Home Office was quietly targeting each county as the occasion arose, and for this assize there was no projected execution in London. Lord Houghton, who as Monckton Milnes had been strongly in the abolitionist party in 1861, but who felt equally strongly that if capital punishment had to remain it must not be done in secret, asked a question in the Lords, to which Lord Beauchamp, the Home Office spokesman, answered from the words of the 1868 Act,

15 Lancs. R.O., DDQ 84 (correspondence of William Garnett).

16 *The Standard*, 28 May 1879.

17 Quoted in *The Globe*, 23 May 1879.

and once again left the ball firmly in the high sheriff's court: admission or exclusion was entirely up to him.¹⁸

The *Manchester Evening Mail* signalled defiance by producing three and a half columns on the execution of William Cooper at Strangeways. 'A peculiarity of the execution . . . is that it was the first in Manchester which was unwitnessed by reporters, although this . . . does not preclude us from giving such details as the public require in a case of this kind.'¹⁹ It produced a minute recapitulation of every detail of the murder in question, as well as a narrative of the last hours of the condemned man, apparently from several different witnesses, possibly relatives, probably also prison officers, since on later occasions newspapers remarked that the prison commissioners seemed to have clamped down on prison warders speaking to the press, on pain of losing their jobs.

Apart from the *Evening Mail*, the Lancashire newspapers did not respond to the change. They entered their brief paragraphs reporting the fact of execution, noted that reporters were excluded, and moved on to other things. Only *The Porcupine*, the Liverpool weekly 'journal of current events—Political, Social, and Satirical', with somewhat smug high-mindedness, lashed its fellow dailies.

Although Mr. Cross leaves it entirely in the hands of the high sheriffs of the various counties to decide whether the representatives of the press should be admitted or not, the official attitude towards the purveyors of gallows literature is becoming more uncompromising every day. Few will have been surprised to find that reporters are to be shut out altogether, and many will regard this last step with the greatest satisfaction. There can be no doubt that when private executions were substituted for the brutal exhibitions previously permitted, the representatives of the press were admitted without the least suspicion of the disgusting and sickening minuteness with which the horrible details of each tragedy would be reproduced. The intention was that members of the outside public should be present as a matter of form, and the reporters were admitted as being the most representative . . . The reporters could be got rid of at any time if they abused their opportunity. They did abuse it, and they have been got rid of.²⁰

There were no further executions in Lancashire during 1879, but the first assizes of 1880 produced two cases. William

18 *The Standard*, 30 May 1879.

19 *Manchester Evening Mail*, 20 May 1879.

20 *The Porcupine*, 24 May 1879.

Cassidy of Bolton was sentenced to be hanged at Strangeways on 17 February for dousing his wife with paraffin and setting fire to her. There were three culprits for the 'Widnes Murder' of one Patrick Tracey by his wife's lover, Patrick Kearns. Hugh Burns (a man of low intelligence who had probably little share in, or understanding of, the crime) was also implicated and condemned, as was Mrs Tracey, who was carrying Kearns's child. She was respited owing to the imminent birth, but the two men were to be hanged at Kirkdale on 2 March.

Among William Garnett's papers there is only one letter, from the *Manchester Courier*, seeking permission to be present at Cassidy's execution. The phrasing indicates that exclusion had been more or less accepted by the press, but that something might recently have altered. 'One reason for troubling you with this application is that the rule as to the admission of representatives of the press has been relaxed in other places where reporters have been admitted.'²¹ Admission was refused, but the *Courier* managed to cobble together two full columns, as did the *Examiner*. The Liverpool papers were less interested, but the coroner's inquest provided them all with ammunition for reviving the battle over press permissions.

