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Introduction

Early on the morning of Tuesday, 26 May 1868, the eminent Victorian journalist George Augustus Sala arrived outside Newgate Prison to report on the last "public" execution in Britain. This was not his first such assignment. Sixteen years earlier, he had attended the hanging at Lewes (Sussex) of Sarah Ann French for poisoning her husband.[1] This time, the condemned was Michael Barrett, the only man condemned for "the Clerkenwell Outrage," when he and several other Fenians had dynamited the wall of Clerkenwell Prison in an attempt to free their associates confined within, killing twelve people and injuring more than 100 others.[2] If murder could ever be said to warrant the deliberate killing of the perpetrator by the state, execution might well have seemed particularly appropriate for this crime.

Sala's account was not much concerned with the crime, however. It focused instead upon whether the effects of Barrett's execution upon those in attendance justified the suffering inflicted upon him. For over a century, this calculation – memorably defined by the novelist and London magistrate Henry Fielding in 1751 – had been a central element of official thinking about executions. Both their moral acceptability and their deterrent efficacy depended upon their being

[1] [G. A. Sala,] "Open-Air Entertainments," *Household Words*, 5 (1852), 165–9; Judith Knelman, *Twisting in the Wind: The Murderess and the English Press* (Toronto, 1998), 55–69, 93–101.
[2] K. R. M. Short, *The Dynamite War: Irish-American Bombers in Victorian Britain* (Dublin, 1979), 7–17.

staged in such a manner as to ensure that the public's detestation of the crime being punished outweighed its natural abhorrence of any apparent agonies endured by the condemned. To what extent did Barrett's execution measure up to this standard?

In Sala's view, not very well. After French's execution in 1852, he had taken the train to Brighton in company with many of his fellow attendees. "Every minute particle of the horrible ceremony was enumerated, discussed, commented upon," he noted then, "but, I can conscientiously declare that I did not hear one word, one sentiment expressed, which could lead me to believe that any single object for which this fair had been professedly made public, had been accomplished."[3] Sixteen years later, Sala was pleasantly surprised to observe that the usual "scum of the abandoned class" comprised "only the smaller part of the throng" gathered to witness Barrett's hanging. He perceived the crowd to consist, in "very large proportion," of "respectable working men, or small tradesmen" who, "knowing that executions are henceforth to be conducted privately, had come chiefly to avail themselves of the last chance" to see one.[4] As the fatal hour (8.00 a.m.) drew closer, "the crowd became denser, but never dangerously, and seldom inconveniently so; and … the influx was chiefly due to the arrivals of workpeople, male and female, who had secured an extra hour for their breakfast in order to take the execution on their way." Nor did Sala detect either a dangerous sympathy for the condemned or detestation of the hangman. The shouts of "Hats off," "Bravo," and of the condemned man's name seemed "more … outbursts of impulsive feeling," signifying "little more than recognition," and "such as they were, they were soon hushed." In general, Sala perceived this last conventional execution crowd to be remarkably well-behaved: to be substantially and reassuringly composed of that better class of working people which all high-minded Victorian commentators hoped to see emerging by the late nineteenth century.

But Sala also saw no evidence that the crowd derived any great moral message from the display. After the platform fell from beneath Barrett's feet – with that "sound, once heard never to be forgotten" – his

[3] [Sala,] "Open-Air Entertainments," 169a.
[4] All quotations in this paragraph and the next are from his account in the *Daily News*, 27 May 1868, pp. 5f–6a.

"powerful frame trembled, and [his] knees shook convulsively," actions that persisted "even after the 'swinging' had been stopped" by the hangman. "A general outcry of horror from men and boys, and a few piercing shrieks from some women, were fitting accompaniments to the scene." Sala also noted that journalists had been prevented from having any interactions with Barrett before he was brought out onto the platform. In yet another departure from long established practice, he had even been pinioned beforehand. All this had surely been done with the intention of shortening, as much as possible, the public display during this last of public executions.

