

Vindication

One-hundred-and-eighty-years ago the Merthyr Rising was a landmark moment in the struggles of the British working class, especially in Wales.¹ Protesting against cuts in wages and unemployment, it forced the Whig government to take notice. They sacked the debtors courts, returning debts and goods to their original owners. The army and some of the Argyll and Sutherland Highlanders were sent to Merthyr to restore order, firing on a crowd when they refused to disperse, killing some protesters. Enraged, the protesters took control of the whole town and it took the government several days to regain control. Reforms eventually followed, but the sacrifices of the Merthyr activists should never be forgotten. Twenty-three stood trial for various offences. Two were sentenced to death.

Lewis Lewis (Lewsyn yr Heliwr) was as close to an organizer as could be found. The seizure of his property helped spark the rising. It was returned to him. He was sentenced to death for robbery, but reprieved when a police officer insisted that Lewis had shielded him from harm. His 23-year-old nephew, Richard Lewis (better known as Dic Penderyn) was less fortunate. Despite a petition signed by 11,000 people, the Home Secretary, Lord Melbourne, was determined that at least one person was going to hang. Penderyn participated in the Merthyr Rising believing in a just cause. It cost him his life for a crime he did not commit.

1. Eight years after the Merthyr Rising, Newport rebelled in the Chartist cause. Several Chartists were killed or wounded and 200 were prosecuted in the aftermath of crushing the Newport Rising. Three were sentenced to be hung drawn and quartered, but following the intervention of the Lord Chief Justice, John Frost, Zephaniah Williams and William Jones had their sentences commuted to transportation for life. Frost was later celebrated in Newport, returning in triumph in 1856 after receiving an unconditional pardon. Eventually Chartism withered away, but its demands found favour and influenced movements worldwide. In the same year as the Newport Rising, another protest movement emerged in South Wales. The Rebecca Riots began as a protest against taxation and the collapse of prices for agricultural produce. The Merthyr Rising was the first in a tradition of working-class resistance and Richard Lewis is arguably its first martyr, certainly the first to be vindicated.

On June 3rd, 1831 a soldier with the 93rd Highland Regiment, Donald Black, was stabbed in the leg. This did not kill him and even his evidence suggested that Penderyn was innocent. Black never identified Penderyn as his attacker. The methods used to railroad Penderyn to the gallows were strikingly similar to other miscarriages of justice that occurred in South Wales decades later. James Abbott gave perjured testimony against Lewis. Without this, Penderyn could not have been convicted, let alone hanged.

Penderyn was hanged in Cardiff Market on August 13th, 1831. He protested his innocence to the last and had considerable support, but Melbourne,² wanted to deter others. Penderyn died a slow and agonising death, strangled by the noose — this happened decades before the long drop was pioneered by doctors in Ireland in the 1850s and used there. It was adopted by executioner William Marwood in 1872 and eventually became the favoured method of execution in Britain from 1875, which is significant in Penderyn's story.

With Penderyn dead, Abbott found a conscience and admitted perjuring himself, claiming that he did so on Melbourne's orders. There is little doubt that Penderyn was innocent.

Two years after Marwood hanged Frederick Horry at Lincoln Prison — the first time the length of the drop had been calculated to ensure the prisoner's neck was broken rapidly and that he or she died quickly — one participant in the Merthyr Rising lay dying. Ianto Parker confessed to the Congregational minister, the Reverend Evan Evans, that he, and not Penderyn, had stabbed Black in the leg. Black survived easily, but the offence was absurdly described as attempted murder and carried the death penalty at the time, so Parker, fearing either execution or, if lucky, transportation, fled the country, leaving Penderyn to hang. Despite the deathbed confession, Penderyn's case was not re-opened.

Deathbed confessions or statements of a dying man have been accepted as evidence for many years. In the nineteenth century religion played a greater role in people's lives — fear for their souls influenced them more than now.

2. William Lamb, became the second Viscount Melbourne in 1828. He was a Whig (the precursors of the Liberal Party) politician, who had a reputation as a reformer, yet some of his policies and practices refute this. He dealt with the Swing Riots of 1830-31 in a vastly different fashion to the Merthyr Rising. In Wales, an example was needed and Penderyn would do. Melbourne went on to become Prime Minister, the favourite of the young Queen Victoria. He died before Ianto Parker's death-bed confession proved Penderyn to be innocent.

It was therefore accepted by the law that a person on the brink of death had no reason to lie and every cause to clear his or her conscience, as they would soon be judged by God. Consequently such evidence was powerful. There is no reason to doubt Ianto Parker's sincerity or that of the Reverend Evan Evans under these circumstances. This all occurred before there was a Court of Criminal Appeal³ and at a time when pardons were few and far between.

