

The killing of Jean Charles de Menezes: risk, the ‘innocent’, and looking guilty

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The killing of Jean Charles de Menezes, a Brazilian electrician working in London, by the Metropolitan Police Service, was the first and only use of the Kratos policy of ‘shoot to kill to protect’. Despite doing nothing out of the ordinary, de Menezes was mistaken for a suicide bomber about to explode a bomb. Subsequent investigations into how this error was made have focused on the face and the actions of de Menezes. Implicit in these analyses is the concept of ‘risk’, the potential of future harm, and thus an understanding that extra-judicial killing is required to reduce risk, and that this will sometimes be of the ‘wrong man’. However, this killing of the ‘wrong man’ does not put everyone at equal risk of being shot by the police. The post-hoc explanation reassures the public that as long as we do not look or act guilty, then we will not be shot, while also reassuring us that potential suicide bombers will be. As with other recent technologies of social control (ASBOs, control orders etc.) aimed at particular sections of the population, the majority know that the policy is not aimed at them and will not affect them. Most of us will not be mistaken as looking guilty.

Introduction

The press coverage of the killing of Jean Charles de Menezes, the subsequent inquiries and the prosecution of the Metropolitan Police Service, have all talked about the victim as an ‘innocent’. At the same time, explanations of the killing focussed on those actions and attributes that made a man appear ‘guilty’, and emphasised that the risk of a terrorist attack has, at all costs, to be avoided.

These arguments depart from the traditions of ‘innocent until proven guilty’, ‘beyond reasonable doubt’, ‘trial by one’s peers’, that make up the UK’s common sense notion of criminal justice. At no point did de Menezes have the chance to show that he was not a suicide bomber; he was never asked who he was, what he was doing and why.

Why, then, should it matter who he was? No ‘innocents’ should be shot by the police, and even the ‘guilty’ should be given a fair trial first. I argue that the politics of the killing of Jean Charles de Menezes shows how risk-based analyses are now embedded in our discourses of security. This reaches from the everyday criminal justice of ASBOs and dispersal orders, to the ‘war on terror’. It is now implicitly accepted that some ‘innocents’ will be punished, and so the question is how many is acceptable?

The killing of Jean Charles de Menezes

The journey to work

On the morning of 22 July 2005, Jean Charles de Menezes was shot eight times, seven times in the head, moments after he got into his seat on a Northern line tube train leaving Stockwell. Given his behaviour up until that moment, we can assume he was completely unaware that his journey from home was being followed by officers of the Metropolitan Police Service (MPS or ‘the Met’), and that the shouts of ‘armed police’ were the first he knew about it. De Menezes was instantly killed.

This killing has been the subject of two Independent Police Complaints Commission (IPCC) inquiries. The first examined the events leading up to the shooting, and those in the immediate aftermath. The second examined the MPS’s statements following the shooting. A prosecution of the MPS under the 1974 Health and Safety at Work Act, in which the Met was found guilty, was effectively a third inquiry. The reports of these inquiries, and contemporary press coverage, show how the police desperately needed de Menezes to have some ‘guilt’, not to be an ‘innocent’. If he was shown to be purely innocent, and the killing an accident, without cause, then any other ‘innocent’ could be the next victim and the public would have reason to fear the Met as well as the terrorists. A random accident would lead the public to lose confidence in the Met’s ability to protect them without harming the innocent. In the past such “loss of confidence” (Ten, 1987: 17) has led to riots and to police reform¹. Thus, the ‘accident’ needs to be explicable.

¹ The Brixton riots of 1981 and the subsequent Scarman Report being a notable example.

At 9:33 on the morning of the shooting, de Menezes left for work from his flat in south London, and was followed by surveillance officers “in the erroneous belief that he was Hussain Osman, a man suspected of having been responsible for a failed suicide bomb attack [the day before]” (IPCC, 2007a: 9). The aim of the police operation was to follow and then stop anyone leaving the flats in which Osman lived, and either safely arrest them, or if not a suspect, gain intelligence about the flats and their inhabitants (IPCC, 2007a: 24).