If the attending crowd derived no moral lesson from the open display of executions, and if the condemned could not be reliably assured of a mercifully swift death, then surely the removal of executions behind prison walls – authorized by a law passed three days after Barrett was hanged – would resolve both problems. Three months later, Sala was on hand to test this proposition.

This time the condemned, hanged inside Maidstone Gaol, was Thomas Wells, a nineteen-year-old railway porter who had impulsively shot and killed a station master "after being mildly reprimanded" by him.[5] Somewhat contradicting his observations on the previous occasion, Sala noted that, "For the first time in England the law has taken its course without the shameful accessories of a howling, screaming, struggling, blaspheming mob," save for "forty to fifty of the dregs of the population – consisting principally of lads of from six to fifteen – squatting on the pavement" near the gaol in the hope of seeing something. The "veriest scum which even a garrison town is capable of throwing to the surface," they were nevertheless "the mere ghost of an execution-mob." Wells was hanged at 10.30 a.m. half an hour after the two dozen people summoned within the gaol "to witness his supreme agony" – "half of them officers connected with the gaol, and half the representatives of the public" – had been admitted. On the scaffold, while he was being pinioned, Wells sang a hymn "in a low and tremulous chant," continuing to do so even after the cotton cap was pulled over his head.

[5] All quotations in this paragraph and the next are from Sala's account in the *Daily News*, 14 Aug 1868, pp. 5a–b.

The dropping of the platform was no more effective in instantly killing Wells than Barrett. This time, however, the horrible realities of execution were experienced by the few attendees – and by Sala's readers – far more vividly than ever before.

> Before life was extinct, . . . all present were invited to advance up to the hanging body. Some convulsive struggles of the strapped legs, throat gurglings, which were heard distinctly through the cap, a deep clenching of the clasped rapidly hands, which turned blue, and a discolouration of the neck, under the ear where the halter came – such were the signs noted silently by those whose painful duty it was to look on.

By comparison with previous executions, Sala thought this one to be "commendably decorous, orderly, and brief." Even so, "the spectacle," however diminished in scale and concealed from the crowd, was "probably more harrowing than any other scene of the kind."

Overview

Few subjects so vividly confront us with the gulf between "then" and "now" as public execution; and few moments seem so clearly to signal a transition from "pre-modern" to "modern" as that when executions ceased to be conducted in the immediate public gaze. As we will see near the end of this book (and as Sala's continued use of the word "spectacle" might imply), the change that took place in England in 1868 was not so much from public to non-public executions, but rather to executions that were made "public" in a different manner. Officials had previously sought to contain objections to the visible work of the gallows in several ways: by seeking to make the death inflicted instantaneous; by limiting the number of people hanged at any one time and place; by seeking to ensure that the crimes for which executions were inflicted deserved to be so punished; and by staging executions so as to keep the public mind fixed more firmly upon the offence than upon the suffering offender. In making these calculations, officials had relied upon a cooperative media – especially the newspaper press – since the early eighteenth century at least. For several decades after 1868, indeed, they expected the press to keep the public's eye focused upon the just punishment of the crime, as well as to alleviate any fear that the outward concealment of executions

might potentially mask either inequities of treatment or cruelties in their conduct. When at last execution itself, even for murder, came to seem an unacceptable cruelty, it was abolished.

This book provides the first comprehensive, single-volume account of how and why the character, the physical location and the numerical scale of English executions changed during the two-and-a-half centuries following the Restoration. Chapter 2 shows how spectacular modes of execution, which in England were already confined solely to traitors, were soon limited, in the duration both of the agonies inflicted and of the subsequent display of bodily parts, decades before continental states stopped decapitating common criminals or breaking them on the wheel. Chapter 3 reminds us, however, that the quality of English mercy was strained in other respects. England executed far more common criminals than any other nation, a practice that was sustained, in part, by a religious doctrine that offered the hope of salvation in the afterlife, even for the worst criminals, while maintaining that there was relatively little difference between the condemned and all other "sinners." By the last third of the eighteenth century, that belief system had been substantially eroded by mutually reinforcing changes in religious and emotional cultures. Chapter 4 shows how these new outlooks not only presented capital criminals as distinctly "other" to the law-abiding, but also viewed people who attended executions as a breed apart. Such views, animated by new beliefs and concerns that were particularly associated with a rapidly expanding urban environment, inspired both an extraordinary increase in the numerical scale of English executions by the 1780s and the concurrent effort to make executions more effective by reconceptualizing their dramaturgy.

