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**‘THE HABITUAL ECCENTRICITIES OF THE
SOLONS OF STAFFORDSHIRE’:
AN INVESTIGATION OF THE CIRCUMSTANCES SURROUNDING
THE PARLIAMENTARY ENQUIRY INTO THE ILL-TREATMENT OF
MRS ELIZA PRICE OF BRIERLEY HILL, 1845**

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Abstract:

This article investigates the circumstances surrounding a dramatic petition read out in the House of Commons in the late spring of 1845 which detailed the alleged ill-treatment of a heavily pregnant young married woman from Brierley Hill, Staffordshire by two parish constables acting upon the instructions of a county magistrate. What began as a minor squabble in two competing provincial magistrates’ courts in the rapidly urbanizing Black Country resulted in a Parliamentary Enquiry and quickly escalated into a nationally aired debate on the capability and legality of the methods used by both the provincial magistracy and police to arrest, detain and physically constrain crime suspects.

This discussion aims to show how various mechanisms of power and politics at local and national levels were utilized both explicitly and implicitly in attempts to apportion responsibility and militate culpability following the publication of the findings of the Parliamentary Enquiry. It also examines the extent to which the local magistracy attempted to control the discretion and activities of an untrained and unprofessional local police force at a time when the future of the lay magistracy and the parish constabulary system was being questioned.

Keywords: police accountability, local magistracy, magisterial power, Parliamentary Enquiry,

Introduction

Solon (c.638-558BC) was an Athenian poet, lawyer and statesman, and is considered to be one of the founding fathers of the democratic ideal. His writings were often used by later commentators in attempts to define concepts of morality, including the view that both rich and poor should be treated equally before the law: ‘Before them both I held my shield of might, And let them not touch the other’s right.’¹

Although Solon’s ideas continued to have a considerable influence on how legal systems should operate, his name was also increasingly applied in a satirical manner to law makers

¹ Quoted from online version (www.ebooks.adelaide.edu.au/p/plutarch/lives/complete.html 19 October 2010), of Clough, A.H.,(ed.), Plutarch, *Lives of the Noble Grecians and Romans, translated by John Dryden* (1906, Boston: Little, Brown & Co.,).

and administers; by the early nineteenth century, incompetent politicians and magistrates alike were often scathingly referred to as 'Solons' in the 'Letters' columns of newspapers.² The quote in the title of this article is taken from a *Times* editorial of 20 June 1845 and refers to the case under discussion in this article, in which 'The Thunderer' clearly regarded members of the magistracy to be at fault.³

1 'A case of greater oppression than that stated in the petition had never occurred': the Petition of Mrs Eliza Price

On Friday 9 May 1845 Mr Thomas Slingsby Duncombe, MP for Finsbury, Radical, and vocal supporter of the Chartists, read out a petition to his fellow MPs in the House of Commons which had been compiled and forwarded on behalf of Mrs Eliza Price of Brierley Hill, Staffordshire (a small mining town in the rapidly industrialising midlands area of England known as the Black Country⁴).⁵ The petition contained several shocking allegations of police brutality, both verbal and physical, carried out by two members of the Kingswinford District Police against Mrs Price, who was in her mid-twenties at the time of the incident and was heavily pregnant with her fourth child. Mrs Price was the wife of William, a poor but respectable millman, who had lived at her current address for some three years. She claimed that after being arrested on warrant by two constables for a simple assault, she had been sworn at, forcibly manhandled and detained overnight by being chained to the fire grate of a public house.⁶

It seems highly likely that despite being the signatory of the petition, Mrs Price was illiterate – both *The Times* report and the *Hansard* report of the reading of the petition show Mrs

² See for example, *The Times*, 31 December 1838 in which a correspondent refers to 'the dull Solons of Leigh'.

³ *The Times* was first referred to as 'The Thunderer' in an article in the *Morning Herald*, 15 February 1830, following a *Times* editorial, 11 February 1830 concerning the mysterious death of Lord Graves, which, referring to a previous editorial on the matter, contained the phrase 'we thundered out that article'.

⁴ The 'Black Country' is a polycentric area of settlement on the western fringes of what is now the West Midlands. First referred to as such in the early nineteenth century, it gained its name from the prevalence of heavily polluting activities such as chainmaking and metal-working. It owed its rapid growth to readily available staples of heavy industry, including coal, fireclay and limestone. In 1843 the *First Report of the Midland Mining Commission* (Parliamentary Papers 1843, XIII) referred to the area as 'an interminable village, composed of cottages and very ordinary houses [...] These houses, for the most part, are not arranged in continuous streets, but are interspersed with blazing furnaces, heaps of burning coal in process of coking, piles of iron-stone, calcining forges, pit-banks and engine chimneys.' (quoted in Greenslade, M.W., and Stuart, D.G., *A History of Staffordshire* (1998, 2nd ed. Phillimore, Chichester) p.19

⁵ *Hansard House of Commons Debates* 9 May 1845 vol.80 cc 410-3.

⁶ It is likely that William Price was a millman in an industrial slitting mill or similar, rather than a textile mill – there were few textile-related industries in the Black Country. By 1851 he had changed occupation and become a clock-cleaner and gilder.