Throughout the operation, the surveillance officers were uncertain of their suspect’s identity. ‘Frank’, who was watching the flats from a van described de Menezes as “IC/1 [white] 5’8”, dark hair, beard / stubble” (IPCC, 2007a: 55). ‘James’, another officer, “described his complexion as being similar to a light skinned North African”, and said he was a “good possible likeness to the subject Nettle Tip [Osman]” (IPCC, 2007a: 55). ‘Ivor’, who followed de Menezes on the bus to the tube station, stated that he “could not positively identify the male as [Osman]” but mentioned distinctive “Mongolian eyes” (IPCC, 2007a: 56). At this point there is some suggestion that the surveillance team were to withdraw without making any contact with de Menezes, as he was “not identical” (IPCC, 2007a: 47).

When de Menezes alighted the bus, subsequently getting back on to the bus as Brixton station was closed, ‘Laurence’ drove past and reported that he “did not believe that the person was identical to Nettle Tip” (IPCC, 2007a: 57). Despite this uncertainty among the surveillance officers, those in the control room and among SO19 (the specialist firearms department) believed that a positive identification had been established (IPCC, 2007a: 57). Further evidence was found in analysis of an early observation that de Menezes “look[ed] over his shoulder” and was acting “wary” and “nervous” (IPCC, 2007a: 55). By the time he was entering the tube station the message from the control room to the firearms team was that “it was definitely our man... nervous and twitchy” (IPCC, 2007a: 59), despite no further mention of suspicious behaviour by the surveillance officers.

When de Menezes re-alighted the bus to get to the tube station at Stockwell he was still only followed by the surveillance team. With no remit to stop, arrest or question – this was the job of another team – they continued to observe and wait. As when travellers pass through airport security, de Menezes was neither innocent until proven guilty, nor presumed guilty, but in between until “authenticated by the system” (Epstein, 2007: 156). Individual surveillance officers avoided making a firm decision by saying it may or may not be the suspect and it was “worth somebody else having a look” (IPCC, 2007a: 55). They knew that they must not let a suicide bomber pass, so continued their surveillance, just in case.

At this point the surveillance team were pressured to provide a percentage or ‘1 to 10’ score as to how certain they were they had the right man. “‘James’ received this message and considered this to be a ‘ridiculous question’ and one impossible to answer” (IPCC, 2007a: 58). Commander Cressida Dick had the choice of the suspect being ‘stopped’ by SO12 (surveillance team), SO13 (the armed debriefing team) or SO19 (the firearms team), but due to the risk that it was the right man, SO19 were sent into the tube, wholly expecting to find a suicide bomber.

Indeed, it seems likely that the surveillance officers who pointed out de Menezes would not have known what was about to happen. SO19 were confirmed as arrived at Stockwell only as de Menezes and the surveillance team went down into the station: the surveillance officers would not have known whether SO13 or SO19 were to do the ‘stop’ or how senior officers’ instructions would be interpreted. Commander Dick’s final instructions were that the “subject...cannot be allowed to enter the tube system. He must be arrested before by SO19”, but this was perceived by those chasing to mean “stop a suicide bomber” (IPCC, 2007a: 61). Because a suicide bomber was not ruled out – the risk was still there – at the moment of killing the police together acted as though there were a suicide bomber, even if some were unwitting actors. When SO19 arrived at the Northern Line train, ‘Ivor’ had to walk to the open door and shout ‘he’s here’, at which point de Menezes was beginning to stand, as others in the carriage had when the police ran through shouting ‘get off’ (IPCC, 2007a: 69). One member of the public even left the train moments earlier, unnerved by “an Asian man with a rucksack” who turned out to be ‘Ivor’ (IPCC, 2007a: 69). ‘Ivor’ then pinned him back in his seat in the belief that this was a suicide bomber about to flick a switch (Sturcke & Attewill, 2007). The SO19 officers shot de Menezes in the head, to avoid the risk that he would set off his bomb.

The immediate aftermath

In the minutes after de Menezes was killed, the belief that a suicide bomber had definitely been killed was prevalent among both the security services and ‘civilian’ witnesses. This was reinforced by

mistaken testimony that the 'suicide bomber' was 'Pakistani', wearing unseasonal clothing and behaving as though he was on the run from the police.