The mechanisms to quash Penderyn's conviction did not exist then, but do now. He remains convicted of a crime that he did not commit. If this conviction was referred back to the Court of Criminal Appeal based on the evidence that is now available—shamefully for nearly 140 years—it is hard to see how the conviction could be sustained. It is often said that there is no statute of limitations in Britain, yet Penderyn's case tells a different story. The crucial witness, without whom there was no credible case, admitted perjuring himself, after the execution. The victim did not identify Penderyn. The real perpetrator admitted his guilt on his death bed and the Reverend Evan Evans campaigned for justice after hearing that confession. The Criminal Cases Review Commission cannot possibly say that on the facts of this case there is not a real possibility that the conviction would be quashed if referred back for appeal. However the courts insist that an applicant who has been directly affected by the injustice must bring the case and this happened too long ago to affect their lives today, but why should that matter in the slightest. As Parris Glendenning said 82 years after the wrongful execution of John Snowden, "The search for justice has no statute of limitations. When faced with the possible miscarriage of justice, even from the distant past, our values compel us to take a second look". It would appear that there is no statute of limitations on the search for justice in Maryland, but there is in Britain. It should be quashed without delay. There was a long wait for Wales' second vindication case—almost 130 years, but half a century before the Cardiff Five were proved to be innocent another disgraceful miscarriage of justice rocked Butetown.

The last person to be hanged in Cardiff died on September 3rd 1952 at the hands of Albert Pierrepoint, but the most famous of Britain's executioners makes no reference to this in his memoirs.

3. And nowadays the Court of Appeal (Criminal Division).

A Major Hitch

Mahmood Mattan's name should never be forgotten. The young Somali seaman and father of three young children was completely innocent of the vicious murder of Lily Volpert. Evidence suppressed at his trial proves beyond doubt that not only was Mattan innocent, but also that the police had a good idea who the real killer was.

Tehar Gass was a dangerous man who went on to kill again, but did not face the gallows for either crime. Instead, the police and the cjs rushed an innocent man to the rope and resisted efforts to right that wrong for 46 years.

Mrs Volpert ran a shop in Bute Street, Butetown. She also functioned as a pawnbroker. On March 6th, 1952 her throat was slit. A weak circumstantial case was built up against Mattan, but the police knew well that, while Mattan was of Somali origin, he did not fit the description of a Somalian man leaving the scene of the crime at the relevant time given by the crucial witness, Jamaican carpenter, Harold Cover.

Cover was an unreliable witness at best, but was also suspected of the murder because of his violent tendencies. Mattan was hanged without knowing that before he was arrested, detective inspector Ludon Roberts had interviewed Gass, who fitted Cover's description to a tee. The man had a gold tooth—Mattan did not. There were other discrepancies too.

Mattan naïvely believed that British justice could not convict him because he was innocent. He plainly did not understand the court proceedings due to language difficulties, telling the authorities that they could give him a lawyer if they wanted to, but he wouldn't ask for one. In a trial dripping with racism, including from his defence counsel, T Rhys-Roberts, Mattan did not stand a chance. By today's standards that trial was a travesty—it also left much to be desired even in the 1950s. Rhys-Roberts undermined aspects of the prosecution case ably, but also invited the jury not to believe his client but rely on prosecution witnesses. His aim was to highlight discrepancies in the case using the prosecution witnesses, but the jury must have taken a dim view of anything Mattan said after that. If Mattan's lawyer was telling them not to believe him, they could surely dismiss everything that he had said, but Mattan's claims of innocence were absolutely true. Rhys-Roberts also described his client as “a semi-civilised savage” and “a half-child of

nature”. The late Lord Justice (Sir Frederick) Lawton said that he would have reprimanded any barrister who told a jury not to believe their client and who had described them in racist terms, but there were no reprimands for Rhys-Roberts.

Mattan’s command of English was far from satisfactory to give instructions to his lawyer, let alone to give evidence, but he didn’t ask for an interpreter. Despite his obvious language difficulties, Mr Justice (Sir Benjamin) Ormerod did not ensure that an interpreter was provided so a man on trial for his life understood the proceedings and could give evidence clearly. If he were the judge and it became clear that a witness or defendant did not understand the proceedings, Lawton would have stopped the proceedings until an interpreter was provided. He was incredulous that this had not happened. Even in the 1950s he found it hard to believe that so much had been allowed to go wrong.

The trial lasted just three days and the jury took slightly more than an hour and a half to find Mattan guilty. As the law then required, Ormerod sentenced him to death—there could be no recommendation for mercy, but Mattan still perversely believed that his innocence would protect him. It was a disgrace to every concept of justice that such a trial was allowed to occur, let alone result in a conviction, especially following such a flawed investigation, but he had the right of appeal, which would correct this travesty if British justice was truly as great as it claimed to be.

A month after Mattan was wrongly convicted, the Court of Criminal Appeal failed to correct matters. Mr Justice (Sir Patrick) Devlin, Mr Justice (Sir William) Gorman and Mr Justice (Sir Roland) Oliver rejected all of Rhys-Roberts’ complaints about Ormerod’s summing-up and refused to allow him to call fresh evidence to prove that the verdict was indeed perverse. Unsurprisingly, the racism of defence counsel and his undermining of his client and failure to ensure that Mattan understood the proceedings did not feature in the appeal. Rhys-Roberts was hardly likely to criticise his own conduct.