Price as signing the petition with an 'X'.⁷ Although this was not unusual in the 1840s, illiteracy rates were beginning to fall; one of the few statistical sources available for the period suggests that around two-thirds of the English population were literate to varying degrees by the 1840s.⁸ The subsequent report into the circumstances referred to in her petition makes it clear that Mrs Price's petition was drawn up and forwarded by 'a gentleman' but unfortunately provides no further details concerning this individual.⁹

Mr Slingsby Duncombe concluded his reading of Mrs Price's petition by stating that:

A case of greater oppression than that stated in the petition had never occurred. It was a disgrace to the magistrates and the laws of the country.¹⁰

By the nineteenth century petitions had a long antecedence in England; the right to petition Parliament for redress for personal grievances dates back at least to the time of Henry IV (Rotuli Parliamentorum 1460), and was further strengthened by the Bill of Rights of 1688. As a result of these Acts, any subject of the monarch had the right to compile and submit a petition to the Crown and Parliament in order to seek judicial or parliamentary redress, and this right continues to the present day.¹¹ In her petition, Mrs Price stated that after 'being put to great inconvenience and expense', she had been advised that the only way she could achieve redress of her grievances was 'by action at law' against the magistrate involved, but that 'your petitioner is poor, and unable to instigate such proceedings for want of the necessary funds'.¹²

The number of petitions presented before Parliament could be staggering; between 1837 and 1841 almost 17,600 petitions were read annually in the House of Commons, and in 1843 a peak of 33,898 petitions was reached (by this time the majority of such petitions were on behalf of companies or entrepreneurs who were trying to get parliamentary approval for business ventures, rather than individuals exercising grievances).¹³ To lessen the claims of such petitions on Parliamentary time, Standing Order 134 of 1842 prevented

⁷ *The Times*, 10 May 1845 and Hansard, HC Deb 09 May 1845 vol.80 cc410-3.

⁸ The *Manchester Guardian*, 25 April 1938 reported that a recent survey of convicts' literacy rates had produced the following statistics: Convicts unable to read or write – 35.85%; Read and write imperfectly – 52.08%; Read and write well – 9.46%; Received superior instruction – 0.43%; Unknown standard – 2.18%

⁹ *The Times*, 29 July 1845.

¹⁰ *The Times*, 10 May 1845.

¹¹ For further details concerning the history of parliamentary petitions, see House of Commons, 'Public Petitions', *House of Commons Information Office Factsheet P7 Procedure Series*, August 2010, and for the role and use of petitions in Europe see Wurgler, A., 'Voices From Among the "Silent Masses": Humble Petitions and Social Conflicts in Early Modern Central Europe,' in (2001) 46 *International Review of Social History* 11-34.

¹² *The Times*, 10 May 1845.

¹³ 'Public Petitions' pp.6-7.

the debate of a petition on the House of Commons floor, apart from petitions 'complaining of some present personal grievance, for which there may be an urgent necessity for providing an immediate remedy', which were still allowed discussion time.¹⁴

Mrs Price's petition was one of the few such debated in the House following the imposition of Standing Order 134, and it caused considerable consternation in the House. Following an unsatisfactory request from Sir James Graham requesting the magistrate involved to explain his actions, Sir James instigated an official investigation on 19 May 1845 by Samuel March Phillipps (Under Secretary of State), with Deputy Judge Advocate F. Newman Rogers QC appointed to chair a commission into the claims of the petition, with his findings to be published as a Select Committee Report. Sir James made it clear that both the role of the magistrate involved and the actions of the two constables were to be thoroughly investigated and reported upon.

2 'Unnecessarily subjected to the degradation of criminal custody': the Findings of the Commissioner¹⁵

The investigation conducted by Newman Rogers took place on 30 and 31 May 1845 and was held firstly at Wordsley Petty Sessions and then adjourned to the Cross Inn, Kingswinford (site of Kingswinford Petty Sessions) in closed session. Wordsley at that time was a small township some 13 miles west of Birmingham and one mile south of Kingswinford. In the first half of the nineteenth century both settlements experienced a rapid population growth due to the presence of heavy industry and coalmining in the area, and in 1830 Wordsley was removed from Kingswinford parish, becoming a parish in its own right, with a newly constructed parish church.¹⁶

Those present at the investigation included Mr and Mrs Price, the two police constables involved, Mr James Baker and Mr William Onions, and the magistrate, Mr Samuel Stone Briscoe (prominent landowner, Staffordshire county magistrate since 1831 and magistrate at Kingswinford Petty Sessions), together with his 'professional advisor' – an unnamed lawyer. They heard the following evidence:

¹⁴ Ibid p.4, and see also House of Commons, *Standing Orders Public Business 2002 (2)*, *Public Petitions Standing Order* 155.

¹⁵ Unless otherwise stated, all quoted passages within this section of the article are taken from Parliamentary Papers 1845 [658] *Report of N. Rogers on Allegations in Petition from Eliza Price, of Ill-Treatment by two Constables of County of Stafford*, reproduced in full *The Times*, 29 July 1845.

¹⁶ Hill, *Wordsley Past & Present* p.5.

On Thursday 3 April 1845, Eliza, the wife of William Price, attended at the Petty Sessions, held at the Cross Inn, Kingswinford, as a witness on behalf of a female neighbour, Mrs Beaumont, who was charged with having assaulted and threatened Joseph Newey, a common informer.¹⁷ Whilst passing through the crowd in the justice room, Newey put his hand on Mrs Price's shoulder and turned her round in order to make way for himself – conduct which Mrs Price resented, pushing or striking him in the side, whereupon Newey immediately pushed her violently on the bosom; Mr Briscoe, the sitting magistrate, who partially saw what was going forward, called to Newey by name, and checked him in a tone of rebuke. [...] Mrs Price, much irritated and rather loudly, was taken out of the room by a policeman, becoming faint and unwell, she being six or seven months' advanced in pregnancy.

After recovering, Mrs Price applied for a summons against Newey for simple assault, but Mr Briscoe, thinking that Mrs Price had been the main aggressor, refused to issue one. Mrs Price then walked home to Brierley Hill with her husband, William. But she was not content to let the matter rest, and on the following day she obtained a summons against Newey for assault from the magistrates at nearby Wordsley. On 7 April the summons was heard at Wordsley Petty Sessions before magistrates William Robins, William Foster and George Bate, with Newey being fined and bound over to keep the peace.