CCTV footage showed de Menezes:

wearing a denim jacket, T-shirt and denim jeans. He was not carrying anything.... he select[ed] a copy of the Metro newspaper. He then walked to the ticket barrier, used an Oyster card and walked through the turnstile. He then turned left towards the escalator to the Northern line and walked down on its left hand side (IPCC, 2007a: 36).

However, witnesses leaving the tube station saw police chasing a fleeing suspect: "There were at least 20 of them and they were carrying big black guns. The next thing I saw was this guy jump over the barriers and the police officers were chasing after him" (Guardian, 2005). Passengers in de Menezes' carriage also saw a stereotypical 'bomber' being stopped. Some mentioned a suspicious looking Asian man being in the carriage before the police ran in. One witness described the killing:

An Asian guy ran on to the train. As he ran, he was hotly pursued by what I knew to be three plain-clothes police officers.... He tripped and was also pushed to the floor and one of the officers shot him five times.... He looked like a Pakistani but he had a baseball cap on, and quite a thickish coat. It was a coat like you would wear in winter, a sort of padded jacket. (Guardian, 2005)

In both instances the IPCC report argues that these witnesses had confused the police with a bomber. Those jumping over the barriers were the SO19 team arriving, and the 'Asian guy' who tripped or was acting suspiciously is believed to be 'Ivor', the surveillance officer.

Indeed, 'Ivor' was himself "dragged away on the floor by armed officers" (IPCC, 2007a: 129) and "had a gun pointed at his chest" (Sturcke & Attewill, 2007). It is entirely possible that he could have been shot after being mistaken for the bomber.

Despite the confusion among the police officers, their early testimony was also very confident that they had got the right man. The first written account by a police officer was made by 'DCI C', who although not present was recording a conversation with one of the SO19 team twenty minutes after the shooting. This included the observation that the suspect was challenged and "did not comply" (IPCC, 2007a: 74), effectively resisting arrest. Approximately half an hour after the shooting, an officer at the scene informed the MPS's Directorate of Professional Standards² (DPS) that "a male Asian/Pakistani had been confronted and shot" by SO19 (IPCC, 2007a: 76). When the Home Office pathologist arrived three hours after the incident he also 'received a verbal briefing' from DCI Evans of the DPS that:

On the morning of 22 July 2005 he was pursued by armed police officers as a result of surveillance. He was followed into STOCKWELL Tube Station where he vaulted over the ticket barrier. He ran downstairs and onto a tube train where he stumbled. The officers then immobilised him and a number of shots were fired. (IPCC, 2007a: 75).

This corresponds exactly with the witness statements and media reports being aired at the time. Somehow, despite the surveillance team knowing this to be false, this version of events was common knowledge.

The next twenty four hours

There is much dispute as to who said what to whom, and so who knew the facts and when in the minutes and hours following the shooting. This is true from the very top to those working at the site of the incident. The most controversial accusation was that the Commissioner, Sir Ian Blair, knew that the dead man was not connected with the bombings before press releases were issued saying "it is not yet clear

² The internal equivalent of the IPCC that works to ensure the MPS acts professionally and correctly (previously the Complaints Investigation Bureau). Part of the rationale of their work is to avoid the Met being sued for their mistakes: "Risk Management' is control of factors which could lead to loss, injury or damage to the MPS, its staff and/or its reputation.' (see <http://www.mpa.gov.uk/downloads/committees/x-pspm/x-pspm-020214-12-appendix01.pdf>)

whether he is one of the four people who attempted to cause explosions” (IPCC, 2007b: 60)³. DCI Evans argued that the errors in the pathologist’s records were based on radio reports and not on their conversation (IPCC, 2007b: 29). “Mistaken civilian accounts that were given to and broadcast by the media became accepted and in some cases repeated by the MPS” (IPCC, 2007b: 26).

However, it is clear that a number of untrue statements and unfavourable interpretations were incorporated into the story told among and by the security services. These focused on the clothing and behaviour of the victim, including the suspicious behaviour of leaving and reboarding the bus – “a recognised anti-surveillance technique” (IPCC, 2007b: 35), the leaping of barriers and the unseasonal clothing. The statement that de Menezes was ‘challenged’, and by implication refused to comply, was added by a member of the MPS’s press office, whose “belief was that it was standard practice with police shootings that a suspect would be challenged” (IPCC, 2007b: 55).

