Let him have it: the short, sad life of Derek Bentley

By Geoffrey Watson SC

In 1953 Derek William Bentley was executed for the murder of a policeman. He was only 19 years old. Did he deserve to die?

The background

Bentley had a deeply troubled life. He was born in 1933 in the East End of London. His family was decent and stable, but Bentley had his own problems. He suffered a serious head injury when young, was intellectually impaired, and he struggled at school. He fell into a pattern of truancy and petty crime and at 15 was sent to a juvenile detention home. His work record was poor, and in 1952 he was rejected from National Service because he was 'mentally substandard'.

He fell into bad company, mixing with a boy named Christopher Craig. Craig was only 16 years old, but came from a family with criminal connexions and was knowing in the ways of the underworld. Even though Craig was the younger of the two, Bentley, who had a mental age of around 11 years, fell completely under the spell of the cocksure, streetwise Craig.

The murder

On the evening of Sunday 2 November 1952 Bentley met with Craig. There was no forward planning – they met by accident. They agreed to attempt to burgle some local businesses. Craig was armed – he carried a Colt 45 revolver and a knife. He also provided Bentley with a knife and a spiked knuckle-duster.

Their target was a warehouse in Croydon in South London. But they were spotted climbing over the fence and the police were called. The police cornered Bentley and Craig on the roof of the warehouse. Detective Sergeant Frederick Fairfax took hold of Bentley and arrested him. Meanwhile, Craig remained free and was taunting the police. What happened next was the subject of controversy. According to the police, Bentley broke free of his grasp and called out 'Let him have it, Chris', immediately following which Craig pulled out his pistol and fired, superficially wounding DS Fairfax.

It was common ground that, although he was at this time free of police control, Bentley did nothing to flee nor did he take out his own weapons – instead he simply remained alongside the police as though he remained under arrest.

Over the next 20 to 30 minutes Craig and the police exchanged fire. One bullet struck Police Constable Sidney Miles between the eyes, killing him instantly. It is important to note that the shooting of PC Miles occurred about 15 minutes *after* Bentley had been arrested.

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Craig eventually ran out of ammunition and dived from the roof, fracturing his pelvis. Bentley and Craig were taken into custody and questioned.

The charges

Craig and Bentley were indicted for the wilful murder of PC Miles.

The two cases were, of course, quite different. The case against the shooter Craig was clear, and was later described as 'very strong' and that 'any verdict other than guilty of murder … would have been perverse'.

The murder case against the non-shooter Bentley was much more difficult. To succeed the Crown had to prove that Bentley was a party to a common purpose – an agreement with Craig that they would use any violence necessary to avoid arrest. But the Crown had also to prove, as part of this arrangement, that Bentley *knew* that Craig had a gun. The Crown case was that Bentley had incited Craig to shoot PC Miles, and relied heavily upon the words – 'Let him have it, Chris'.

Bentley's defence was that he did not incite Craig, and he did not even know that Craig had a gun until the first shot was fired. Specifically, Bentley denied using the words 'Let him have it, Chris'. He also relied upon the inferences available from the fact that he had remained alongside DS Fairfax, making no effort to escape or to use his weapons.

The trial

The murder of a policeman was such a serious event that the lord chief justice, Rayner Goddard, appointed himself to preside at the trial.[1] This was very bad news for the accused. Goddard already had a strong preliminary view of this case: Sir Charles Hardie, gave a statement that during the trial Goddard had told him that Craig and Bentley had to be found guilty '*at all costs*'.

The trial was opened and conducted with heavy reliance upon – 'Let him have it, Chris'. In addition, the Crown relied upon a voluntary statement signed by Bentley. Bentley could not write, so his words were transcribed by one of the police officers. That statement contained this very damning sentence – 'I did not know he was going to use the gun' – which, it was said, demonstrated that Bentley *knew* Craig had gone to the scene of the crime with a gun.

Diverting for a moment, it is worth reflecting upon the centrepiece of the Crown case – those critical words 'Let him have it, Chris'. Each of the police witnesses swore that these precise words were used. Both Bentley and Craig denied it. But even if the words were said by Bentley they are obviously ambiguous. They could convey a sinister meaning – 'Let him have it' is the language of cinema gangsters. On the other hand, it could mean quite the opposite – a request by Bentley that Craig let the police have his weapon.

