

The London Police's Mossad-style Execution of a 'Suspect'

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John Gardner at Home 27 July 2005

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Police state:

Like many of my fellow-Londoners I am less alarmed by suicide bombers than I am by the police's Mossad-style execution of a 'suspect' (who turned out to be a completely innocent passer-by) on Friday 22 July. This is not because we are at greater risk of death at the hands of the police than at the hands of the bombers. (Both risks are pretty tiny, but of the two the risk posed by the police is clearly smaller). Rather, it is because, all else being equal, it is worse to be killed by one's friends than by one's enemies, and worse to be killed by people in authority than by people not in authority.

Here are some other important things to remember in thinking about the police actions of 22 July:

(1) There is no general legal duty to assist the police or to obey police instructions. *Rice v Connolly* [1966] 2 QB 414.

(2) There are special police powers to arrest and search. But there is no special police licence to injure or kill. If they injure or kill, the police need to rely on the same law as the rest of us.

(3) The law allows those who use force in prevention of crime to use only necessary and proportionate force. Jack Straw and Sir Ian Blair say that officers are under great pressure. But this is no excuse. In law, as in morality, being under extra pressure gives us no extra latitude for error in judging how much force is proportionate or necessary. *R v Clegg* [1995] 1 A.C. 482.

(4) Arguably, the police should be held to higher standards of calm under pressure than the rest of us. Certainly not lower!

(5) The necessity and proportionality of the police use of force is to be judged on the facts as they believed them to be: *R v Williams* 78 Cr. App R 276. This does create latitude for factual error. In my view it creates too much latitude. The test should be reasonable belief. The police may be prejudiced like the rest of us, and may treat the fact that someone is dark-skinned as one reason to believe that he is a suicide bomber. But in court this reason should not count.

(6) It is no defence in law that the killing was authorised by a superior officer. A superior officer who authorises an unlawful killing is an accomplice. *R v Clegg* [1995] 1 A.C. 482.

(7) The fact that those involved were police officers is irrelevant to the question of whether to prosecute them. It is a basic requirement of the Rule of Law that, when suspected of crimes, officials are subject to the same policies and procedures as the rest of us.

(8) Some people say: Blame the terrorists, not the police. But blame is not a zero-sum game. The fact that one is responding to faulty actions doesn't mean one is incapable of being at fault oneself. We may blame Tony Blair for helping to create the conditions in which bombing appeals to people, without subtracting any blame from the bombers. We may also blame the bombers for creating the conditions in which the police act under pressure, without subtracting blame from the police if they overreact. Everyone is responsible for their own faulty actions, never mind the contribution of others. This is the moral position as well as the position in criminal law.

Proposed new anti-terrorist offences:

The one that has been variously labelled as 'condoning' or 'glorifying' or 'indirectly inciting' terrorism gives cause for concern. It is already an offence to incite another person to commit an act of terrorism (Terrorism Act 2000 s59). In which respects, we may wonder, is the scope of this offence to be extended? The word 'indirect' suggests that they mean to catch those who incite the s59 inciter. But under general doctrines of English criminal law it is already an offence to incite the inciter. So one suspects some other extension of the existing offence is being cooked up. Is the plan to criminalise the mere defence or endorsement of a terrorist act? If so we are in for trouble. Terrorism in English law is defined to cover all modes of political violence, however trifling. Are academics and commentators no longer to be permitted to defend any political violence? Is Ted Honderich's *Violence for Equality*, or Peter Singer's *Democracy and Disobedience*, to be put on the banned books list? The only thing protecting these books at the moment is that, in the eyes of the law, an argued endorsement is not an incitement. The thought that the government may be thinking of changing this should send a shiver down the spine of anyone who still has a spine (damn few).

Lord Hoffman in *A v Home Secretary* [2005] 2 WLR 87: 'The real threat to the life of the nation ... comes not from terrorism but from laws like these.' Quite right. Some extra risk of being blown up by fanatics on the way to work is one of the prices we pay for living in a free society. Let's make sure we keep it that way.

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