

On the use of force

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Abstract

The use of force by the state through its security services has been the topic of much debate, especially in recent years after the Black Lives Matter movement highlighted and protested against the treatment of black people by police officers. The state's use of force through the police and through military campaigns is closely examined and assessed in relation to both the treatment of ethnic minorities in the UK, and to the treatment of civilians by the US-UK coalition in the Middle East as part of the War on Terror. The violation of human rights, despite the principles, rules and laws already in place to protect them, is explored by examining the use of the prone position at home, and the tactic of airstrikes, the use of prohibited weapons and the treatment of detainees by UK forces abroad.

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

UN Charter article 2(4) on the use of force (UN Security Council, 1945)

According to the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948, human beings have the right to life, freedom and security. The first three articles set these out, with Article 1 stating that all human beings are born free and equal in dignity and rights; Article 2 stating that everyone is entitled to all the rights and freedoms set out in the declaration, without distinction of any kind, for example between race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; and Article 3 stating that everyone has the right to life, liberty and security of person. In August 1949, the Geneva Convention relative to the Protection of Civilian Persons in Time of War defined humanitarian protections for civilians in a war zone. In the General Provisions, Article 3 states that even where there is not a conflict of international character, the parties must, at a minimum, adhere to the following: non-combatants, members of armed forces who have laid down their arms, and combatants who are hors de combat (out of the fight) due to wounds, detention, or any other cause shall in all circumstances be treated humanely, with the following prohibitions:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- taking of hostages;
- outrages upon personal dignity, in particular humiliating and degrading treatment;
- the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(International Committee of the Red Cross, 2002)

The violation of a person's rights is subject to prosecution as a war crime. Jus in bello carries the requirement of discrimination, or distinction. The status of being vulnerable is key to the principle of discrimination or 'distinction'. The value of human life and the importance of its protection are evident in all modern legislation. The case for the protection of human life and

security is made on many levels and from many aspects: moral, legal, political and religious. Through the centuries ‘we see a slow but steady development of the idea that each person is deserving of respect and protection as a free-thinking being equal to all others. The right to life is paramount and this is reflected by the abolition of the death penalty in many western countries in the last 100 years’ (Hamourtziadou, 2017, p. 60).

In this paper we explore the power of the state in using force at national and international levels, at home and abroad, in violation of rules, laws and rights that should be respected – violations that are overlooked when the victims’ lives don’t matter.

We examine the use of force in *policing* and the use of force in *military* campaigns by the British state, both of which have resulted in civilian casualties. We look at the principles of policing in England and Wales, the use of the prone position and, finally, the force used by the military in Iraq – force that consisted of abuse as well as preferred type of warfare, which violated the rights of civilians, including the right to life.

Policing: the use of force by the state at home

When Robert Peel created the Metropolitan Police Act in 1829, he envisaged an organisation that was to be different from any previous form of law enforcement and public governance (Emsley, 1996). Rather than controlling society, the ‘new police’ would work in conjunction with, and obtain the consent of, the communities in which they policed (Grieve et al, 2007). In order to obtain consent, an organisation must demonstrate the highest levels of professional standards, implement ethical practice and work in accordance with the laws of the state (Joyce, 2011). The police must enact robust governance measures and develop sophisticated forms of procedural justice to tackle misconduct and all forms of malpractice. Without this ability to reflect on police actions, cultures and values, services will never gain the community respect or consent (McLaughlin, 2007).