The inquest was entirely in the hands of the coroner, who had liberty to allow whomever he wished to attend, unless it was held inside the walls of the prison, in which case the prison governor's authority was paramount. On this occasion the prison authorities refused entry to the press, having, it was said, telegraphed the prison commissioners for their decision but not having received an answer in time, and the coroner therefore removed the inquest to a neighbouring hotel, to which the press was admitted. The *Daily Post* was particularly incensed by the necessity for this move, and thought the coroner had not entirely understood his powers, which would have extended, it thought, to having 'the governor locked up for contempt by his own warders'.²²

The press who attended the inquest made much of the comment by a juror that 'the head was almost off the body', as proof that observers were necessary to prevent, or at least record, irregularities. At the end of the inquest the jury made

21 Lancs. R.O., DDQ 84.

22 *Liverpool Daily Post*, 18 Feb. 1880.

a presentment 'that at future executions reporters of the press should be allowed to be present', an opinion to which the coroner was clearly sympathetic. A flurry of activity followed. Notice was given of a question in the Commons, and the Home Office hastily wrote to the high sheriff, asking for comments on the execution.²³ The home secretary's parliamentary answer showed the experienced politician, ducking under the parapet before the bullets flew, and indicating that he was really on both sides at once. 'The manner in which the sentence was to be executed', he said, 'had been left from time immemorial to the High Sheriff, and the Home Office had never interfered; but if any abuse occurred he would be the first to do so. He . . . would put himself in communication with the local authorities, and see what could be done with regard to the admission of the Press, or some representatives on behalf of the public; but amongst the evils complained of under the former system were the reports of the executions in the papers.'²⁴

The Lancashire newspapers took up the fight, not so much in retrospect over Cassidy, but by drawing up their ranks for the approaching execution of Kearns and Burns. They sent in their requests to the high sheriff, not without collusion. There was even a request from the Liverpool correspondent of *La Semaine Française* and other French papers. The home secretary wrote personally to the high sheriff. 'There is I find every desire in both Houses to exclude all sensational paragraphs as to Executions. I find at the same time some uneasiness at the fact of no one but the officials being there. You would see my answer in the Times the other day, and an article in the Standard. I think it would give great satisfaction if you could in any manner see your way next week at Liverpool to admit some one or two on express understanding that no sensational paragraph was to be written.'²⁵

William Garnett received this by the morning post on 26 February, wrote his reply to the newspapers immediately, took it to Lancaster in the afternoon to discuss it with William Sharp, and then to Longmans the bookseller in Market Street,

23 Lancs. R.O., DDQ 84.

24 *Hansard*, 23 Feb. 1880.

25 Lancs. R.O., DDQ 84.

which served as an unofficial club for the Lancaster gentry. Here he was able to sit and make fair copies of his draft to the Liverpool *Daily Post* and *Mercury*, and catch the afternoon post.²⁶ He kept the draft.²⁷

Sir, I am prepared to grant admission to *one* Representative of your paper, to the execution which will take place on Tuesday next—on the following conditions—an acceptance of which I must have in writing or I shall withhold my permission for you to be represented on the occasion.

1. You undertake that merely the *fact* of whether the execution has been carried into effect humanely or otherwise, shall be recorded.

2. You will undertake that no details regarding the personal appearance or acts, (either before or at the time of Execution) of the wretched criminals be recorded.

3. You undertake that your representative shall not furnish any information to any other paper whereby the above Conditions may be broken.

I may add that I have the fullest authority for acting in the matter, and shall not hesitate to refuse admissions if these conditions are not accepted in their entirety. An Answer per return will oblige.

The response from the press was hardly surprising. No one took up an offer 'which is thoroughly opposed to the spirit of freedom and independence in which English journalism has hitherto been conducted'. 'The observance of such conditions would make impossible the proper discharge of the duties of the reporter, and further, the Editor declines to allow his reasonable discretion to be fettered in the stringent manner proposed by the High Sheriff.'²⁸ The *Daily Post*, in a full column, blamed the change in attitude on the 1877 Act. 'Since the acquisitions of the prisons by the government, however, the power of admitting the Press to executions has been vested in the High Sheriffs, and these gentlemen, clad with a little brief authority, have almost invariably excluded the Press'. They also printed the high sheriff's 'extraordinary letter' in full.²⁹

The executioner of the Widnes murderers was William Marwood, and William Garnett kept, no doubt as a macabre curiosity, his letter to Wilson and Deacon.

26 William Garnett's diary, 26 Feb. 1880.

27 Lancs. R.O., DDQ 84.

28 Ibid.

29 *Liverpool Daily Post*, 28 Feb. 1880.