The evidence was short (the whole trial was over in three days). The parties addressed. Goddard summed up. The summing up – as I will discuss later – was very slanted against the accused.

On 11 December 1952, after only 75 minutes of deliberation, the jury returned two guilty verdicts. The jury made a recommendation for mercy in the case of Bentley.

In those days a murder conviction carried a mandatory death sentence and Goddard sentenced Bentley to be hanged (no doubt enjoying himself in his customary fashion while he did so). The shooter Craig was only ordered to be detained during Her Majesty's pleasure because he was only 16 years old.[2] Goddard forwarded the jury's recommendation for mercy to the Home Secretary, but he added his own observation that he 'could find no mitigating circumstances'. An appeal to the Court of Appeal was dismissed.

An application for clemency fails

In controversial circumstances, the plea for mercy to the home secretary, Sir David Maxwell Fyfe QC[3], was declined. Many were frankly amazed that, in the circumstances of this particular case, the plea of mercy failed. More than 200 Labour MPs signed a petition opposing carrying out the sentence, but on the night before the execution, in a raucous session, the speaker of the House of Commons refused to allow a debate on the issue. There were protests around London, in Whitehall, and outside the Wandsworth Prison.

The execution

The evil day arrived. The hangman, Albert Pierrepoint, recounted a chilling story. He arrived at Bentley's cell to collect the condemned – but Pierrepoint did not wear a uniform; he was in an ordinary day suit. This created the wrong impression, and Pierrepoint said that when he entered the cell Bentley 'thought, at that moment, we had come with his reprieve'.

Derek William Bentley was executed at 9.00 am on 28 January 1953. He was old enough to be hanged; he wasn't old enough to vote.

Did Bentley deserve to die?

We now know the answer to this frightful question – Derek Bentley should not have been executed: We know that he did not receive a fair trial, and we also know that crucial evidence was either manufactured or concealed.

At the time the public recognised a number of disturbing issues surrounding the conviction and execution of Bentley. And over time that public concern never went away. Derek's family fought and fought. Slowly steps were taken to rectify the injustice. In 1966 Bentley's remains were released from the grounds at Wandsworth, and he was reinterred in his family grave. In 1993 his family were able to secure a royal pardon from the sentence – but, of course, a pardon leaves the underlying conviction untouched.

The real breakthrough came in 1998 when the UK Criminal Cases Review Commission referred the matter to the Court of Appeal for review. Another lord chief justice presided over this second appeal – the great Tom Bingham.[4] The review was conducted applying the same substantive law which applied in 1952. It involved a thorough examination of the evidence which was presented to the jury. A limited amount of fresh evidence was admitted and relied upon.

This second Court of Appeal found that the result in Bentley's case was unsafe and unanimously quashed the conviction. In

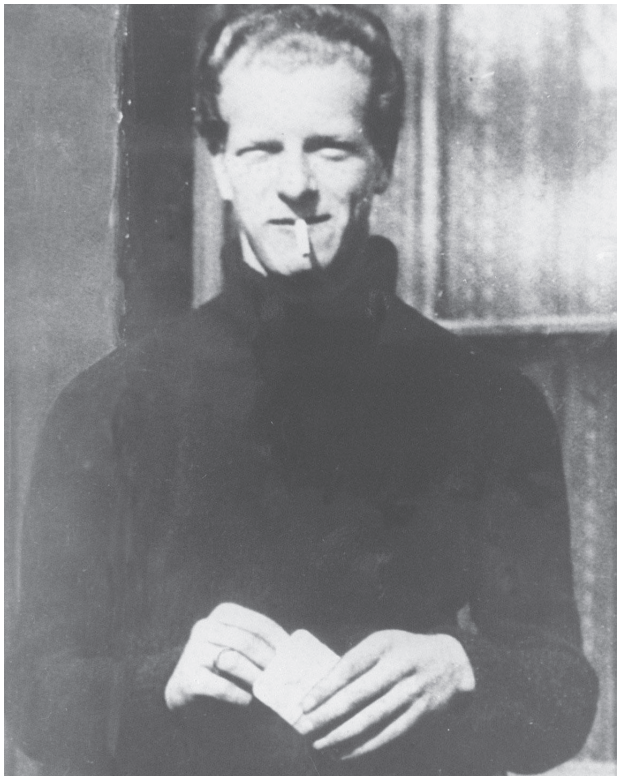
arriving at that result the Court of Appeal exposed the truth – Derek Bentley had suffered a terrible string of injustices: see *R v Bentley (deceased)* [1998] EWCA Crim 2516.