However, Newey had on the very same day likewise obtained a warrant from Mr Briscoe at Kingswinford against Mrs Price for abusive behaviour. Eliza Price's petition states 'that after the said conviction of the said Joseph Newey, [at Wordsley Petty Sessions] he [...] exultingly pulled a paper from his pocket.' As a result of the execution of this warrant against Eliza Price, constables James Baker and William Onions of the Kingswinford District Police removed Eliza from her house in Moor Street, Brierley Hill the following evening.

Kingswinford District Police consisted of a group of constables under the administration of a Chairman and financed by the parish vestry. The policing of provincial England was in a somewhat confused state in the mid-nineteenth century. Although both the Municipal Corporations Act 1835 and the Rural Constabulary Act 1839 had encouraged the establishment of county and borough police forces based largely on the lines of the Metropolitan Police (created in 1829), there was no compulsory obligation for either a borough or a county to create a full-time, professional police force until the introduction of the County and Borough Police Act 1856.

¹⁷ A 'common informer' was a person who provided evidence at criminal trials for the sole purpose of being recompensed by receiving a share of any financial penalty awarded against the defendant. For further details on the role of common informers in courts see Beresford, M.W., 'The Common Informer, the Penal Statutes and Economic Regulation', (1957) 10(2) *Economic History Review*, New Series 221-238.

Staffordshire had created a county police force in 1842 following the Rural Constabulary Act 1839, which permitted county magistrates to appoint Chief Constables for the direction of the police in their areas. However, many ratepayers and magistrates were opposed to the introduction of such County forces, as they were seen as too expensive and detrimental to liberty, as there were perceived to be too few checks on their regulation and operation. Consequently, a parallel piecemeal system of parish constables remained in place in many areas including Kingswinford, which by 1845 was administered by county quarter sessions under the Parish Constabulary Act 1842.

Although nominally under the control of the Chief Constable of the county police force, parish constables were in actuality more often subject to the order of the parish vestry and local magistrates. Parish constables were unpaid and were nominally appointed for a period of one year, although due to a system of substitution whereby anyone unwilling to serve as a parish constable could nominate another willing person, many men served for a longer period. They had no official powers outside their parish, unlike the county police officers, who had countywide jurisdiction.¹⁸

This confused situation remained in place in some areas for another 30 years, before the Parish Constabulary Act 1872 finally abolished the office of parish constable, as 'unnecessary now that an efficient police force has now been established'.¹⁹ There was, therefore, often a barely disguised rivalry and mutual suspicion between the parish constabulary and members of the county constabularies. Although there has been much recent revision of the efficiency of parish constables, there is no doubt that the general contemporary perception was that they were not the most efficient form of policing.²⁰ In a Parliamentary Select Committee Report on Policing in 1839, evidence was heard from rural magistrates that:

As far as our experience extends, we are convinced of the incompetency and inefficiency of the old parish constable. He holds his office generally for a year; he enters upon its duties unwillingly; he knows little what is required of him; is scantily paid for some things, has no remuneration in many cases; he has local

¹⁸ For further details on the archaic and confusing duties and responsibilities of the parish constabulary, see Holdsworth, W.A., *The Handy Book of Parish Law* (1859, London: Routledge, reprinted by the Wiltshire Family History Society, 1995), pp.28-33. For a concise discussion of the system of English police from Anglo-Saxon times onward, see Rawlings, P., *Policing: A Short History* (2002, Cullompton: Willan Publishing) and Emsley, C., *The English Police: A Political and Social History*, (1996, 2nd ed., London: Longman).

¹⁹ Quoted in Li Wynne, M., *Some Principles of Policemanship* (1938, Singapore), p.18.

²⁰ For a more favourable view of the parish constabulary, see Sharpe, J.A., *Crime in Early Modern England 1550-1750* (1984, London: Longman) or Sharpe, J.A., 'Policing the Parish in Early Modern England', *Past and Present Colloquium: Police and Policing* (1983), unpaginated.

connections, is actuated by personal apprehension, and dreads making himself obnoxious. His private occupation as a farmer or little tradesman engross his time, and, in most cases, render him loath to exertion as a public officer; and all these drawbacks have induced a general persuasion that, in ordinary cases, the parish constable has an interest in keeping out of the way when his services are called for.²¹

Returning to the events detailed in Mrs Price's petition, her husband accompanied them to the nearby Horseshoes Inn in High Street, Brierley Hill (a town some two miles east of Wordsley) as did a Brierley Hill parish constable, Mr Tomkinson. According to her petition, both of these men asked the Kingswinford Police officers to release Eliza on assurances of her keeping her appointment with the Kingswinford magistrates, but the officers refused, as she had been arrested by warrant as opposed to being issued with a summons.

On arrival at the inn, no room was available, and following heated discussions Constable Baker suggested that Eliza accompany him to his house, where she could sleep in a room with his wife. Eliza refused this offer, as it was by this time after midnight and she did not want to travel with a man at that time of night to a strange house. Constable Onions was then alleged to have said to his colleague, Constable Baker, 'Damn her, if her won't go chain her to the post!' Constable Baker then went out and returned with a pair of handcuffs and a length of iron dog chain, and according to the enquiry:

One handcuff was bolted around Eliza's wrist which was furthest from the fire, and the chain attached to it, passing across her body, was fastened to an iron post which supported the fireplace.

Eliza Price remained in this uncomfortable situation until seven or eight a.m., accounts differing as to whether or not she was supplied with bedding and a place to lie down. Eliza's petition stated that:

no bed, bed-clothes, or other accommodation for sleeping was provided your petitioner, except a wooden bench, which was of an inconvenient distance from the post, and was immovable.²²

She was then taken on foot some two or three miles to Mr Briscoe's house, where she was subsequently released without bail. She appeared before Mr Briscoe and two other magistrates at Kingswinford Petty Sessions on 17 April, when the case against her was immediately dismissed.