Furthermore, as investigating officers found information that suggested that the victim was not connected with the bombings, decisions were made to emphasise that the victim could still be a terrorist.

Although an explosives officer removed de Menezes’ mobile phone and wallet five minutes after the shooting, the mobile phone was only checked three hours later and the wallet nearly five hours later. The mobile phone contained names of “Latin rather than Arabic or Asian origin” (IPCC, 2007b: 28), and then bank cards, a National Insurance card and a driving licence, all in the name of Jean Charles de Menezes. By mid-afternoon this information was circulating in New Scotland Yard and beyond. Whereas at 11:22, the DPS officer investigating the shooting believed that “a lone Pakistani male had been shot” (IPCC, 2007b: 28) at 15:00, “the wallet examinations suggest that the deceased is Jean Charles de Menezes... a Brazilian born in Sao Paulo” (IPCC, 2007b: 30).

By mid-afternoon officers, including some senior officers, were beginning to believe a mistake had been made. Brian Paddick, then Acting Assistant Commissioner, stated that around 15:30 he was told that “we’ve shot a Brazilian tourist” and that they “had got the wrong man” (IPCC, 2007b: 37-38). At around the same time a Police Federation⁴ representative received a call from the representative for SO19, “advising him that the man who had been shot was Brazilian”, and including the words ‘wrong man’ and ‘mistake’ (IPCC, 2007b: 67), and a member of DPS “became aware that evidence was emerging that the person who had been shot was not a terrorist” (IPCC, 2007b: 36). An officer at Marylebone station, completely unconnected to the investigation, heard at 17:00 that “there has been a massive cock up at Stockwell” (IPCC, 2007b: 66). In a stereotypically British fashion, some senior officers of the Met learnt about a “terrible mistake” while watching England make a comeback against Australia at Lord’s (IPCC, 2007b: 65).

Although none of this information could completely rule out a terrorist connection – de Menezes could have been an accomplice of the bombers – this identification meant that the deceased was certainly not one of the bombers, and unlikely to be a terrorist. At a briefing for crime reporters at 16:30, Assistant Commissioner Andy Hayman informed journalists that the MPS “did not believe the man was one of the four suspects” but believed him to be a terrorist suspect (IPCC, 2007b: 57).

At a meeting thirty minutes later, AC Hayman worked with the Commissioner and a number of others to decide what to tell the press. The IPCC found AC Hayman’s actions at this meeting to be of “serious concern” (IPCC, 2007b: 106). AC Hayman failed to tell the meeting that he did not believe the victim to be one of the bombers, and the press statement released at 18:44 said that “it is not yet clear whether he is one of the four people” (IPCC, 2007b: 59), a wording that was used again with slight modification in a press release at 23:37.

A written record of this meeting shows how those present felt the need to explain what had happened:

COMMISSIONER: ... In terms of the link with the investigation how about “the man shot today at Stockwell was under police surveillance after he left the house under observation as a result of our inquiries following the incidents yesterday”.

³ I will not discuss this here. It is possible that many people around the commissioner were fairly sure they had got the wrong man but felt it unnecessary to tell their boss, and thus there is no evidence for wrongdoing by the commissioner.

⁴ ‘A staff association for all police constables, sergeants and inspectors’ (<http://www.polfed.org/aboutus.asp>). It is similar to a trade union.

Len DUVALL: People watching must understand that the intelligence led the police there and that you thought he could be dangerous.

Dick FEDORCIO: I will craft something for the public.

AC HAYMAN: There is press running that the person shot is not one of the four bombers⁵. We need to present this that he is believed to be. This is different to confirming that he is. On the balance of probabilities, it isn't. To have this [version of events] for offer [to the public] would be low risk.

COMMISSIONER: Also his behaviour reported at the scene added to the circumstances. So, he came from the address, his behaviour, he was followed by officers, this led to shooting. The second point is that for the time being the CT (Counter Terrorism) investigation is pre-eminent. In due course we will discuss handing over to the IPCC. We must have this space.