Sir—Pleas this is to inform you that i have reseaved your *kind Letter* Concerning the tow Prisoners now under the *Sentence of Death* at *H.M. Prison Kirkdale* Prison Liverpool the Execution to take Place on Tuesday next at Kirkdale March the *Sekond* Day of March. Sir i thank you for your Very kind *Letter* and also to inform you that Every *Cair* shall be taken in the Araingement of the *Execution* of the 2 Prisoners i shall Ariave at the Prison on Monday the First Day of March—you may Depend on *me* to be thear at the Time apointed—*Sir* i will send a Letter to the Governor of *H.M. Prison* at Kirkdale to Let him know that I shall ariave at the Prison Kirkdale on Monday the 1 Day of March. Sir i Remain your Humble Servant, Wm Marwood.³⁰

The high sheriff's ultimatum having failed as one would expect it to fail, there was no press representation at the execution, although the reporters did what they could to extract the last drop of sensation from insufficient material. They reverted to every detail of the crime; they made much of a story that Burns was innocent and would be exonerated by Kearns at the last minute; they interviewed friends and relations of the prisoners; they described the crowd outside, some of whom stood with their ears against the prison wall to hear the bodies drop. The *Daily Courier* expressed its doubts in a leader: 'It is widely rumoured that the secret system has been adopted because the new method of execution will not bear exposure'.³¹ The *Mercury* raised the hypothetical danger of a sufficiently wealthy malefactor who 'might contrive to evade the law altogether'.³²

It was unfortunate for William Garnett that on the day of execution he handed the press a classic opening for attack, on the grounds of the unsuitability of leaving such power in the hands of a person 'not appointed because of any special qualifications, but because they possessed so many thousands or hundreds a year'.³³ The execution of Burns and Kearns, which would be the last in his shrieval year, was the one he had decided to witness himself, in company with his under-sheriff William Sharp. They stayed the night at the North Western Hotel, and ordered a cab at 7.30 for the 8 a.m. execution, which, however short the transit, seems incautious.

30 Lancs. R.O., DDQ 84.

31 *Liverpool Daily Courier*, 3 Mar. 1880.

32 *Liverpool Mercury*, 3 Mar. 1880.

33 *Hansard*, 9 Mar. 1880.

It was, of course, a duty which Sharp had already undertaken several times, and the timetable was probably of his arranging.

It was a snowy, slippery morning. 'The man mistaking his directions proceeded to go to Walton gaol. We luckily stopped him before he got there. He then went as hard as he could to Kirkdale, about a quarter of a mile from the gaol the cab spring broke. Sharp and I then ran as hard as we could to the gaol and at last got there. A small crowd outside',³⁴ which was treated to the unusual sight of the high sheriff in his black suit and clutching his tall hat arriving at a sprint (he was a very athletic young man), with the older and stouter under-sheriff some minutes behind him. The unfortunate criminals had to wait nearly a quarter of an hour to be hanged.

Proceeded at once to the duty imposed by law and executed the two men Burns and Kearns who walked to the scaffold and died without a struggle or a word. Marwood was executioner. Saw the bodies cut down and found the length of the drop was in one case 9ft. 6in. and in the other 8ft. 7½in. Necks of both men dislocated completely . . . The whole thing today was too awfully simple, and easily done. No hitch anywhere. I did not feel at all bad: nothing as bad as seeing the man flogged in Manchester Gaol.³⁴

The final comment is interesting and credible: he had clearly been unable to come to terms with the trauma of the flogging in November 1879, and took refuge in a sort of schoolboy bravado: 'Caught the 9.5 train to Manchester with Wm. T. Sharp to see the flogging of the beast Kershaw who was tried at the last assize. Saw the sentence executed. The brute howled at the very first stroke and continued whining all thro' the 30 strokes. His back was well marked.'³⁵

By the first post after the double execution he 'wrote at once to the Home Secretary a full account of all that happened', before the newspapers appeared. Some of them commented on his blunder with restraint: others seized an opportunity to link the high sheriff's powers with the high sheriff's inefficiency.