The use of force has and continues to be a contentious aspect of policing across the globe. Since the creation of the Metropolitan Police by then Home Secretary Robert Peel in 1829, successive governments have long grappled with balancing the need to protect officers from harm whilst ensuring that a culture of violent tactics and practices are not endorsed (Emsley, 2010). The use of force to deter a criminal or to deny a person’s freedom in response to the suspicion of a crime, will incur regular debates surrounding the potential challenges that such actions can have to civil liberties and democratic freedoms. When first establishing the ‘new police’ of London, Robert Peel recognised that in order for an officer to uphold the law and tackle disorder, force would have to be used to ensure the safety and security of its citizens (Emsley, 2010). The key distinction of the ‘new police’ and the old forms of governance was a focus on obtaining the consent of communities – working for and with, rather than against, its citizens. If force was to be used, it should be justifiable, legal and proportionate to the risk being posed to officers and the public (Joyce, 2011). The medieval systems of constables and watchmen, which had dominated law and order for 600 years, lacked any legal and procedural governance to its behaviours, leading to wide scale abuse and corruption. The revised approach that Peel implemented in 1829, identifying how and when officers used force, was born of the incompetent actions of military units against protestors at St Peters Field, Manchester, in 1814. That incident, later termed by media sources as the ‘Peterloo Massacre’, has become a shining example of when the use of force by the state is not proportionate, justifiable or delivered by those who are trained in appropriate techniques of crowd dispersal.

Whether it be 1829 or 2020, the systems and tactics within policing may have changed but the core requirement of using force to enforce the law and deliver public protection remains a central function of the police service (Brain, 2010). The principles of policing laid out by Robert Peel emphasised the need for a consent-based model of practice, and outlined

that force should, at all times, be lawful, justifiable and in proportion to the offence (Lyman, 1964). In our increasingly global world, it is often the case that the British public develops its understanding of police force on the actions and events of those engaged in American policing, most notable in the recent case of George Floyd.

Major security incidents can often create public debates regarding the proportion of force that officers can use. With the increasing threat posed by terrorist and organised crime groups, many in public and political spheres begin to demand that forces are able to utilise more systems of force to ensure public protection and deliver officer safety (Martin, 2016). From the Siege of Sidney Street (1911) to the Manchester Bombing (2017), there remains a fine balance between ensuring safety whilst ensuring no opportunity to increase unlegislated police power and damage public rights. This is also in conjunction with the increased use of large-scale demonstrations and protests by members of the public to political decisions, increasing the potential for disorder and contact with the police (Peace Index, 2020). Bittner (1970) showed that the police, unlike other organisations, is unique in its ability to use force on members of the public in accordance with the law. This can extend to the taking of a person's life to preserve and protect the public from further threat, risk and harm. Brain (2013) shows that for the majority of the 20th century, systems of force within policing did not extend past wooden truncheons and brute physical force. By the turn of the new century, more sophisticated and less lethal systems have been added to response officers in order to increase their own protection and that of the public (Bleetman, et al, 2004). In order to combat increased threats to officers, police forces in England and Wales have begun to introduce new non-lethal tools for response officers in a number of different service areas. Deputy Chief Constable Louisa Rolfe of West-Midlands police announced in August 2017 that the force intended to double the number of Taser-trained officers from 643 to 1,441 as part of a three-year programme (Eccleston, 2019). In August 2019, the figure amounted to 1,000 trained officers, with the force citing issues of funding and the complexities of training as being significant in being responsible for the slowdown in officer training and deployment with the system (Sherman, 2013).

The use of force by police officers in England and Wales calls into question ethical and legitimacy issues, and challenges the central themes that form the basis of policing and its function within wider society. Practising a consent model requires greater focus on working with communities to manage and deal with issues locally, removing the negativity that may drive the hostility and increased violence officers are experiencing. Williams (2003) identifies that 'the ability of the police to perform their duties is dependent upon public approval of police actions'. Wide-scale deployment of systems, such as the Taser, can be perceived as an imbalance in the legitimacy of force, providing officers a greater advantage to manage and control communities that is not shared by the communities themselves.

The 'Peelian Principles' of 1829 continue to provide a blueprint as to when force should be applied to members of the public.

Principle 1: The basic mission for which police exist is to prevent crime and disorder as an alternative to the repression of crime and disorder by military force and severity of legal punishment.