A fundamental question was whether or not Bentley was even fit to plead. Earlier I had mentioned his diminished mental capacity. His impairment was partly congenital, worsened by the childhood head injury, and complicated by uncontrolled epilepsy. The combination was very serious. A review of Bentley's school and medical records showed that at the time he had been assessed as 'borderline feeble-minded' and 'educationally very retarded' and 'quite illiterate'. Bentley was unable to recognise all of the letters of the alphabet. There remains a real doubt about whether this material about Bentley's mental capacity was made available to the defence. Whatever be the case, this material was not disclosed to the jury. Even if Bentley was fit to plead, these were matters clearly relevant to his complicity and his ability to enter into the necessary agreement with Craig.

Another problem was related to Bentley's mental capacity. Remember Bentley's statement and his crucial admission – 'I did not know he was going to use the gun'? At the trial the police witnesses were adamant that the statement was merely a verbatim transcript of Bentley's *unprompted* words. The second Court of Appeal admitted fresh expert opinion that the language contained in the statement did not fit with other samples of Bentley's speech patterns – Bentley's way of speaking was, no doubt due to his mental impairment, very simple. The same experts described the terms of the statement as containing phrases which were 'redolent of police usage'. I have read the material and you do not need to have expert qualifications to arrive at this conclusion. It is inherently unlikely that a boy with a mental age of 11 years would say – unprompted – 'I have been cautioned that I need not say anything unless I wish to do so, but whatever I do say will be taken down in writing and may be given in evidence'.

There were other concerns as to the accuracy, and even the honesty, of the police evidence. Those critical words – 'Let him have it, Chris' – are a little too good to be true. The phrase was one well-known to UK police. In 1940 it was held that a call to 'Let him have it' was sufficient to justify a common purpose case against a non-shooter in the murder of a police officer: *R v Appleby* (1940) 28 CR App R 1. And there was plausible evidence that Bentley never even called Craig 'Chris' – instead, he only ever called Craig by his nicknames 'Kid' or 'Kiddo'.

There were also problems with the ballistics evidence. The pathologist said, at least at first, that PC Miles' wound was consistent with a bullet of .32 calibre (the actual bullet was never produced). Craig's revolver could not fire a bullet of that calibre. The police weapons, however, were .32 calibre. So there is a reasonable chance that PC Miles was accidentally shot by one of his fellow police officers.



Bentley memorial flyer. PA Images / Alamy Stock Photo.

The Court of Appeal was scathing of the performance of Lord Goddard.[5] Some of Goddard's '*mistakes*' are truly breathtaking.

Let's start with the standard of proof. Bear in mind the need for proof beyond a reasonable doubt had been repeatedly described as the 'golden thread' in the criminal law since Viscount Sankey's famous speech in *Woolmington v DPP* in 1935. Incredibly, Goddard failed to draw that to the jury's attention. Instead, Goddard instructed the jury – 'if you find good ground for convicting them, it is your duty to do it if you are satisfied with the evidence for the prosecution'. That sounds to me like something even less than the burden of a balance of probabilities.

The second Court of Appeal also said Goddard had reversed the onus of proof, describing the directions in this respect as such that the jury 'could well have been left with the impression that the case against [Bentley] was proved and that they should convict him unless he had satisfied them of his innocence'.

The summing up was seriously imbalanced. Goddard referred to the 'highest gallantry', the 'conspicuous bravery', and the 'devotion to duty' of the police. He said that the police deserved the 'thanks of the community'. Compare that with his references to Bentley's 'wickedness', his 'horrible' and 'dreadful' knuckle-duster, and his 'dagger' (in reality, it was a steak knife). The second Court of Appeal described the summing up as prejudicial and unfair and constituted a 'highly rhetorical and strongly-worded denunciation of both defendants and of their defences. The language used was not that of a judge, but of an advocate'.

Each of the 19 years of Derek Bentley's short life were hard, and his future was unpromising. But he still deserved to have that future.