²¹ *Crime and Punishment* Police vol. VIII (IUP Reprints Series): First Report on the Constabulary Force in England and Wales Parliamentary Papers 1839 (169) vol. XIX

²² This statement was hotly contradicted by Constables Onion and Baker, who insisted that they had made suitable provisions for her comfort and well-being.

The petition was reported in *The Times* 10 May 1845, and a letter from Mr Briscoe, in which he vigorously defended his actions, appeared in *The Times* 13 May:

Sir, As the reports of the proceedings of the House of Commons on Friday last contain matters impeaching my conduct as a magistrate, I beg you will have the goodness to state that I have written to Sir James Graham requesting the most searching and comprehensive enquiry. It became my duty, as I conceived, to issue the peace warrant in question. In doing this I was influenced by neither fear nor affection; it was simply a magisterial act called for by necessity; and of the mode in which that warrant was executed I had no knowledge whatever, until I became informed of it by a letter from Sir James Graham; nor upon enquiry will it be found to bear the character of oppressiveness attributed to it. The constable repeatedly offered to pay for a bed for the woman, and even offered to allow her to sleep with his own wife. The woman never complained to me or my colleagues on the bench. [...] the result of the enquiry. I feel confident, will show that I have not acted illegally or harshly in any degree whatever. Trusting to your sense of justice for the insertion of this note.²³

What evinced most shock and outrage to those who learnt of the contents of Mrs Price's petition i.e. the chaining in handcuffs overnight of a person suspected of a misdemeanour, seems not to have been considered unusual in the Black Country: the Commissioner remarked in his findings that:

Indeed, the system of chaining prisoners seems to be familiar to the people of the district, for neither Eliza Price nor her husband appears to have considered that she had undergone any peculiar injury in this respect. Their grievance was that she was brought up before the magistrates at the Cross Inn [Kingswinford] on 17 April for the same assault which had been determined in her favour by the magistrates at Wordsley on 7 April.

Mr Newman Rogers further stated that it appeared from the evidence of all the constables that:

The practice of chaining prisoners during the night at public houses, beershops, and, at one period, even at the police station, prevailed generally throughout the district. Each constable spoke of having himself frequently chained prisoners, and of having seen others chain them. All sorts of offences and all descriptions of crime are treated in the same manner. No distinction is made between persons charged with misdemeanours and those charged with felonies.

²³ It appears that Mr Briscoe despatched copies of his letter to many newspapers, as the same missive appears in several other London and provincial newspapers, including the *Morning Chronicle* and the *Political Examiner*.

Relating to a slightly earlier period, local diarist Thomas Clulow remarked in his *Journal* that in the 1830s the Old Bush Inn in Level Street, Brierley Hill had also often been used as a lock-up by the then parish constable, Benjamin Greenfield:

Mr Greenfield's house was the "lock-up", with a chain fastened to the culprit's leg, and locked to the fire grate, all night. On the next morning, he would be removed to Stourbridge lock-up, or taken to Kingswinford, to appear before Mr Briscoe, magistrate.²⁴

Such actions had apparently attracted previous local criticism, and Colonel Hogg, chairman of the Kingswinford District Police had caused the following addition to be entered into the order book of the Kingswinford Police Station on 25 July 1844:

No prisoner should in future be chained to the grate, but that one police constable should remain on reserve duty to take charge of the prisoner, and that all prisoners shall, as soon as possible, be removed to the Kingswinford lock-up.

Colonel Hogg also complained that whilst Kingswinford parish contained over 22,000 inhabitants, and was over eleven square miles in size, the single lock-up available could only hold a maximum of six people. This lack of suitable accommodation was the responsibility of the county magistrates, who had the power under the County Police Act 1840 to ensure that such buildings were erected at parish expense.

However, Colonel Hogg's order did not completely remove the practice, as there were apparently still parish constables who continued to chain people; Commissioner Newman Rogers wrote that 'other constables (of whom there seems to be still a considerable proportion) adhere to the former practice'. In his evidence, Constable Baker stated that Constable Onions had told him to chain Mrs Price 'as he had been in the habit of doing for years, there being no lock-up in the neighbourhood, or other mode of securing prisoners'.

Constable Baker stated that he had no option but to chain Eliza as she refused to promise to appear before Mr Briscoe, and that Mrs Ann Pearsall, the landlady of The Horseshoes Inn 'would not allow her to be left in the house except [*that*] she was chained up.'

Constable Baker was found to have 'acted from a mistaken sense of duty...for from the beginning to the end his manner was described by Mrs Price to have been civil and forbearing', while Constable Onions was found innocent of all ill-will toward Mrs Price. In his findings, Commissioner Newman Rogers stated that Mr Briscoe should be exonerated

²⁴ Clulow, T., *Journal of Thomas Clulow* (Dudley: Dudley Teachers Centre, undated).

of any ill-will toward Mrs Price, but criticised him for not 'rebuking the constables for such unnecessary rigour in the execution of a warrant on so trivial a charge'.

One of the most serious findings of the enquiry concerned two problems with regard to the issuing of warrants by Mr Briscoe. The first problem was that in his defence at the enquiry, Mr Briscoe stated that 'it is the usual practice to issue warrants and not summonses in all cases of assault'. This was in fact in contravention of usual legal practice in England, as warrants were normally only issued for indictable offences (unless the address of a suspect was unknown), and simple assault was classed then (as now) as a misdemeanour rather than an indictable felony.