In drawing up his extraordinary stipulations, there can be no doubt that the high sheriff strangely exaggerated his functions as the representative of the Crown. But this is not the only point upon which it would seem that Mr. Garnett is imperfectly informed as to his duties. He actually did not know

34 William Garnett's diary, 2 Mar. 1880.

35 Ibid. 19 Nov. 1879.

the gaol at which the execution, which he had undertaken to see properly carried out, was to take place! So at least it would appear from the evidence of Major Leggett, the governor of Kirkdale gaol, who at the inquest stated that 'the sheriff went to Walton gaol by mistake, and his cab having broken down, by the wheel coming off, he did not get to Kirkdale until between ten and fifteen minutes past eight o'clock'. The execution had been fixed for eight o'clock; so that for nearly a quarter of an hour the two wretched culprits were kept shivering under the shadow of the scaffold, while the representative of her Majesty, who had written so much about the law being 'humanely' carried out, was finding his way from the wrong to the right gaol! Of that fifteen minutes of awful agony to the poor culprits, what a chapter might be written! With nerves strung to the utmost tension, as the pinioning had been completed, with the hangman by their side, and the dreadful prison bell tolling their death knell, there they stood, amidst the gloom of the cheerless winter morning—waiting for the sheriff. If this is carrying out the law 'humanely', we have not another word to say on the subject.³⁶

The leader-writer of the *Mercury* was clearly enjoying a heaven-sent opportunity, but one may feel that it was fair comment.

The *Daily Courier* punished the high sheriff less, but the establishment more; the prose was no less purple, the argument somewhat wilder.

Executions in England are apparently being assimilated to the system which used to prevail in Spain, where the culprits were privately strangled in their cells without preliminary warning as to the time of their death. Up to this period the dates of execution in England are known, and the hours are fixed. The criminals doomed to expiate their offences on the gallows know how much time is left to them to prepare for another world. But the arrangements may miscarry, and the mental torture of the condemned may be prolonged when a snowstorm is allowed to interfere with the due fulfilment of the law. There is, besides, no longer any certainty that a criminal's life is taken according to the law. Under the new and secret system, everything depends upon the gaol officials, who may subject culprits to needless torture, or even hang substitutes, and some criminals might make it worth their while to do this. Executions are now removed beyond the influence of press criticism. High walls and massive gates intervene between the reporters and the criminals who are being done to death . . . In this case possibly the bodies viewed were those of Kearns and Burns, executed in accordance with judicial sentence; but there may come a time when the public will be less disposed to trust implicitly to official evidence.³⁷

William Garnett commented in his diary, 'The Liverpool

36 *Liverpool Mercury*, 3 Mar. 1880.

37 *Liverpool Daily Courier*, 3 Mar. 1880.

papers are quite *rabid* and will defeat their own object', but added 'Glad I wrote a full a/c of all details to Cross yesterday'.³⁸ The next day, as it happened, was the last of his shrieval year. 'I was relieved from the cares and duties of High Sheriff at 1.15 today',³⁹ the words heavily underlined. But the controversy was not over; it was taken up in both Houses of Parliament. Two days later, the home secretary was asked in the Commons to issue regulations requiring some reporters or other unofficial witnesses. There was 'a scene of some little heat and excitement'.⁴⁰ Cross answered as he had answered before, denying responsibility: 'There seems to be an idea that executions are carried out by the officers of the gaol under the direction of the Home Secretary. Nothing could be more erroneous. I have nothing to do with the matter from beginning to end. The condemned man is handed over to the High Sheriff.'⁴¹ On 9 March Lord Houghton brought a motion to the Lords 'That it is the opinion of this House that other than official persons should be present at ultramural executions', but it was negatived without a division, and to William Garnett's relief, certain noble lords referred to him as having 'exercised a sound discretion', and laid down conditions which were 'wise and judicious'.⁴² The *London Standard*, commonly more statesmanlike than its provincial fellows, produced a weighty and sensible leader summing up the controversy:

Lord Houghton's promised motion about admission of Reporters to Executions led last night to a longer and more important debate than might have been expected, and there seemed to be indications that some of the speakers were at cross purposes with one another. The Motion itself was ostensibly simple and unobjectionable, being merely that 'other than official persons' should be present at executions; the reason being that there ought to be independent testimony as to the observances of humanity and propriety on such occasions. But it follows from this that 'other persons', not officially tongue-tied, whether professional Reporters or not, might, and probably would, furnish accounts to the public Press of what they had seen and heard. So when there is talk of 'independent witnesses' and 'other than

38 William Garnett's diary, 3 Mar. 1880.

39 *Ibid.* 4 Mar. 1880.