No criminals seemed more definitively "other" than murderers. The desire to punish them more severely, while serving other compelling interests, inspired the single most striking innovation in English execution practice of the eighteenth century. The Murder Act of 1752 required that the dead bodies of executed killers be either anatomized and dissected (Chapter 5) or hung in chains upon a gibbet (Chapter 6). The purposes and effects of this remarkable statute are considered here at some length because, in recent years, many if not most historians have come to view both as being newly and distinctly regressive. In fact, as we will see, for most of the remainder of the eighteenth century, the

practical effects of the Murder Act were at worst largely benign and, in some ways, positively beneficial to the interests of humanity. If post-mortem dissection ran the risk, as so many people feared it might, of inflicting unspeakable agonies upon a body that might still be able to experience them, the Murder Act at least confined those agonies to the one class of offenders whom everyone might think most deserving of them. In so doing, it conformed to an increasingly powerful new culture of feeling (or sympathy) which demanded not only that no more pain should be inflicted upon the bodies of those condemned for crimes other than murder than was strictly necessary to securing a deterrent display, but also a more substantial apprehension of the suffering of the victims of crime. By the mid 1780s, however, and increasingly thereafter, the unintended consequences of the Murder Act – first an accelerating epidemic of grave robbery to supply surgeons with anatomical "subjects," then finally the resort of some men to serial murder to do so – definitively undermined the statute's logic.

England's traditional (landed) rulers had resolved the penal crisis of the 1780s by sharply reducing the scale of executions in any one jurisdiction. By this means, they hoped to preserve the letter of a "Bloody Code," which assigned the death penalty to more than 200 separately defined crimes, at a time when most other western nations were entirely abandoning execution for all but a handful of the most serious offences. To the urban and middling ("urbane") peoples of England, a criminal law that went substantially unenforced defeated the principle of certainty and proportion in punishments. Chapter 7 outlines the first phase of the struggle in parliament between these two perspectives, arguing that the reformers and their cause were more powerful than previous accounts, focusing upon the movement's few formal successes, have allowed. Chapter 8 shows how the work of Home Secretary Robert Peel during the 1820s clearly responded to the power of this reform movement and prepared the ground for the decisive reduction of the "Bloody Code" in the mid 1830s. Chapter 9 completes the story by showing how the public culture of Victorian England, now governed by the priorities of urbane people, was surprisingly slow to abandon the last vestiges of the "Bloody Code" and never seriously questioned that moral equation between murder and execution which prevailed until the 1960s.

This study incorporates many of the insights of – but also seeks to move beyond – two major analytical perspectives that have dominated penal history during the last three decades. The first is a pronounced deference to theoretical perspectives, often at the cost of the historian's close attention to detail. Michel Foucault doubts the degree to which "Enlightenment" influences upon the transition from public/physical punishments to psychological inflictions imposed behind prison walls were genuinely humane. His perspective has been viewed critically, but not unsympathetically, by Randall McGowen and others.[6] Pieter Spierenburg embraced Norbert Elias's "civilizing process" as a means of explaining penal change as part of a long-term transformation in state power and social–cultural practices. His lead has been followed, with qualifications, by such prominent historians of England as James Sharpe.[7] The most eminent theorist of punishment, David Garland, while pointedly refusing to adhere to any one perspective, nonetheless embraces the theoretical enterprise itself.[8] The capacity of such work to stimulate significant and helpful reflections upon major developments in any one national context has recently been demonstrated by Peter King.[9]

The strength of theoretical approaches is their insistence that we notice broad similarities in basic patterns of development throughout the western world. Those similarities, however, while persuasive at a macro-level of analysis – where the landscape is viewed, as it were, from high above the surface – may seem less compelling when our perspective is kept closer to the ground. The concern of this book is to

[6] Randall McGowen, "The Body and Punishment in Eighteenth-Century England," *Journal of Modern History*, 59 (1987), 651–79; Randall McGowen, "Power and Humanity, or Foucault among the Historians," in Colin Jones and Roy Porter (eds.), *Reassessing Foucault: Power, Medicine and the Body* (1994), 91–112.