Newman Rogers heavily criticised Mr Briscoe for this practice; he stated that:

the evil [of chaining suspects] has been, and is, greatly aggravated by the magistrates [...] indiscriminately granting warrants in all cases, by which decent persons have been exposed to this injurious treatment who never ought to be in custody at all, at least not previous to the charge against them being heard by the magistrates.

Secondly, Newman Rogers was also critical of the practice by which Mr Briscoe issued blank warrants of commitment, by which convicted prisoners were escorted by police officers to their place of custody, with nothing more than a hastily scribbled note being subsequently sent to his clerks of the court, Messrs William Lea senior and junior, who were not professionally trained and who lived several miles away in Wolverhampton. Newman Rogers was deeply critical of Mr Lea junior's apparent poor memory for the facts relating to the issuing of such warrants, referring to the clerk as 'Mr Lea, the clerk of whose want of memory I had reason to complain...' He stated 'if [the clerks] had been [legally qualified], the above irregularities could hardly have occurred'.

Newman Rogers' report also detailed a rift that had occurred between several local magistrates due to a breakdown of communication:

Previously to the year 1834, the business of the Kingswinford district was done at Wolverhampton or Dudley, or, when the nature of the business admitted, at Stourbridge, which is in Worcestershire, by the Worcestershire magistrates, who were also magistrates of Staffordshire.²⁵ In August 1834 Petty Sessions

²⁵ This was by no means an unusual situation; local 'worthies' were often appointed as magistrates of two neighbouring counties. This convenience allowed such individuals to hear cases that had originated in either of the counties – there was often a lack of precision as to where offences such as robberies or other acts of violence had occurred. For an example of such a case see Cox, D.J., *The Dunsley Murder of 1812: A Study in Early Nineteenth-century Crime Detection, Justice and Punishment* (2003, Dulston Press).

were established at the Cross Inn by Mr Briscoe and Mr Cope, magistrates living in the immediate neighbourhood [this rift resulted from an argument with the Stourbridge magistrates over clerks' fees].

In January 1844, Petty Sessions were established on each Monday by the Stourbridge magistrates in Wordsley at a former Dissenting Chapel:

Resolutions to that effect were entered into, which resolutions being published and circulated in hand-bills, a counter hand-bill was circulated, dated 1 February 1844, stating that the Petty Sessions would continue to be heard at the Cross Inn on Thursdays, signed by Mr Briscoe and three other magistrates.

The Commissioner pointed out the obvious shortcomings of having two conflicting Petty Sessions within the same district:

Two Petty Sessions being thus established under the circumstances above stated, without any division of district, unseemly jealousies among the magistrates and conflicts of authority as must naturally have been expected, have frequently occurred, tending to bring into disrepute the administration of justice.

Newman Rogers further stated that there appeared to be a significant degree of competition between the two magisterial benches: 'each bench of justices has its admirers, and the constables, and even some of the police force, seemed to me to be infected with a partisan spirit'.²⁶ There seems to have been little if any communication between the two benches; Mr Briscoe admitted that he did not know that the case had been dealt with and disposed of by the magistrates at Wordsley, or of Mrs Price's incarceration, saying that she had not mentioned it to him.

Another item discovered as a result of his enquiry disturbed Newman Rogers; much of Mr Briscoe's magisterial business was carried on at his private residence rather than in a formal setting as required by an Act For The Better Regulation Of Divisions 1828, which required Petty Sessions to be held in courtrooms provided and maintained by the County, with legally trained clerks of the court. Newman Rogers stated that:

Judging from his notebook, in which he inserts the evidence taken before him, and which was shown to me, Mr Briscoe seems to be a painstaking magistrate,

²⁶ Despite appearing to visitors to the area as a continuous urban sprawl, the villages and townships of the Black Country seem to have always had (and still retain) a strong sense of individual identity – as a landscape archaeologist recently stated with regard to the character of the Black Country, 'social traits were more persistent than the landscape' (Quigley, P., 'What's left of the Black Country', unpublished conference paper *Fifth Black Country History Day*, University of Birmingham 16 October 2010).

and the cause of the above strange proceedings may, in a great measure, be traced to the habit of doing business in a private house.

There is circumstantial evidence that Mr Briscoe may not have been a well man during his later years, which would account for his predilection for dispensing justice from his own house. In the *Morning Chronicle* report of 25 July 1845 detailing the ill-treatment of two young girls (see below), he was referred to by a witness as 'lying on the sofa [of his house] with pillows on it'. He may of course have simply been taking his ease, but he certainly did not live long beyond the events detailed in this article, dying at the age of 54 in late-1846, with his will being proved on 23 January 1847.²⁷

However, he was certainly not alone in dispensing justice from a less formal setting than a courtroom. Many justices of the peace kept notebooks in which they noted details of cases that were presented to them, and there are several examples of such notebooks containing examples of more informal dispensation of justice.²⁸ Few such notebooks have survived, but those that do are a fascinating source of information about the work of magistrates, as they include instances in which differences were settled without recourse to further legal involvement; in many instances the Justice of the Peace managed to get the would-be defendant and prosecutor to simply apologise and shake hands, thereby avoiding the need for costly formal judicial and legal intervention.

3 'The Indulgent Commissioner': Newman Rogers' Recommendations²⁹

The recommendations of Commissioner Newman Rogers were passed on to Sir James Graham, Secretary of State for the Home Office. He in turn wrote a letter dated 30 June 1845 to Earl Talbot, Lord Lieutenant of Staffordshire, in which he requested him to ensure that the following recommendations were implemented in full and that the local magistracy and constabulary were made aware of their shortcomings.³⁰

²⁷ TNA Prob 11/2050

²⁸ See for example, Thomas Netherton Parker's *Justicing Notebook, 1805-13* (Shropshire Archives 1060/168-170). For a brief discussion of the value of such notebooks for criminal justice historians, see Cox, D.J., 'The Shropshire Magistracy in the Eighteenth Century', in Cox, D.J. and Godfrey, B. (eds.), *Cinderellas & Packhorses: A History of the Shropshire Magistracy* (2005, Almeley: Logaston) pp. 23-42.

