

Democracy and the “rule of law:” An exchange on the British police murder of Jean Charles de Menezes

8 September 2005

Below we publish a letter from reader MM disagreeing with aspects of the analysis made by the World Socialist Web Site of the police murder in London of Brazilian Jean Charles de Menezes, and a reply by Chris Marsden, the national secretary of the Socialist Equality Party of Britain and a member of the WSWs International Editorial Board. De Menezes, who had no connection with terrorism, was shot multiple times in the head on July 22 by plainclothes officers while he was seated on a train at Stockwell underground station.

I would like to elaborate a little on your statement that the closing of ranks by the British political establishment “reinforces the political fact that de Menezes was shot in a cold-blooded manner to instill fear in the population and implement a shoot-to-kill policy that had been secretly decided on by Prime Minister Tony Blair and top officials two years previously.” (See “More lies from the British Police on the de Menezes murder”).

The British ruling class and its institutions are not monolithic and do not have a single directing brain, so we should not exaggerate the degree to which the incident was deliberately engineered. There will indeed be factions and conflicting interests at work at every level. Different elements will be positioning themselves to avoid blame for an incident widely seen as an unwelcome setback for the police. Others will attempt to manage the way information is used so as to limit the damage. Still others will console themselves with the thought that some of the public will find robust action by the police acceptable despite tragic mistakes.

The shoot-to-kill policy and the incessant tough talking from politicians have created an atmosphere in which reckless and violent action by the police is increasingly likely and individuals can be considered expendable. As yet, the state has not dispensed with the rule of law, although the strains are showing. Friction between Government and Judiciary is now almost the norm. Each time the judges interfere with decisions, the Government rewrites the law.

The old shoot-to-kill policy—officially denied—claimed many lives. In any given incident considered on its “merits,” it was open to police or Army to claim that they had to shoot because of an imminent threat. The courts tended to agree, but at least a case had to be made to show that force was reasonable in the circumstances.

The new policy, prepared in secret and proclaimed after the event, has no basis in law. To say that shooting was decided by reference to a guidance document or by way of obeying an order from someone not even at the scene would be to throw away any pretence of being a reasonable person assessing the situation. The “imminent danger” defence becomes the “Eichmann” defence: Instead of, “I thought he was pointing a gun,” we will have, “I was only obeying orders.”

This is a potential minefield. Perhaps, rather than run naked across it, the Government will clothe itself in a new legal provision to provide some immunity to those who issue and those who carry out such deadly orders

on its behalf, rather than have to initiate a series of murder trials.

We are indeed at a crossroads.

The media presentation of the de Menezes killing has concentrated on a series of tragic mistakes rather than the policy that brought about the killing. Calls for Sir Ian Blair to resign play along with this. George Galloway, the Respect MP, was one of the first to make the call, presumably hoping he will be replaced by a different policeman who will respect democratic values. Faced with a drive on the part of the ruling class for a more authoritarian solution to promoting its interests, the arguments for or against Sir Ian Blair are sterile.

MM

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Dear MM,

Thank you for your observations.

You argue that we are wrong to suggest that the killing of Jean Charles de Menezes was sanctioned a priori, with the aim of implementing a hitherto unknown shoot-to-kill policy. This, you claim, proceeds from the false assumption that the British ruling class and its institutions are “monolithic” and therefore exaggerates “the degree to which the incident was deliberately engineered.”

Your alternative version of events implies that de Menezes died because of the actions of trigger-happy cops operating in a political climate where a “shoot-to-kill policy and the incessant tough talking from politicians” means that “reckless and violent action by the police is increasingly likely.”

Your argument underestimates how developed is the threat to democratic freedoms revealed by the de Menezes murder.

The *World Socialist Web Site* and the Socialist Equality Party (Britain) have never suggested that there was a preconceived plan to specifically target and kill de Menezes. Rather, there was an intention to implement, in the aftermath of the July 7 London bombings and the abortive bombings of July 21, a shoot-to-kill policy that had been established in secret. At some point after de Menezes had left the block of flats that were under police surveillance, orders must have been given that he should be shot, rather than detained.

The August 18 statement by the Socialist Equality Party (Britain), “Government lies exposed over de Menezes murder,” cites facts clearly indicating that there was a deliberate decision to kill, rather than arrest, de Menezes, taken at the highest level of the police force rather than by the officers immediately involved.

Papers leaked from the Independent Police Complaints Commission (IPCC) inquiry into the shooting show that all the excuses initially advanced to explain why de Menezes was shot were lies. De Menezes was not wearing a heavy coat on a hot day that could have concealed weapons, but a light denim jacket. He was never challenged by police and never sought to evade capture. Rather, he was shot without warning by

plainclothes police officers while he was seated on a train.

Secondly, the papers confirm that “gold command made the decision and gave appropriate instructions that de Menezes was to be prevented from entering the tube system. At this stage the operation moved to code red tactic, responsibility was handed over to CO19.”

Gold command is based at Metropolitan Police headquarters and is charged with giving the go-ahead for shoot-to-kill operations. It must therefore have given such instructions with regard to de Menezes.

The documents also quote the commanding officer of CO19 telling his team “that they may be required to use unusual tactics today because of the environment they were in.” Asked to clarify, he is reported to have replied, “If we were deployed to intercept a subject and there was an opportunity to challenge, but if the subject was noncompliant, a critical shot may be taken.”