[7] Pieter Spierenburg, *The Broken Spell: A Cultural and Anthropological History of Preindustrial Europe* (New Brunswick, NJ, 1991), ch. 1; Gatrell, 17, 27; J. A. Sharpe, "Civility, Civilizing Processes, and the End of Public Punishment in England," in Peter Burke, Brian Harrison and Paul Slack (eds.), *Civil Histories: Essays Presented to Sir Keith Thomas* (Oxford, 2000), 215–30; J. A. Sharpe, *A Fiery and Furious People: A History of Violence in England* (2016), 23–6.

[8] David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford, 1990); David Garland, "Modes of Capital Punishment: The Death Penalty in Historical Perspective," in David Garland, Randall McGowen and Michael Meranze (eds.), *America's Death Penalty: Between Past and Present* (New York, NY, 2011), 30–71.

[9] Peter King, *Punishing the Criminal Corpse, 1700–1840: Aggravated Forms of the Death Penalty in England* (2017), 7–10, 195–9.

explain how and why English execution practices changed in ways that were often distinct, in both their timing and their character, from other parts of Europe and North America.

A second analytical vision that has been broadly ascendant in recent years maintains that changes in the letter and practice of English criminal law after 1750, a date once taken to signal the advent of humanizing trends, were in fact more distinctly regressive (or at least, non-progressive) than the pioneering work of Leon Radzinowicz and others seemed to suggest.[10] This outlook came to prominence with V. A. C. Gatrell's *The Hanging Tree* (1994). One cannot read that remarkable book without feeling its compelling emotive force, particularly its insistence that the character and motives of reform advocates were not so unambiguously "good," and their efforts on behalf of the condemned not so consistently energetic, as they were once presumed to be. The case for a more ambivalent record of progress has been reiterated in several recent studies of the Murder Act of 1752.[11] Stimulating as all these works have been, however, readers may come away from them with the impression that not much changed for the better – or even much at all – until 1830 at least.

The central concern of this book is to explain the remarkable shifts in the character, extent and frequency of executions in England between the Restoration and the twentieth century. In so doing, it endorses some of the insights of these works, while questioning others. By the early nineteenth century, English officials had become deeply divided by a struggle to redefine the scale, morality and effect of executions for crimes other than murder. On the one side was a traditional landed rural elite, determined to defend most of the old practices, albeit on a scale sufficiently reduced to minimize the powerful and persistent objections that had arisen to them. On the other was a new, urban-oriented (urbane) public culture that sought

[10] Radzinowicz, i, iv; David D. Cooper, *The Lesson of the Scaffold: The Public Execution Controversy in England* (1974); J. M. Beattie, *Crime and the Courts in England, 1660–1800* (Princeton, NJ, 1986).

[11] Elizabeth Hurren, *Dissecting the Criminal Corpse: Staging Post-execution Punishment in Early Modern England* (2016); King, *Punishing the Criminal Corpse*; Sarah Tarlow, *The Golden and Ghoulish Age of the Gibbet in Britain* (2017); Sarah Tarlow and Emma Battell Lowman, *Harnessing the Power of the Criminal Corpse* (Cham, 2018).

to eliminate execution for all crimes against property, as well as all prolonged modes of execution and post-mortem infliction.

