The Silencing of Sir H. Wilson's Assassins

[The following letter originally appeared in the *Manchester Guardian* on August 5. The points raised by Mr. Shaw, however, are of such fundamental importance that we herewith reproduce it by kind permission of the author. —Ed. *New Witness.*]

Sir,—It is impossible to allow the scandalous travesty of judicial procedure by which Joseph O'Sullivan and Reginald Dunn were condemned to pass without vehement protest.

It would be hard to cite an occasion on which it was more important for the education of public opinion that the case for constitutional methods as against direct action in its extreme form of political assassination should be fully and impressively argued to its inevitable conclusion. We have had enough of Government by quixotic young men with revolvers versus hot-headed old men inflamed by *Morning Post* journalism.

Further, it was important that the constitutional party in Ireland should not be harassed and compromised by any violation of the strictest judicial spirit in dealing with a capital case of Irish political crime. In the absence of a supernational tribunal there was no practical escape from the scandal of a trial in which England was plaintiff, prosecuting counsel, judge, and jury; but it was all the more urgent that the legalities and constitutionalities should have been scrupulously observed. Otherwise it would have been far better had the accused been killed red-handed by the spectators.

I do not think any responsible Englishman who understands the terms of these propositions will demur to them. They could have been applied all the more readily because there was not the slightest risk of a miscarriage of justice through any defect in the law or any technical loophole through which an ingenious barrister could extricate his clients.

What actually happened? At the trial the judge lost his head so completely that he denied the prisoners their right—a right fundamental in trial by jury—to plead for a verdict of not guilty by justifying their action. The accused (to whom, by the way, he alluded as "these people") at once very properly refused to proceed with their defence, and depended on the Court of Appeal to rescue them. They were accordingly found guilty by the jury and sentenced to death. The judge then said that he desired to say a few words: the usual prelude to a political speech. In the course of the few words he described the conduct of the prisoners as cowardly. As the prisoners had sacrificed their lives, given an extraordinary exhibition of military courage in resisting arrest, and showed remarkable dignity and self-possession in court, the state of mind which provoked so absurdly inappropriate an epithet can hardly be called judicial.

The Court of Appeal might have set all that right without altering the final result. But the Court of Appeal went from bad to worse. Mr. Justice Shearman, at least, cannot be accused of levity. But what are we to say to Mr. Justice Branson, who said that if a prisoner were allowed to speak he might offer the jurymen £1000 each not to convict him? Or to Mr. Justice Darling, who added that "the man might threaten the jury so that they might be afraid to convict him"? If we take those frivolities seriously these two judges know less about the law then the crudest J.P. But, of course, they know as well as I do that the legal remedy for the very serious crime of attempting to corrupt or intimidate a jury is to commit the offender and punish him very severely after due trial, not to gag men quite innocent of it lest they should commit it successfully. The Lord Chief Justice might and should have rebuked these sallies, and restored judicial decorum. Unfortunately he countenanced them. He took the view of Mr. Justice Shearman. He assumed the point at issue. The prisoners were guilty. Therefore to allow them to justify their conduct was to allow them to justify guilt. The justification of guilt acts as a propaganda of crime. To allow a court of law to be used for such a purpose would be "subversive to all the foundations of justice." The Attorney-General need not reply on so obvious a situation. Away with the prisoners to the gallows.

There is no remedy for this sort of thing but vigilant and fearless criticism in the press. The two prisoners, being young men and soldiers, were quite helpless. Had they been experienced demagogues like Mr. Pemberton Billing they could have shouted down Mr. Justice Shearman and forced him to consider whether he dared silence them by actual violence. Had they known something of the law, like Mr. Horatio Bottomley, they could have made political appeals to the jury-box and the gallery to the last extremity of irrelevance without being interrupted. Being only what they were—"these people"—they could not defend themselves, and their counsel was not prepared to handle the Bench as it deserved.

The legal position was simple enough, though it was not the normal position. In 999 criminal cases out of 1000 the issue is really one of fact only. The verdict follows the fact because neither the prisoner nor anyone else defends the alleged act. When a professional thief is tried for picking a pocket his only chance of escape is to deny the fact; he does not dream of admitting that he picked the pocket, and contending that he is not guilty because pocket-picking is innocent and laudable. But in the case now under consideration there was no question of fact at issue at all; the two men had deliberately and openly shot Sir Henry Wilson as certainly as Eaton Square is in the south-west postal district. Their only possible defence was a justification of their action. And neither the judge nor anyone else had the right to call that defence a justification of murder until the jury had found, in spite of the defence, that they were guilty of murder. To rule out a defence because it might possibly be successful (an impossibility in this instance) is simply to rule out all defence whatever.

In France, just before the war, the Socialist leader Jaurès was killed precisely as Sir Henry Wilson was killed. The assassin's defence was an appeal to the political sympathies of the jury. He was acquitted. During the war an officer frankly killed a man of whom he was jealous. He appealed as an outraged husband to the domestic sympathies of the jury. He was acquitted. In neither case was there any question about the fact or the wilfulness. In both cases deliberate homicide was justified. If a fanatical English Unionist were to shoot Mr. de Valera or Mr. Collins to-morrow on English ground he would be fully entitled to exhaust all the resources of patriotic casuistry in an appeal to a British jury to find him not guilty; and nobody in Ireland or America believes that any English judge would attempt to silence him. It is quite likely that the next time a prison warder shoots a prisoner trying to escape, a coroner's jury may return a verdict of wilful murder. Will the warder be forbidden to argue his plea of not guilty on the ground that nothing can justify killing and that killing must not be justified in a court of law where the judge in his next breath sentences the prisoner to be killed? A judicial mind is a rare gift; and in England it is so incomprehensible and unpopular that it is difficult for anyone with a vestige of it to obtain promotion in a profession which is becoming more and more entangled in party politics.

But this gives an overwhelming importance to the constitutional and legal checks on any personal or political abuse of the great power necessarily confided to them; and the present is an occasion calling for a very emphatic reminder that the Fourth Estate is not so ignorant of these checks, nor so apathetic in insisting on their scrupulous observance, as the man in the street, who is apt to forget that he may one day be the man in the dock.—Yours, etc.,

G. BERNARD SHAW.

Death of Sister Mary Celestine, St. Joseph's Convent, Ohakune

Sister Mary Celestine, who died at Ohakune on Monday, September 18, was born in New South Wales. She came to New Zealand some 22 years ago, and entered the Institute of St. Joseph, at Wanganui. Sister Celestine taught in various branch houses of the Order. She was an able teacher, highly artistic and musical, and of a bright, happy disposition that endeared her to her pupils and her Sisters in religion. Her health gave cause of anxiety for some time. She bore her sufferings cheerfully, and, fortified by the rites of holy Church, passed peacefully away on the above-mentioned date. Requiem Mass for the repose of her soul was celebrated on the following Wednesday morning at St. Joseph's Church, the funeral taking place immediately after Mass. The people of the parish showed their great esteem for the deceased Sister by attending the funeral in large numbers, in many cases at great personal inconvenience. Rev. Father Guinane officiated at the interment, assisted by Rev. Father Harnett of Taihape.—R.I.P.