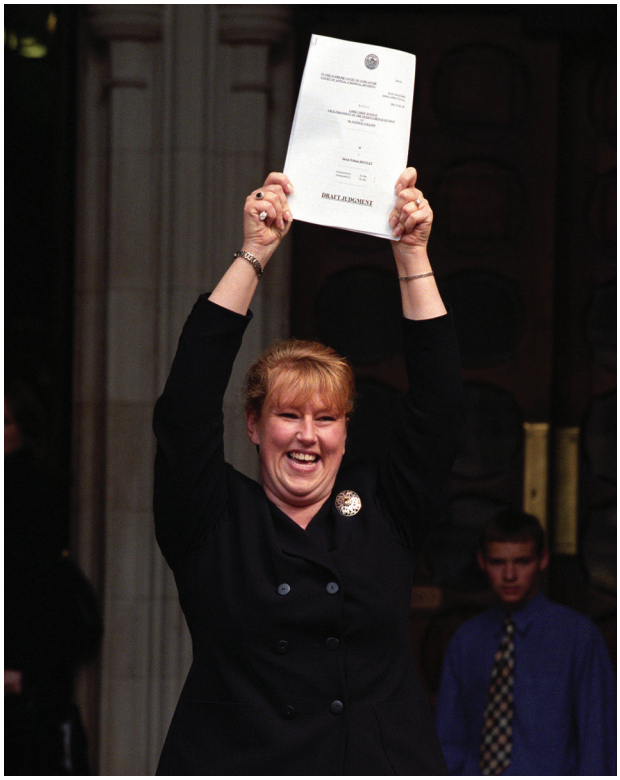
I have read a great deal of material about this case and I can no longer believe that these errors were unintended mistakes by Goddard. They are just too gross, and there were too many of them. In instructing the jury in the way he did, Goddard had even failed to follow some of his own judgments. Goddard's behaviour is entirely consistent with the statement he made to Sir Charles Hardie – that a conviction must be secured '*at all costs*'. Goddard rode that jury to a conviction – which he knew would lead to the imposition of a death penalty on Bentley.

The second Court of Appeal said this: 'The summing up in this case was such as to deny [Bentley] that fair trial which is the birthright of every British citizen'.

The aftermath

Each of the 19 years of Derek Bentley's short life were hard, and his future was unpromising. But he still deserved to have that future.

Was there some bright side to this dark mess? Maybe – although it depends on your views about the death penalty. The lingering sense of injustice surrounding Derek Bentley's execution greatly strengthened opposition to the death penalty, eventually leading to its abolition in the UK in 1965.



Derek Bentley's niece, Maria holds aloft the draft Court of Appeal judgment in *R v Derek William Bentley.* PA Images / Alamy Stock Photo.

Endnotes

1. Rayner Goddard: b 1877; d 1971. Called to the bar 1899; KC 1923; King's Bench 1932; Court of Appeal 1938; House of Lords 1944; lord chief justice 1946–1958. In 1957 he had acquired the nickname 'Justice-in-a-jiffy' when he heard and dismissed six appeals in one hour. As a Conservative peer he spoke ardently in favour of the reintroduction of flogging, and against decriminalisation of homosexuality.
2. This discrepancy in punishment was one of the grounds for public disquiet at the time. On any view, the culpability of Bentley was far less than that of the shooter. Craig was released after ten years and qualified as a plumber and led a good life. I believe he is still alive.
3. David Patrick Maxwell Fyfe, first earl of Kilmuir: b 1900; d 1967; called to the bar 1922; KC 1934; solicitor-general 1942; attorney-general 1945; lord chancellor 1954–1962. Maxwell Fyfe was an accomplished practising barrister, who took the role of second counsel to Hartley Shawcross QC at Nuremburg. His cross-examination of Göring remains famous. His brother-in-law was the actor, Rex Harrison.
4. Thomas Henry Bingham, Baron Bingham of Cornhill: b 1933; d 2010; called to the bar 1959; QC 1972; Queen's Bench Division 1980; Court of Appeal 1986; master of the rolls 1992; lord chief justice of England and Wales 1996–2000; senior law lord 2000–2008. Widely regarded as one of the greatest of the English judges in the last century. The other judges on the Court of Appeal were not slouches either – Lord Justice Kennedy and Justice Collins (later Lord Collins of Mapesbury).
5. And not just Lord Goddard: the second Court of Appeal was critical of the decision of the original appeal court decision, and the way in which the original appeal was argued.