Contexts

Whichever side of the social–cultural divide they stood upon, however, officials, at both the national and local levels, were the driving force of changes in execution practice.[12] These men were more immediately responsive to changes in the physical and moral circumstances of executions than their European counterparts. That responsiveness arose from at least five distinct and often overlapping features of public life that were either unique to England or at least uniquely powerful there: (1) a criminal law universally applicable throughout the realm, but enforced variably, from one time and place to another; (2) a parliamentary monarchy in which both royal government and a notably representative parliament were responsive to public opinion; (3) the unprecedented scale of urbanization in England from the seventeenth century onwards, which gave rise to an increasingly influential class of urban-based people who objected to prolonged execution displays in their midst, as well as the responses those displays provoked in working people; (4) a free and independent public press, which provided a vehicle for the sustained and increasingly powerful expression of these new "urbane" views; and (5) the size, and the political and cultural power, of London, which at certain critical junctures exerted a decisive influence on the conduct of executions throughout the nation at large.

A Single Criminal Law, Variably Enforced

Compared with other European states, England was to a unique degree effectively centralized under royal rule by the High Middle Ages. The oversight of criminal justice – the principle indeed that any crime was a violation of "the king's peace," rather than a purely personal wrong amongst his subjects – was embodied, by the middle of the twelfth

[12] Compare Tim Hitchcock and Robert Shoemaker, *London Lives: Poverty, Crime and the Making of a Modern City, 1690–1800* (Cambridge, 2015), which argues that criminals and the poor provided the main forces of change in secondary punishments.

century, in the establishment of eyres, wherein the king heard serious crimes in person in some parts of the country. In the thirteenth century the eyres gave way to assizes circuits, wherein royal judges, acting in the king's name, often conducted trials and imposed capital sentences in most counties: every few years initially, and eventually twice yearly in all places except the north.[13]

The system's success was assured in part by the prominent role it assigned local elites in the administration of justice, both as judges in lesser causes at quarter sessions and as participants in determining the fates of capitally condemned offenders at the assizes. This blending of local influence and central authority was symbolically evoked, twice yearly, when the royal judges arrived at each county capital. They were greeted at the town's boundary by the county sheriff and his many junior officials, a ritual enactment of "the subtle marriage of county authority and central power."[14] Moreover, although England's first two Stuart kings appear to have been particularly heavy-handed in using the judges to advance their agendas, this does not seem to have entailed any centrally directed policies as to hanging or pardoning capital criminals.[15] If a single, nationwide pardoning policy was being imposed at this time, explicit evidence of it has not yet been uncovered.[16]

[13] J. S. Cockburn, *A History of English Assizes, 1558–1714* (Cambridge, 1972), ch. 1; Edward Powell, "The Administration of Criminal Justice in Late-Medieval England: Peace Sessions and Assizes," in Richard Eales and David Sullivan (eds.), *The Political Context of Law* (1987), 49–59; Edward Powell, "Law and Justice," in Rosemary Horrox (ed.), *Fifteenth-Century Attitudes* (Cambridge, 1994), 29–41; Paul Brand, "The Formation of the English Legal System, 1150–1400," in Antonio Padoa-Schioppa (ed.), *Legislation and Justice* (Oxford, 1997), 103–21; David Carpenter, *The Struggle for Mastery: Britain 1066–1284* (2003), 156–7, 233–5, 348, 479–80; John H. Langbein, Renée Lettow Lerner and Bruce P. Smith, *History of the Common Law: The Development of Anglo-American Legal Institutions* (New York, NY, 2009), 64–72, 211–12, 592–4.

[14] David Eastwood, *Government and Community in the English Provinces, 1700–1870* (Basingstoke, 1997), 101–2 (quote at 102).

[15] Steve Hindle, *The State and Social Change in Early Modern England, 1550–1640* (Basingstoke, 2000), 6–10.

[16] The circuit judges received their instructions in the Court of Star Chamber until that notorious institution was abolished in 1641 (Cockburn, *History*, ch. 8). After the Restoration such instructions were issued far less often, and the judges received them at a meeting of the Privy Council (e.g., HMC [36] Ormonde MSS n.s. v.342; BL, Add MS 36118, ff. 115–22; BL, Add MS 40782, ff. 113v, 125; BL, Add MS 72566, ff. 2–3;