Action agreed that Dick Fedorcio is to produce the above and issue as an official statement. The IPCC will take over Monday. (IPCC, 2007b: 44-45)

Both Len Duvall, Chair of the Metropolitan Police Authority (the MPS's governing body) and Labour London Assembly Member, and the Commissioner felt the need to show why the man was killed, while AC Hayman, although believing that the deceased was not a bomber, wanted to tell the public that it still might come true.

Indeed, the 23:37 version of the press release stated that:

A man was challenged by officers and subsequently shot... The man shot is still subject to formal identification and it is not yet clear whether he is one of the four people who attempted to cause explosions. The man who was shot was under police observation because he had emerged from a house that was itself under observation because it was linked to the investigation of yesterday's incidents, Surveillance officers then followed him to the station. His clothing and behaviour at the station added to their suspicions. (IPCC, 2007b: 60)

This was despite the facts that SO13 (the terrorism officers) decided at 20:20 that they had no interest in the deceased, and that, earlier in the day, contact had been made with the Home Office, the Foreign and Commonwealth Office, and the Muslim safety forum, that, subject to formal identification, the deceased was not one of the bombers (IPCC, 2007b).

After 22 July 2005

As the days, weeks and months passed, press reports, two IPCC inquiries, and a health and safety prosecution of the Metropolitan Police Service brought more details of the events into the public domain. And although the MPS began to admit that the victim "was not connected with the incidents of Thursday 21st July 2005" (IPCC, 2007b: 116), they continued to look for explanations of their mistake, and to blame the victim.

The next day, the first press release that confirmed they had got the wrong man emphasised that "his clothing and behaviour added to their suspicions" (IPCC, 2007b: 61). Of course, given that he was not a terrorist it was then difficult to see why, as was the knowledge at the time, that he had run from the police and not complied with the challenge. On the following Monday, an explanation was offered on the BBC's *World at One*: "Jean Charles de Menezes... was an illegal immigrant who had overstayed his welcome on a student visa" (Clark, 2005). This 'fact', allegedly leaked by the security services (Clark, 2005) helped to explain "the accounts of bystanders and police officers who said that Mr Menezes [sic] fled when he was challenged by armed plainclothes officers" (Syal & Hennigan, 2005).

De Menezes' immigration status was later raised in the Health and Safety prosecution of October 2007. As noted in the IPCC report "Evidence emerged during the course of the criminal trial into the Health and Safety charge that Mr de Menezes was lawfully in the country on 22 July 2005" (IPCC, 2007a: 21) as he had come to the UK from Ireland less than three months before (Fresco, 2007). Yet at the same time, the MPS's defence lawyers argued that a forged stamp in his passport, along with previous use of cocaine "explained why the Brazilian had allegedly behaved in an 'aggressive and threatening manner' as armed police approached him in a London Underground train carriage" (Milmo,

⁵ Due to AC Hayman's press briefing.

2007). The Met's lawyer, Ronald Thwaites QC, said "I don't suggest he did have any drugs in there. Did he wonder whether he might have any drugs left from when he last used them?" (Steele, 2007).

He was shot because when he was challenged by police he did not comply with them but reacted precisely as they had been briefed a suicide bomber might react at the point of detonating his bomb. (Guardian, 2007)

The potential presence of drugs or false stamps was thus presented as a reason why de Menezes acted like a terrorist. This argument was used despite the previous IPCC finding that de Menezes had not behaved unusually, and had not been challenged.

Finally, we return to de Menezes' face: to what extent did de Menezes look like 'Nettle Tip', or indeed the stereotypical Asian or Arab bomber? The men eventually convicted of the 21 July bombing were from Ethiopia, Eritrea and Somalia. However, at the time, and even though CCTV pictures were available, they were assumed to be of Asian/Pakistani origin⁶ and connected to the previous bombings. Some witnesses of the 21 July bombing attempts saw 'Asian' men fleeing the scenes of their crimes (Low, 2005). De Menezes was first identified as white, but was noted as having "distinctive Mongolian eyes" (IPCC, 2007a: 56). He was never positively identified as 'Nettle Tip'/Osman, and after it was realised he was not, at least one surveillance officer attempted to distance himself from the killing by amending records to say that he was identified as *not* being 'Nettle Tip' (IPCC, 2007a: 86). By the time of the Health and Safety prosecution, allegations were made that the Metropolitan Police Service manipulated photographs to make de Menezes and Osman look more alike to justify their confusion (Milmo, 2007).

