

# The law above the law?

Deborah Coles details an absence of accountability for deaths in police custody.

Deaths in custody represent the most severe end of a continuum of police neglect and potential criminality. At this end of the continuum, the system for holding the police properly to account for ill treatment and deaths of citizens in their custody is an important indicator of public confidence in the state of our democracy. The lessons that can be learned from the experiences of bereaved families and their representatives are therefore particularly important for understanding the type of state we live in.

INQUEST uses the generic term 'death in police custody' to cover all police-related deaths in custody, in police cells, police vans, following police contact, or police shootings.

People die in custody in a broad range of circumstances, including: as a result of medical neglect; self-inflicted deaths; following the use of force by police officers, involving firearms, CS spray, long-handled batons, neck holds, and other restraint techniques resulting in the inhibition of the respiratory system (asphyxia).

According to INQUEST's casework and monitoring, there have been 705 deaths following police contact, in police custody or as a result of police shootings between 1 January 1995 and 1 September 2010. Of those deaths, 112 (16 per cent) were of people from black, Asian, and minority ethnic (BAME) communities. During this period, there were six unlawful killing verdicts returned at inquests into such deaths, and seven prosecutions of police officers on charges such as manslaughter relating to deaths in their care. None of those prosecutions resulted in convictions.

The issue of police violence and impunity has been on the political and public agenda most recently

following the death of 47 year old Ian Tomlinson who was caught up in the police response to the G20 protests while he walked home in the City of London on 1 April 2009.

On the fifth anniversary of the police killing of Jean Charles de Menezes the decision not to prosecute his death follows a litany of other cases where no criminal or disciplinary action has been taken as a result police violence or neglect. This has resulted in high levels of public interest in the current mechanisms for investigating police related deaths. The institutional impunity afforded police indicate that in most cases police officers remain above the law. Abusive practices and systematic violence are marginalised and diminished by the failure to take criminal action or formal sanctions.

There are a number of unique features regarding the Ian Tomlinson case not least the public scrutiny of police conduct through video footage/photos which directly undermined the police version of events without which his death would have been dismissed as a 'natural causes' death.

The evidence of CCTV is rarely available in police-related deaths, the majority of which take place behind the closed doors of the police van or cell or where the only witnesses to the death are the custodians themselves. There are, however, similarities with other deaths in police custody/following police conduct, in particular family and public disquiet at the investigation mechanisms following such deaths.

Thirty years before the death of Ian Tomlinson, in April 1979, Blair Peach died as a result of head injuries inflicted by the police. He, along with thousands of others, was demonstrating against the National Front in West London. No police

officer was ever charged or prosecuted in relation to his death, raising serious questions about the lawlessness of the excessive force used by police officers from the Metropolitan Police Special Patrol group (the predecessors to the TSG) whilst policing the demonstration. The investigation into his death conducted by Commander John Cass was finally made public in 2010 after years of obfuscation and prevarication following a concerted campaign from family and friends. The mindset of Commander Cass and his approach to the investigation is portrayed by the following excerpt from his report where he sought to define its terms of reference and context:

*My brief is to investigate the circumstances surrounding the death, so I do not propose to enlarge much further on the events of that day except to emphasise that it was an extremely violent, volatile and ugly situation where there was serious disturbance by what can be classed as a 'rebellious crowd'. The legal definition 'unlawful assembly' is justified and the event should be viewed with that kind of atmosphere prevailing. Without condoning the death I refer to Archbold 38<sup>th</sup> edition para 2528: 'In case of riot or rebellious assembly the officers endeavouring to disperse the riot are justified in killing them at common law if the riot cannot otherwise be suppressed [sic]'.*

The whole police investigation into what happened was clearly designed as an exercise in managing the fallout from the events of that iconic day in Southall, to exonerate police violence in the face of legitimate public protest. The echoes of that exercise sound across the decades to the events of the G20 protest and the death of Ian Tomlinson in 2009.