²⁹ *Political Examiner*, 2 August 1845.

³⁰ Parliamentary Papers 1845 [845], Copy of a letter from the Secretary of State for the Home Department to the Lord Lieutenant of the County of Stafford, again reproduced in full in *The Times*, 29 July 1845. All subsequent quotes in this section of the article are reproduced from this source. The post of Lord Lieutenant was originally created in the mid-sixteenth century when they were charged with maintaining the military duties of their respective county, but by the mid-seventeenth century their role also encompassed the advising the Lord Chancellor on the appointment of magistrates. They were also the 'Custos Rotulorum' (Keepers of the Rolls) of the Quarter Sessions – and as such were responsible for the maintenance and administration of the quarterly courts

- The squabbles between Wordsley and Kingswinford magistrates – Sir James recommended ‘the necessity of dividing into separate and distinct jurisdictions, the populous district which is now the subject of contention between two conflicting Benches of Magistrates’ – and required this ‘recommendation’ be put into immediate effect. He recognised that the Staffordshire Quarter Sessions had been discussing this matter for some time, but urged Earl Talbot to take ‘immediate steps’ to remedy this situation.
- The chaining of prisoners – Sir James requested that the Lord Lieutenant contacted the Quarter Sessions in order to ensure that ‘such directions be given to the parish constables as will at once put an end to this practice, which I consider indefensible’.
- The lack of suitable places of confinement for arrested suspects – on this matter Sir James drew the attention of both the Lord Lieutenant and the county magistrates to their responsibilities under the County Police Act 1840: ‘I beg therefore, to call your Lordship’s attention, and through your Lordship, the attention of the county magistrates, to the 12th section of the 3 and 4 Vict. c.88, which empowers the magistrates to erect suitable building for this purpose’.
- The dispensation of magisterial business from private dwellings – Sir James regarded this as a practice ‘which I consider open to serious objections’, and made it clear that he wished this practice to cease.
- He also made it clear that the issuing of warrants for trivial offences was to cease, stating that the practice was ‘at variance with the public interest, and inconsistent with the due administration of justice’.
- Similarly, he pointed out the problems of Mr Briscoe having issued blank warrants of commitment; he stated that ‘I am sure it is unnecessary to call your Lordship’s attention to the serious abuses which such an irregular proceeding might produce, or to the injurious effect which so great an informality must have upon the administration of justice’.
- Finally, he stressed to Earl Talbot the importance of clerks ‘who possess every qualification necessary to fit them for the discharge of such duties’. He also urged him to make Sir James’ displeasure at Mr Briscoe’s conduct known to the magistrate; ‘I request that your Lordship will impress strongly upon him the necessity of exercising great caution in his future magisterial duties, [and] of strictly

which were attended by county magistrates, although they often deputised the day-to-day administration to professional clerks of the court.

adhering to those legal forms of proceeding which are important to the proper administration of justice.³¹

4 'Magisterial incompetence': the Aftermath of the Enquiry³²

Following the political and public outcry after the publication of the contents of Eliza Price's petition and the subsequent enquiry, the local and regional press seem to have generated something of a minor 'moral panic' over both the treatment of girls and young women by the police of the area and the workings of the local magistracy.

The Times, in its editorial of 20 June 1845, remarked that 'the occasional vagaries of a few of our metropolitan magistrates are nothing when compared with the habitual eccentricities of the Solons of Staffordshire', whilst the *Morning Chronicle* of 25 July contained a detailed report on the chaining to the fire grate at Constable Onions' own house of two other young women, 14-year-old Susannah Hill (suspected of stealing a halfpenny-worth of coal) and eleven-year-old Emma Woodhall (suspected of stealing a waistcoat), on five consecutive nights in July 1845. In the report, Constable Onions is reported as stating that he was following orders from Mr Briscoe, as the magistrates' court was not to sit for some time.

Under the headline of 'Magisterial Incompetence', the *Political Examiner* of 2 August 1845 stated that:

It appears that in Stafford[shire] it has been of ancient usage to treat untried, nay unexamined, prisoners pretty much like dogs, not keeping them in custody in a strong room, but chaining them up in the kitchen of a public-house or beer-shop. To make this practice worse, it has also been the custom in the same district to issue warrants instead of summonses upon petty charges.

As a result of this flurry of media condemnation of the local magistracy and police force, Sir James Hatton, Chief Constable of the recently formed Staffordshire Police, felt compelled to write to *The Times* in order to separate the actions of the Kingswinford Police Force from the recently established County force:

I beg leave to inform you that Onions and Baker are not, nor ever have been, members of the county constabulary force; they are local constables, and totally unconnected with the force under my control; and I further beg leave to refer you to Mr Newman Rogers' report on the same subject [...] which will show that the county constabulary are strictly prohibited from resorting to such treatment of prisoners as 'chaining them to grates.'³³

³¹ *Political Examiner*, 2 August 1845. Somewhat ironically, Sir James Hatton retired in 1857 and was succeeded by none other than Colonel Gilbert Hogg, erstwhile Chairman of the Kingswinford District Police.

³² *Ibid.*

³³ Letter to *The Times*, 9 August 1845.

Newman Rogers was himself heavily criticised as being too lenient in his condemnation of the local authorities. The *Political Examiner* of 2 August referred to him as ‘the indulgent Commissioner’; implicitly suggesting that he was unwilling to openly criticise the behaviour of the magistrates too much because of the lack of faith in the legal system that might consequently be engendered in the mind of the general public.