The police had concealed their knowledge of Gass and the effect that had on Cover’s credibility from the judges. They had effectively ambushed the cjs and ensured that Mahmood Mattan would be judicially murdered, but instead of being criticised for concealing vital evidence, they were praised for “one of the finest collections of circumstantial evidence ever presented to the

court”, according to detective chief inspector Harry Power’s autobiography. Crown counsel, Edmund Davies QC, was not even required to respond to Rhys-Roberts’ arguments. The appeal was dismissed on August 19th, 1952.

The then Home Secretary, Sir David Maxwell-Fyfe,⁴ declined to reprieve Mattan. Right to the bitter end Mattan believed that not only would he not be hanged, but that he would be freed as an innocent man. Nevertheless, the 28-year-old Somalian seaman was hanged for a crime he did not commit.⁵ At least some City of Cardiff police officers — that force was later incorporated into South Wales Police — must have had an inkling that not only was Mattan innocent, but that they had almost certainly allowed the real killer to slip through their fingers and kill again. They showed no remorse for the judicial murder of Mahmood Mattan. Instead, the character assassination of an innocent man who could no longer defend himself continued. DCI Power was convinced that no miscarriage of justice had occurred and pointed out that the appeal court judges had praised the police on the quality of the circumstantial evidence that they had gathered. DCI Power also claimed that Mattan never forgot how they ritually slaughtered animals in his native Somalia. The killer had pulled Mrs Volpert’s hair back to expose her throat, which he then slit. Presumably, every killer who uses such methods must also be familiar with the methods used to ritually slaughter animals in Somalia. DCI Power went to his grave, the police stayed silent and to the shame of his force never broke that silence. The truth was discovered through the efforts of Yusef Abdullahi’s solicitor, Bernard de Maid, who took up Mattan’s case to great effect in the 1990s, but what about Gass?

Gass was a sailor who quickly came to police attention due to his criminal activities. He was arrested, but allowed to leave, even though he had no alibi worthy of the name and had placed himself in the vicinity at the relevant time. He also had a liking for violence and went on to murder wages clerk Granville Jenkins, but was found not guilty by reason of insanity in 1954. Gass was detained in Broadmoor before being deported to British Somaliland,

4. Maxwell-Fyfe controversially refused to reprieve Derek Bentley — the feeble-minded teenager who was old enough to be executed for the murder of PC Sidney Miles, while his underage accomplice Christopher Craig was not. Even the trial judge, Lord Chief Justice Goddard, believed that Bentley should have been reprieved, despite a reputation as a hanging judge.

5. According to his family, he added four years to his age to allow himself to become a sailor.

as Somalia then was. Roberts knew that Gass fitted the description given by Cover, but withheld that information — and the fact that Gass placed himself at the scene of the crime at the relevant time — from the defence and the court. Gass was not heard of again. Had Ormerod, Devlin, Gorman and Oliver known about the police’s knowledge of Gass and that it destroyed Cover’s credibility, they would surely have prevented Mattan’s conviction and execution and condemned the investigative methods that secured them, but the police ambushed the courts.

Meanwhile, Cover was also a man of appalling character. In 1969 he was convicted of the attempted murder of one of his daughters. He slit her throat with a razor, which was the same method used to kill Lily Volpert. It also emerged that he had been paid a reward for his evidence — testimony that prosecuting counsel John Williams QC accepted could not be relied on at all — during Mattan’s appeal in 1998.

Forty-six years after Mattan was hanged, the Court of Appeal, headed by its then vice-president, Lord Justice (Sir Christopher) Rose, quashed Mattan’s conviction. It was the first time that the conviction of a wrongly executed person had been quashed. Rose apologised for what had happened and the time it had taken to acknowledge — it could not be put right.

Mattan’s family was compensated but, despite the size of the award, it proved insufficient as money could not replace a father of three young children, or remove the stigma that the family had wrongly endured for half a century. His widow Laura is now deceased and eldest son Omar drowned in mysterious circumstances.

This was also a case that laid bare shamefully racist attitudes. Mattan was not allowed to live in the same house as his wife, who was called “a black man’s whore” by neighbours and the court proceedings were racist too. His children were treated as pariahs and were cruelly told about how their father died. Omar was eight-years-old when he learned the truth. He heard the Salvation Army Band playing and went out to sing with them. He was told that they didn’t need the son of a hanged man.

Mattan’s case and the treatment of his family disgraces Cardiff and its broader reputation for tolerance. It remains a sombre reminder of the consequences, not only of the death penalty preventing “mistakes” being rectified, but of the way that British justice functioned in those days.

The methods used to secure these scandalous convictions appear to have been passed down the ranks, resulting in other miscarriages of justice after capital punishment was abolished. But Richard Lewis and Mahmood Mat-tan are graphic reminders of when miscarriages had even worse consequences than those suffered by the Cardiff Five, Newsagents Three, Guildford Four and countless others. Those old miscarriages cannot really be rectified, ever.