Two of the fundamental requirements of the rule of law are that servants of the state should be dealt with before the courts on an equal footing with other citizens and their coercive powers should be constrained by precise legal rules.

One of the most long-standing complaints INQUEST receives from families of those who die following police contact is the failure on the part of the authorities to investigate deaths on the basis that a potential crime may have been committed. Too many cases have revealed an inability and unwillingness to do this, thus undermining family and public confidence in the police complaints system and the interrelated role of the Independent Police Complaints Commission (IPCC), the coroner, the pathologist, and the Crown Prosecution Service. Misinformation or 'spin' has been a feature of many contentious deaths in custody: there have been concerted attempts by the authorities to tarnish the reputation of the deceased in order to deflect attention away from official incompetence or wrongdoing (Hattenstone, 2005). Routine demonisation of the person who has died seeks to position them as 'undeserving' victims.

In the large majority of cases the state uses the inquest rather than criminal prosecution and trial for the public examination of deaths in custody – processes that are subject to appalling delay, limited public funding, and narrow scope and remit. Perhaps most significantly, an inquest cannot attribute blame or culpability.

In the absence of prosecutions the inquest is the only public scrutiny of the death and the family's only opportunity to try and hold the state to account. Properly conducted inquests into police-related deaths have exposed dangerous and unacceptable practices among state agents and institutions. However, despite a pattern of cases where inquest juries have rejected the official version of events and found overwhelming evidence of unlawful and excessive use of force, gross neglect, or a failure to abide by existing policies and procedures, no-one has been held responsible, either at an

individual or organisational level, for institutional and systemic failures. Since 1990 verdicts of unlawful killing have been returned in ten death-in-custody cases, none of which has resulted in a successful prosecution. This encourages a culture of impunity and sends a message to all involved that when deaths occur as a result of their acts or omissions they will not be brought to account. Through this process the perception is created that state agents are above the law resulting in both bereaved people and communities directing anger and mistrust towards the criminal justice system.

Deaths involving the use of lethal force by state agents have been by their nature the most controversial and historically their impact in particular on police and community relations has been profound. A disproportionate number of people from black and minority ethnic (BME) communities have died following the use of excessive and unlawful force, including Roger Sylvester, Christopher Alder, Mikey Powell, Richard O'Brien, Shiji Lapite, Joy Gardner, and Ibrahima Sey (Shaw and Coles, 2007). Cases often reveal a horrendous catalogue of failings in

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the treatment and care of vulnerable people in custody or otherwise dependent on others for their care and questions about the excessive and inappropriate use of force on some of the most vulnerable people in society, not least those with mental health problems.

In refusing to acknowledge the systemic features of police-related deaths, violence and neglect become institutionalised within organisational culture. In many cases, no matter how disturbing and outrageous the circumstances of some of the deaths, no matter what human rights abuses are vested upon citizens by the state, no-one is ever truly held to account.

Deaths in custody and their investigation expose to scrutiny some

of the most worrying aspects of the treatment of detainees within the criminal justice system. In uncovering these issues we come face to face with the secrecy and authoritarianism inherent in the system. What this underlines is how important it is that the families with whom INQUEST works engage with the democratic process. The struggles and campaigns of the bereaved for public scrutiny and political accountability supported by INQUEST provide a counterweight to state secrecy and a lack of formal accountability, particularly where people die in closed institutions.

Not all deaths in custody arouse wider public concern, lead to complaints, or are particularly controversial. But many occur in similar circumstances raising broader policy considerations on drug and alcohol use, mental health, homelessness, and racism and cannot be considered in isolation from issues of poverty and inequality. Unlocking the truth about deaths in custody sheds light on the way we treat some of the most vulnerable men, women, and children in our society. Thirty years after the killing of Blair Peach, the need for democratic debate about the limits of police power and police accountability is as vital now as it has ever been. It is important that we recognise, scrutinise, criticise, and argue for reform of the way the state deals with deaths in custody. These processes are an indicator of the condition of our democracy. ■

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## References

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