As before, the explanation for the mistake is a property of the victim, not those making the mistake. Like those young Asian men who are now stopped and searched because they fit the ethnic and age profile of the 'violent extremist', de Menezes, while not looking much like Osman, did not look sufficiently different from Osman or the 'Pakistani' suicide bomber. In the beginning he was targeted because, unlike others leaving the flats, his face did not confirm his innocence, and he, unwittingly, failed to 'authenticate' himself, and so remained a potentially 'guilty body' (Epstein, 2007).

The contours of 'threat': the guilty and the innocents in the risk society

Accidents, mistakes, and miscarriages of justice happen, and always have happened: sometimes the guilty go unpunished and the innocent are punished. After the latter, the fact that the convicted was innocent will "soon leak out and when that happens, there will be a loss of confidence in the sheriff and widespread fear among the population that any one of them might be the next innocent victim" (Ten, 1987: 17-18). To reduce the likelihood of this possibility, modern polities begin criminal justice with a presumption of innocence and a very high threshold for conviction; 'beyond reasonable doubt'.

However, as Foucault shows, the exercise of power in the modern era is the "conduct of conduct" (see Dreyfus & Rabinow, 1982: 220-221), and consists of much more than catching the guilty after the crime and punishing them. This technique is first supplemented by disciplinary techniques such as the school, the prison, and the factory, which control individuals and guide the way they live their lives. This introduces an orientation to the future (Kemshall, 2003) that aims to stop crimes and other harms occurring in the future. Second, and in combination with the above techniques, governments realise that total control is impossible, so a statistical and risk-based approach is the rationale for where, how, and on who power is exerted. This is the 'apparatus of security':

now, the application of this penal law, the development of preventive measures, and the organization of corrective punishment will be governed by the following kind of questions.... What is the average rate of criminality for this [type]? How can we predict statistically the number of thefts at a given moment, in a given society... in a given social stratum, and so on? Second, are there times, regions, and penal systems that will increase or reduce this average rate? ... how much does this criminality cost society? ... What is the cost of repressing these thefts? ... The general question basically will be how to keep a type of criminality ... within socially and economically acceptable limits and around an average that will be considered as optimal for a given social functioning (Foucault, 2007: 2-3).

⁶ By 26 July this had changed: "the disclosure of a link to east Africa could have a big impact on the investigation into the attacks because it is likely to widen the focus of inquiries beyond Asian communities" (Bennetto, Milmo, & Sengupta, 2005).

The killing of Jean Charles de Menezes is at the limit of all three of these forms of power; the *sovereign power* that acts at a discrete moment to punish a past crime, the *disciplinary power* of rules and institutions that modify future behaviour, and the *biopower* of risk, costs and benefits where the objects of power are populations and not individuals (Dillon & Lobo-Guerrero, 2008: 267). “Temporary sovereigns”, making a “clear, confident and forceful [decision]”, (Vaughan-Williams, 2007) used the ultimate punishment, “to take life” (Foucault, 2003: 241). At the same time, the suspect was ‘stopped’ and not arrested, tried and punished – a recurring feature of the war on terror – in order to stop an imminent attack: there was no need to kill the suspect if he was not about to kill himself and others. Killing is thus the ultimate ‘disciplinary’ tool, as the victim is ‘stopped’ absolutely. Finally, this incident occurred as the first use of Kratos, the policy of shooting in the head to stop a suicide bomber about to detonate, described as ‘shoot to kill to protect’ (MPA, 2005). In its operation, as described in the chronology above, individuals such as Commander Cressida Dick are weighing up the risk of danger to the public against the risk of danger to the suspect. After this killing, Sir Ian Blair told Channel 4 news “that he could not guarantee that another innocent man would not be shot”: “I know there have been 250 incidents since July 7 where we have considered whether we are seeing a suicide bomber.... there [have] been seven times when we have got as close to calling it as ‘that’ and we haven’t.” (Ford & Syal, 2005).