The above case is a fascinating one in its own right, but it also illustrates many of the problems facing the judicial and policing systems of the mid-nineteenth century. It is therefore perhaps useful to now discuss how typical the activities of the south Staffordshire magistracy and police detailed in the findings of Newman Rogers were in relation to the rest of England, and what wider implications with regard to magisterial and policing activities were highlighted by this particular case. Each of Newman Rogers’ recommendations are therefore dealt with in turn below:

Disputes between Wordsley and Kingswinford magistrates

Unfortunately there are no surviving records of the Wordsley or Kingswinford Petty Sessions to show if or when Sir James’ recommendations to Earl Talbot regarding the separation of the courts were ever instigated; no official statistics regarding the composition of such courts exist before 1856 (and these returns only detail the situation from 1852 onward). However, there seems to have been a change of mind with regard to the perceived problem of the two competing Petty Sessions; by 1852 Kingswinford and Wordsley Petty Sessions had been amalgamated into the Kingswinford & Wordsley Division Petty Sessions, with only one courtroom remaining in use. It would appear that due to the rapid population growth of the area, it was decided to amalgamate some of the smaller petty sessions divisions in favour of larger divisions with more magistrates and more sittings (the number of magistrates in the Kingswinford and Wordsley Division Petty Sessions rose from eight to eleven in the three years from 1852-54 and by 1854 there were 51 sittings throughout the year).

Chaining of prisoners and the lack of suitable secure premises

The chaining of arrested suspects in the Black Country seems to have been peculiar to the district; a search of the British Newspapers 1600-1900 archive has not revealed similar practices elsewhere (although it is conceded that just because such instances were not

reported does not mean that they did not occur).³⁴ The rapid expansion of the Black Country may provide a clue as to why this should be – the area was one of the fastest growing areas in England during the period under discussion and the concomitant problem of restraining an increasing number of suspects without the benefit of a suitable infrastructure may go some way to explaining the prevalence of such behaviour. The population of England and Wales increased by 18.8% between 1811 and 1821, by 15.8% in the following decade, and by 14.4% between 1831 and 1841; whilst the percentage increases for Kingswinford Parish over the same periods were 33.3%, 37.5% and 46.6% respectively.³⁵ However, the Black Country was not unique in experiencing such a rapid population increase but there appears to be little evidence of the practice occurring in other such areas, and its reasons remain something of a mystery.³⁶

The lack of provision of lock-ups seems to have been more widespread; the provision of prisons and other places of confinement was a very piecemeal affair in the first half of the nineteenth century. This situation was not rectified until after the Penal Servitude Act 1853, when transportation to Australia was largely replaced by sentences of confinement within prisons. Until then, there had been a general reluctance on behalf of county ratepayers to build expensive secure facilities; for example a magistrate at Essex Quarter Sessions brought up the ‘want of a lock-up at Ongar’, and was told that he should take the matter before his Police Committee which was responsible for such matters.³⁷ The Rural Constabulary Act 1840 was clearly an attempt to rectify this situation, but it took several years for some of the provincial Quarter Sessions to implement its requirements.

³⁴ British Newspapers Online Archive 1600-1900 (www.galegroup.com 19 October 2010). Only one other example of the chaining of an individual was found as a result of this search. The *Ipswich Journal* 15 January 1848 referred to a prisoner who had been chained to a post within a lock-up due to its inadequate security; the constable who was questioned about such treatment of the prisoner stated that the practice had been occurring in the village for some time.

³⁵ Population increases extrapolated from census abstract data on www.histpop.org 19 October 2010.

³⁶ There is considerable evidence for the chaining of suspects in rapidly growing settlements which did not possess a suitable place of confinement in the Antipodes; law enforcement officers in the gold-mining towns of both Australia and New Zealand regularly chained suspects to logs for want of a lock-up or gaol. For example, the *Tuapeka Times* 13 May 1876 reported on a talk given by a former prospector on the Ballarat gold fields, Australia, in which he stated that all prospectors were required to hold licences and ‘any person found without one would be chained to a log for the night, and brought up before the magistrates the next day’. Similarly, the *Poverty Bay Herald* 23 October 1890 reported that ‘in some townships in Northern Queensland prisoners captured by the police are, for the want of a lock-up, chained to a post in the stable’.

³⁷ *Essex Standard*, 7 April 1843. For a detailed discussion of the effects that the ending of transportation had on the prison system in Britain, see Godfrey, B.S., Cox, D.J., and Farrall, S., *Serious Offenders: A Historical Study of Habitual Criminals* (2011, Oxford University Press).

The dispensation of justice from private dwellings

This problem, where a magistrate presided over a magisterial sitting in his own home had been around for centuries (due to a combination of factors including the reluctance of magistrates to conduct business away from the comfort of their own homes and the tardiness of ratepayers to invest in suitable public buildings), but was by the 1840s becoming less prevalent. The aforementioned Act For The Better Regulation Of Divisions 1828 was designed to curb this practice, and by the 1840s many towns had either acquired purpose-built courtrooms or had adapted older buildings to this purpose: taking Shropshire as an example Ellesmere Town Hall was provided with a courtroom in 1833, Ludlow Assembly Rooms were similarly equipped in 1840, Shifnal acquired a Magistrates' Office in the same year, while Bridgnorth, Bishops Castle and Shrewsbury all adapted older public buildings for this use. Mr Briscoe, perhaps for reasons previously alluded to may have been somewhat out of kilter with the majority of his fellow magistrates in this matter.