This clearly identifies the ideological and practical differences between military and police force. Unlike military doctrine, which involves the engaging of and destruction of the enemy, policing must defuse, persuade and manage incidents in accordance with national and international legal frameworks (Strachan, 2013). It is also clear that the first principle provides a proverbial nod towards the actions of the military during public demonstrations and how such techniques and tactics would be revised within policing.

Principle 6: The police should use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning

is found to be insufficient to achieve police objectives; and police should use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.

Principle 6 indicates the large-scale revisions that would be implemented within the 'new' police. The use of force by officers did, and continues to, focus on controlling a suspect safely in order to minimise threat, risk and harm to those in and around the situation. It is also clear that force was to be a last, rather than first, resort, and only when all other options to bring the situation under control have tried and failed. Additionally, it is clear that force is to be used only to bring the situation under control, rather than be used continuously to threaten or intimidate members of the public. With this in mind, it is clear that the scrutiny of police actions is likely to receive far more interest from political and social commentators due to the situational context in which many of these incidents occur (Rowe, 2019). Strachan (2013) argues that warfare has often been conducted in the 'fog of battle' and crimes disregarded and explained through confusion and chaos. This same interpretation of surrounding factors is often ignored when using force is scrutinised post event. As policing is public facing and engaging, it is subjected to much greater analysis from society so as to ensure that procedural justice is being carried out. It is clear from the nine principles outlined by Robert Peel that the use of force is a necessity in order to ensure the safety of the public, but that, at all times, force was to be proportionate and justifiable, ensuring public confidence rather than being used as a tool of oppression or control (Martin, 2016).

A society's perceptions on the use of force by police can also be influenced by that group's own understanding of violence and how it can be represented (Brain, 2013). Public understanding of tactics and systems can be altered due to a failure to communicate the purpose or impact of such actions on the public or individual. Operational prudence will see the police unable to communicate the full extent of the reasons behind such actions, creating a greater platform for inaccurate debate and discussion on why and how the tactics were implemented.

The prone position

Prone position is a restraint in which the person being restrained is lying face down, usually against the floor. It is said to be "safer than other restraint positions, is the preferred position for control and restraint of a combative subject" (Reay et al, 1992). This restraint is used in a range of professional environments, such as the Prison Service, Police Service and Private Sector (Private Security, Health and Social Care), and when carried out correctly, it reduces risk of harm. Personal protection and restrictive practices are now also in the early stages of being taught in schools to help staff control aggressive students. However, concerns have been highlighted in the UK around the safety and efficiency of this restraint, especially in Policing. The term 'reducing risk of harm' when describing the use of prone does need to be explained in this context. From the perspective of the person being restrained this may be regarded as an unsafe position to be held in, especially if they suffer from ill mental health or have taken drugs/alcohol. However, from the perspective of the persons carrying out the restraint, prone position enables them to effectively restrain an individual displaying extreme, challenging and violent behaviours, to mitigate the threat of violent assault or risk to life or limb.

Despite Reay et al's study, which suggests that there is no evidence that "control and restraint" contributes to hypoxia and sudden death in custody, we do indeed see that 'using the prone restraint increased the risk of asphyxia by restricting chest and abdominal movement and adversely impact[ing] the ventilatory function' (Reay et al, 1992). Positional Asphyxia, also known as Restraint Asphyxia, 'occurs when a person is placed in a posture that prevents or impedes the mechanism of normal breathing' (Kent Police). 'An

individual dying of positional asphyxia may well be able to speak or shout prior to collapse' (HM Prison Service Order (PSO) 1600, 2005) and throughout all training, warning signs are highlighted, however, it is not uncommon for Police Officers to miss these signs. The training given to Police differs compared to that of the more successful Prison Service and Private Sector, leading one question to be why do the Police not seem to be following their lead?