The Kratos policy, then, is a continuation of other present-day regimes that aim to control a ‘risk’, that is, a chance of harm in the future. In the UK, New Labour has introduced a number of measures which, when working on individuals, are prompted by non-criminal acts (e.g. anti-social behaviour orders) or do not involve testable accusations (e.g. control orders), or work on populations and spaces (e.g. alcohol restriction zones, local lettings policies). This could also include the recent suggestion, by a senior police officer, to take the DNA of all primary school children deemed at risk of offending in the future (Townsend & Asthana, 2008). Although at first glance, the distinction between actions on individuals or the population would make these types of power fundamentally different, at the points of enforcement and policy they are the same. Although an alcohol restriction zone means that technically no-one is allowed to drink in public, in practice those doing the enforcing remove alcohol from those they judge to be likely to cause disorder, while others may be asked to move elsewhere. Although ASBOs and control orders are given to individuals likely to offend, at the policy level particular ‘risky’ groups are the target, including young people, the poor and socially excluded, the people of particular ‘problem estates’, asylum seekers, and so on. In both cases the policy is enacted on a population through the interventions in individual people’s lives.

For all of these interventions, from alcohol restriction zones to the killing of potential suicide bombers, the question to be posed is how the problem should be managed “within socially and economically acceptable limits and around an average that will be considered as optimal for a given social functioning” (Foucault, 2007: 3). Using the language of statistics and probability, the need for ‘beyond reasonable doubt’ becomes an analysis of false positives and false negatives, and the consequences of each: some are punished despite doing no harm and other harms go unpunished.

At the more ‘actuarial’ end of the scale, “through its utilization of risk-based techniques to detect and manage social problems, this emergent form of power divides the population into statistical and behavioural categories” (O’Malley, 1992: 254). With alcohol restriction zones or the use of the ‘Mosquito™ Teenage Deterrent’, which emits an uncomfortable high-pitched noise that only young people can hear (Compound Security, 2008), there are many false positives. However, the restriction of liberty these false positives cause – being unable to drink or ‘hang around’ in particular spaces – is deemed a minor cost, outweighed by the benefits of disciplining a few trouble makers. With a ‘shoot to kill to protect’ policy, false positives are rare but devastating: the question to be asked is whether this is outweighed by the benefits of stopping a successful bombing.

If an armed police officer believes they are in pursuit of a terrorist who might be a suicide bomber and they start making these sort of calculations based on, ‘How’s this going to be seen ... am I going to be hauled off to court? ...’ At the end of the day, mistakes are always going to happen in wars or situations like this. (London Mayor, Ken Livingstone, quoted in BBC News, 2007).

From the devastating ‘shoot to kill to protect’ policy to the everyday deterrence of teenagers, the key political question is where to place the ‘socially and economically acceptable limits’. This, then, is the politics of security and risk (see Aradau, Lobo-Guerrero, & Van Munster, 2008).

Throughout the testimony of those involved in or witnessing the killing of de Menezes, we can find the language of risk, and thus clues to the mental maps that each of us use to judge risk. Maps of risk elucidate the 'threat' present in our everyday encounters: we fear the black teenage (mugger), the (no-go) underclass estate, the Pakistani (bomber) with a rucksack as we build up an image of who is likely or unlikely to cause harm. In reverse, if we are told of a 'threat', we know who we are looking for. The firearms team expected to see an Asian suicide bomber, and at first the Met reported that they had. "The atmosphere of fear for those living and working in the capital cannot be over estimated.... in periods of heightened tension and an enhanced awareness of the threat from terrorism, the police will receive more calls from the public about people who have aroused their suspicions" (IPCC, 2007a: 17).

Until July 2005, and perhaps today, the chance of being accidentally or mistakenly killed by the police is perceived to be zero: neither the police nor the public could believe in a devastating false positive. Although sent to 'stop' and possibly kill, I believe the firearms officers would have felt confident in their superiors sending them to stop a bomber, and not a 'civilian'. Most tellingly, the press officer justified her insertion of the 'challenge' into the official narrative because that was how she saw the operation of policing: from her position, mistakes are impossible because of the reliable check and balance of a 'challenge'. Witnesses 'unnerved' by an Asian man or seeing an Asian man run on to the train saw *him* being killed (IPCC, 2007a: 68): because a terrorist is expected to be Asian, the man shot must have been the Asian man.