Issuing of warrants of arrest for trivial offences, of blank warrants of commitment and the lack of a professional clerk to the court

This was a clear breach of magisterial rules by Mr Briscoe and does not seem to have been a widespread problem elsewhere. Mr Briscoe's eccentric behaviour with regard to these issues should perhaps be seen as the indication of a more general problem with the magistracy of the time; largely unqualified individuals could wield considerable power in their capacity as magistrate, and this could occasionally lead to problems such as those encountered by Newman Rogers. Although professionally qualified men in the form of stipendiary magistrates were beginning to make an appearance in some of the larger towns as a result of the Municipal Corporations Act 1835, the magistracy remained fundamentally a voluntary and amateur position, and as such was open to the vagaries of personality and behaviour.

Debate over the role of a lay magistracy versus a stipendiary system has continued to the present day. Despite intermittent calls for the voluntary system of magistrates to be replaced by a stipendiary one, in which professionally qualified magistrates sit on their own, the magistracy remains overwhelmingly lay in nature; only in larger conurbations has the sheer numbers of cases coming before the lower courts resulted in the introduction of stipendiary magistrates (known as District Judges).³⁸ The magistracy as a whole continues

³⁸ The continuation of a system of lay magistrates is largely as a result of economic reality; despite several calls for its replacement the system has consistently been found to be much cheaper than a

to deal with over 97% of all criminal cases, with over 1.5 million cases being heard annually.

The lack of a professionally trained clerk to the court seems to have been a clear breach of the Act For The Better Regulation Of Divisions 1828, which stipulated that Petty Sessions must be recorded and clerically administered by a legally trained clerk. This again seems to be an example of further inertia on the part of the Staffordshire Quarter Sessions in not enforcing this requirement.

Conclusion : 'Justices' Justice'³⁹

The Eliza Price case aroused widespread interest and generated many column inches in both the provincial and metropolitan press, including *The Times*, the *Morning Chronicle*, the *Political Examiner*, and *Lloyd's Weekly*, which ran a very critical editorial on the leniency of the censure against Mr Briscoe in its edition of 3 August 1845. This case, although arising from a petty squabble in a lower court, serves to highlight a piecemeal, illegal, ineffective and competing shambles of executive and judicial provincial power, at a time when the 'professionalization' of the police and the magistracy of England was being hotly debated against a background of political and social unrest. The question of effective (both in terms of results and cost) policing was prominent in the minds of many people; despite attempts to introduce 'modern' policing by means of the Municipal Corporations Act 1835 and the Rural Constabulary Act 1839, less than half of the 57 counties in England and Wales had fully implemented such police forces before the County and Borough Police Act 1856 demanded the mandatory establishment of such forces.⁴⁰

Newman Rogers' enquiry and subsequent *Report* shows that there were severe failings within parts of the judicial and legal system within the Black Country, and that the standards of police procedure left a lot to be desired. The subsequent slew of newspaper reports criticising both the local officials in Staffordshire and the Commissioner for his leniency in dealing with them illustrates that both the popular media and the public who

fully professionalised one – the current salary of a District Judge is £102,921, and while they are undoubtedly quicker in dispensing justice, such professionalism comes at a price (salary figure taken from www.justice.gov.uk/publications/docs/judicial-salaries-2010.pdf 19 October 2010). There are currently 444 District Judges in England and Wales and almost 30,000 lay magistrates (figures taken from www.judiciary.gov and www.magistrates-association.org.uk 19 October 2010). Since 1966 all newly appointed magistrates have had to complete a specialist training course, and are encouraged to update their magisterial skills by attending numerous other training schemes.

³⁹ *Lloyds Weekly*, 3 August 1845.

⁴⁰ Stallion, M., and Wall, D.S., *The British Police Force: Police Forces and Chief Officers 1829-2000* (1999, Bramshill: Police History Society) p.9.

devoured such items of news were beginning to openly question judicial and policing systems that had operated for many centuries, but which were increasingly being shown to be inadequate in a rapidly changing society.

However, it is interesting to note that whilst a certain amount of condemnation by the authorities was clearly directed at both the local magistracy and the police, no-one was removed from office over the affair, and despite a certain amount of public censure as a result of the media activity, no further action seems to have been taken by the authorities. Whilst having to endure a certain amount of public debate on the issues raised, the authorities seem to have been keen not to disturb the status quo too much, and although general recommendations were made, the enquiry did not result in the implementation of any new magisterial or policing procedures at a national level.

There also may have been an implicit political dimension to the decision not to seek the removal of those in office; Sir James Graham had recently decamped to the Tory party in 1837, after having spent the previous 19 years as a Whig, while Earl Talbot (Lord Lieutenant of Staffordshire 1812-1849) was an eminent High Tory, who 'was determined to preserve the political and social dominance of the Tory nobility and gentry in the county'.⁴¹ Samuel Stone Briscoe was definitely a member of the provincial Tory 'squirearchy'; he had previously been much praised for his role in quashing the 'Wolverhampton Riots' in 1835, when he read the Riot Act and led a charge of the 1st King's Dragoon Guards into a hostile crowd following the election of Sir Francis Goodricke as Tory MP for South Staffordshire.⁴² As such he would have been confident of the support of his peers within the Staffordshire Tory gentry and nobility, especially at a time when parliamentary and political reform was on the agenda.

Finally it is interesting to note that throughout Newman Rogers' report and findings, and the numerous newspaper reports on its subsequent ramifications, no mention is made either of any financial compensation or an apology to Eliza Price.

⁴¹ Swift, R.E., 'The English Magistracy Past and Present', in Cox, D.J., and Godfrey, B.S., (eds.), *Cinderellas & Packhorses* p.10.

⁴² See Parliamentary Papers 1833 (343) *Wolverhampton Enquiry. Copy of the Minutes of Evidence Taken Before Sir Frederick Roe at Wolverhampton*. The charge of the King's Dragoon Guards and their use of pistols led to the shooting of three young men, one of whom lost a leg as a result of his injury.