40 *The Times*, 6 Mar. 1880.

41 *Hansard*, 5 Mar. 1880.

42 *Hansard*, 9 Mar. 1880.

official persons' we may safely assume that these phrases mean practically the same thing as 'Reporters.' Now, by the existing law, as expounded last night, the discretion as to the admission of such persons rests with the High Sheriff. He must admit certain officials; he may admit other persons who are not officials. One High Sheriff attempted to compromise. He would admit 'other persons', even if professional Reporters, if they would accept conditions pledging them to keep their reports within what he considered to be decent limits. Such an arrangement was, on the face of it, inadmissible, and would, in any case, have been impracticable. There are here materials for almost unlimited discussion, arriving at no result. The presence of the public at Executions means the presence of persons who will report the proceedings. That in its turn makes it certain that what are called 'demoralising accounts' cannot be checked except by the individual wills of newspapers. These latter, in the cases of such criminals as may be notorious or interesting, would be much biassed by a consideration of popular demands. It comes, therefore, to this, that there is no practicable third course between excluding the public from executions altogether and admitting full freedom of publication. When the point is once clear, the only remaining point is one that can be argued apart from newspaper considerations. It is simply this. Does the presence of officials only at the execution, followed by a Coroner's inquest to which Reporters are admitted, and at which evidence is taken on oath, give sufficient guarantee to the public that the person condemned was in fact executed, and that the execution was conducted according to form of law, and without inhumanity or untoward accident? Few persons will be found to deny seriously that the present law, however rigidly administered, really provides sufficient safeguards in these respects, and that where it falls short of ideal perfection the defect is more than compensated by accompanying advantages. Whether individual High Sheriffs should be trusted to administer according to their unfettered discretion a system which ought at least to be administered uniformly is quite another question, and one which need not be discussed until occasion arises.⁴³

The parliamentary session ended a few days later, and the controversy seems not to have been renewed. It must have ended in a very English fashion, not by any Home Office order, or change in the position and powers of the high sheriff (which were reiterated by the Sheriffs Act of 1887). The heat had gone out of the situation, and a tacit compromise seems to have been reached. How often in the next eighty years, before capital punishment was abolished in 1965, reporters were admitted to executions, and once admitted how often they overstepped the bounds of good manners in their reporting, is not known: to check would mean trawling

43 *The Standard*, 10 Mar. 1880.

through the newspaper reports of some 1,500 executions. That in theory they could be admitted, and in practice sometimes were, and that having been admitted a self-denying ordinance kept them in such low key that they were largely invisible, is proved by the words of an expert witness to the Select Committee on Capital Punishment in 1930. Sir Reginald Lane Poole was representing the Law Society. 'There are', he said, 'some counties still which admit the Press to executions. I am not sure that I am not in favour of that, in order that assuming there were any scandals the public might be informed; but I did not know when I wrote this answer that in some counties as for example the other day in the case of Podmore, reporters were admitted to the prison. I thought that now that was not allowed, but apparently, in some counties, under some provision, the details of which I do not know, and the authority for which I am unacquainted with, it is still possible for reporters to be admitted to executions.'⁴⁴ William Podmore was a salesman of oil to garages, who murdered his supplier to conceal the fact that he had been cheating him. He was hanged at Winchester on 22 April 1930, and two press representatives, one from Winchester and one from Southampton, were admitted. The information they divulged appears to have been as curt and restrained as if they had signed William Garnett's attempted restriction of fifty years before.⁴⁵

44 *Report of Select Committee on Capital Punishment*, 1931, P.P. 1931 (2102).

45 *The Times*, 23 Apr. 1930.