However, the post-9/11 "emergence of a 'precautionary' element that has given birth to new configurations of risk that require that the catastrophic prospects of the future be avoided *at all costs*" (Aradau & Van Munster, 2007: 91, my emphasis), makes similar incidents more likely. As the risk of a bomb is nearly zero, yet its happening is catastrophic, the only direction risk management can take is towards "a politics of zero risk" (Aradau & Van Munster, 2007: 103). The reduction of false negatives (bombs not detected) necessitates an increase in false positives. Cressida Dick could only send in the best she had available, SO19: if she asked the untrained surveillance team to do the 'stop' she could have been deemed responsible for a catastrophe. No surveillance officer was willing to confirm de Menezes was not 'Nettle Tip', lest they be wrong.

Of course, in the end, they were wrong. This could not be just an accident, however, but needed to be explained. Blame needed to be apportioned (see Douglas, 1994). The reasons given for the killing at the inquiries and health and safety prosecution retrospectively explain, and at the same time reassure the public that they remain safe from random extra-judicial killings. Whereas an unexplainable shooting would result in a loss of confidence in the sheriff and a fear that anyone of us could be next, the explanation shows how we could not.

Indeed, this is a common feature of the 'risk-based techniques' of security. We are willing to accept punishment for past harms, and prevention of future harms, without the procedure of the trial, as we trust the system to differentiate between ourselves and those with a patina of guilt. Despite the potential for false positives – being dispersed when one had no criminal intent, being shot without a bomb – most of us believe that it won't happen to us. These events happen to the poor, the young, the deviant, the mentally ill and those claiming asylum, groups that are regarded as a 'threat' to our security (Jenkins, 2004), prior to any harm they would do. They possess guilt before they are guilty. In the past this position was occupied by the unrespectable or undeserving poor and the dangerous classes: just as government expertise finds 'at risk' groups, so does the public. We have no mass backlash against ASBOs or the de Menezes killing because each of us believes that we wouldn't have acted like a terrorist; we've no drugs or false passport stamps to hide; we wouldn't be mistaken for a Pakistani suicide bomber, and most of us can be confident we won't be taken to be 'Pakistani'. Despite evidence to the contrary, a belief that only those up to no good get caught up in the system allows it to go on. The majority of the UK public is in favour of a 42-day pre-charge detention (Revill, 2008) knowing that it will not be used on them. The police admit as much: after arresting a university student after, as part of his dissertation research, he downloaded an al-Qaida document from a US government website, officers said "that if this had been a young, blond, Swedish PhD student, then this would never have happened" (Glendinning, 2008).

Conclusion

I began by asking how the identity of the victim of the Stockwell shooting mattered. In the human rights context, the answer has to be not at all: "Deprivation of life shall not be regarded as inflicted in contravention of [the right to life] when it results from the use of force which is no more than absolutely necessary [to stop violence or riot, or to arrest]" (Human Rights Act, 1998, article 2). Only if the suicide bomber is reaching for the button can he or she be shot dead.

However, justification of the shooting focused more on the victim's identification, behaviour, and the possible motives of his behaviour. If the victim had been Hussein Osman, or an accomplice, even if not carrying a bomb, there would have been celebration of the killing. If he was a Muslim, the post-hoc explanation may have been more easily acceptable.

As de Menezes was not a bomber or accomplice we have not had to, this time, admit our complicity in extra-judicial killings as part of the 'war on terror'. Instead this is another miscarriage of justice, another death in police custody. Because he was 'innocent', we need to check that we will not be next. Because he was 'guilty' of being a potential threat – through his face and his perceived actions – we believe that we will not.

Not only were the recent boundaries between the military and civil society torn down, but also the boundaries between innocent and guilty, between suspects and non-suspects, where jurisdiction up until now made sharp distinctions. If the individualization of war should continue to be a threat, then the citizen should prove that he or she is not dangerous; because under these circumstances every individual could come under suspicion of being a potential terrorist. Everyone has to put up with the fact that he or she, in the absence of any concrete reason, has to be checked "for security reasons." (Beck, 2002: 9)

Although Beck argues that citizens should prove they are not dangerous, he forgets to mention that some find it easier than others.

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