As we explained, “Events demonstrate that de Menezes was never given a chance to comply with the police.”

In a subsequent article published on August 22, “New revelations expose police, media cover-up: The *Guardian* and the de Menezes killing,” we drew attention to an August 21 article in the *Observer* revealing that leaks from police sources “said that the surveillance officers wanted to detain de Menezes, but were told to hand over the operation to the firearms team.”

Even without a “single directing brain” for the ruling class, there is still a command structure in the Metropolitan Police that implements police policy and a government in Westminster that sets it and who are therefore responsible for the de Menezes murder.

Your statement, “As yet, the state has not dispensed with the rule of law,” again implies that we are exaggerating the degree to which democratic rights are under threat. No one is arguing that the ruling class has abandoned parliamentary rule in favour of naked dictatorship. This is not possible without the ruling class having inflicted massive defeats against the working class. But neither is it the case that a Chinese wall exists between democracy and dictatorship.

The danger of dictatorial forms of rule being established does not begin on the day that it is proclaimed. You underestimate the degree to which democratic norms are already being dispensed with or emptied of any real content, as class antagonisms have deepened.

As you point out, conflicts between the government and the judiciary have become the norm as a result of repeated efforts to trample on civil liberties. And every time the government has felt itself to be constrained by existing legal norms, it has indeed rewritten the law.

Also, as you suggest, there is every possibility that the government may pass legislation providing immunity from those who order and carry out shoot-to-kill operations, in response to the scandal over the killing of de Menezes. Today, laws are being passed—by an elected parliament—that constitute a direct assault on longstanding democratic rights. So the threat this poses to the working class is not lessened because the “rule of law” continues to operate.

I might add that this is particularly the case in Britain, where, unlike the United States, for example, which has a written constitution, constitutional rights are determined by parliamentary act. Even when the government in parliament has introduced legislation withdrawing the right to trial by jury in some cases, or curtailing free speech as it is now seeking to do, there is no authority, including the courts, that has the power to declare this unconstitutional.

Our articles have explained that the ongoing offensive being mounted against democratic rights is the product of a historic shift in class relations. We wrote on August 18, “The lies employed to justify the state execution of de Menezes are only a link in the chain of lies used by the British and US governments to justify their predatory war in Iraq and ongoing ‘war against terror.’ Both London and Washington have developed a *modus operandi* that is not limited by any commitment to

traditional democratic norms. Opposed by a majority of the population, these governments uphold the interests of a tiny financial elite that seek to enrich themselves through rapacious plunder of the world’s resources and the ever more brutal exploitation of the working class.

“The imposition of these policies, which are antithetical to the interests of the vast majority of the population, cannot be reconciled with the preservation of democracy. It demands new forms of rule based in the most profound sense on lawlessness and criminality. This is what now confronts working people.”

The abandonment of any commitment to democratic rights is not confined to the government. You speak of factions within the ruling class and its institutions, but you can only cite them as seeking to avoid direct blame for the de Menezes killing, or other tactical considerations.

However, the most striking feature of the bourgeoisie’s response to the de Menezes killing and to the supposed anti-terrorist measures that produced it—including the shoot-to-kill policy—is the extraordinary degree of unanimity that has been displayed in supporting them.

The government and the police have enjoyed the backing of both the major opposition parties and the media. There may be efforts to avoid blame for the de Menezes killing, but where were the voices raised in protest from within official circles? We drew attention to the stand taken by the *Guardian* because it confirms that there is no significant constituency committed to the defence of democracy within the bourgeoisie, including its nominally liberal wing.

That is why there can be no room for complacency because the “rule of law” has not been formally dispensed with. To believe that the judiciary or any other section of the establishment will stand in the way of the fundamental thrust of the government’s attacks would be a dangerous illusion. At most, the judges may protest the most obviously illegal excesses of the government and seek to persuade it to draft better legislation, which then will not face the possibility of successful challenge.

This brings me to your final point opposing calls for the resignation of Sir Ian Blair. You are, of course, correct to warn that the former Labour MP George Galloway has raised this issue as part of efforts to preserve illusions in the possibility of democratically accountable policing. However, we cannot be indifferent to such a basic demand for justice to be done.

Blair should indeed be forced to resign and, more importantly, he should face legal action. To demand that the representatives of the ruling class be held accountable for their crimes—such as the launching of the illegal war against Iraq in the case of Prime Minister Tony Blair—is an essential aspect of the political mobilisation of the working class, without which there can be no defence of democratic rights.

The government and its apologists in the media are adamant that the police must not be answerable for their actions. Hence, the near-universal defence of Sir Ian Blair, as well as the refusal to countenance any public accounting of the circumstances leading up to the gunning down of de Menezes—using the excuse of an IPCC inquiry that will not make any report until at least December.

That is why we have insisted, “Those responsible for the de Menezes killing must be brought to account. But this cannot be accomplished by relying on the IPCC or any other legal body.... Everything depends on the development of an independent political movement of the working class, the axis of which must be opposition to the profit system that is the source of the drive towards war and the assault on civil liberties.”

Yours fraternally,

Chris Marsden



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