The use of the prone position throughout the Prison Service is closely monitored, and training is extensive and differs to that of the Police. Concerning the use of this restraint, the HM Prison Service Order (PSO) 1600 states that 'before anything else happens staff should seek to diffuse the situation' and 'the prone position should only be used if necessary'. Akin to the guidance given to Police, the PSO declares 'if it cannot be avoided the time spent in this position must be minimised'. However, the PSO does guide officers to 'avoid pressing down on the chest. Use the limb, as binding the wrists will be considerably safer than kneeling on the back of someone's chest'. Throughout control and restraint guidance in the Prison Service, it is emphasised that 'a degree of positional asphyxia can result from any restraint position in which there is restriction of the neck, chest wall, or diaphragm' (HM Prison Service Order (PSO) 1600, 2005), yet, in 2016, Ross and Hazlett, in an analysis of the use of the prone position in policing, wrote of how 'one or more officers may place one or both knees on the resisting persons back . . . in order to control the subjects hands for hand cuffing' (Ross and Hazlett, 2016). This raises questions around why, despite guidance and evidence of the importance of not restricting the chest wall and airways, it appears police officers are still carelessly kneeling on the restrained. The HM Prison Service Order (PSO) 1600 also gives guidance around the use of handcuffs, stating 'Ratchet handcuffs can be applied to a prisoner who is in the prone position (but the prisoner must NEVER be kept in this position with handcuffs on)'. In cases involving the police, however, individuals are often left in prone position even after being handcuffed. 'There must be continuous observations of the prisoner following relocation in the prone position until such time as the prisoner is no longer lying face down' (HM Prison Service Order (PSO) 1600, 2005). This vital role is allocated to one of the three team members carrying out the restraint, usually the person supporting the head.

The PSO 1600 highlights 'control and restraint basic techniques are used by a team of three officers (with the option of having another person involved to control the legs) in order to manage a violent or refractory prisoner'. A team of three allows for a more controlled restraint, which is safer for both the person being restrained and the people carrying out the restraint. If there are not enough staff immediately for a three-member team, Prison Officer Training encourages staff to use their own personal safety training until more staff arrive to carry out the restraint. Each member of the 'team' has an important role in ensuring the prone restraint is efficient and safe for everyone involved: 'Head support person (referred to as number one)' has the duty to 'support and protect the head, communicate and monitor health signs of the individual and control and give lawful instructions to the team' (Inspire Training Group, 2020). Team members referred to as two and three are the arm support, whose role is to 'support and control the arms and act on the lawful instructions of number one' (Inspire Training Group, 2020). The role of 'number one' giving instructions to the other team members is crucial, as they can instruct the others to move back if they appear to be leaning too much on, and therefore restricting movement of, the chest wall of the individual. They also hold the paramount importance of monitoring the health of the individual.

The Mental Health Act 1983 states 'a member of staff should monitor the individual's airway and physical condition to minimise the potential of harm or injury. Observations, including vital clinical indicators such as pulse, respiration and complexion (with special attention for pallor/discoloration), should be conducted and recorded' (Department of

Health, 2015, p. 295). With regards to Policing, the College of Policing does highlight that ‘a safety officer should be responsible for monitoring the detainee’s conditions, particularly the airway and response’ but not the need for a three-member team. Consequently, this leaves an officer, who may have a disadvantageous view of the individual, in control of monitoring and communicating with them, which can lead to misjudgement and neglect.

The use of the prone position during restraints throughout Policing has increased due to factors such as the heightened use of Taser (CED’s). The use of the CED increases the risk of supine (laying on the back) and prone restraint incidents as the aggressor will fall to the ground following the Taser and then the staff will move in to handcuff. In the year ending March 2019, the total CED use had increased by 39% from the following financial year (Home Office, 2019). Out of 23,000 incidents, 11% involved the actual discharge of the CED ‘the recent increase in CED use may reflect the increase in recent years of the number of CED trained officers and CED’s available to police forces’ (Home Office, 2019). This highlights the need for extensive training and education around the use of the prone position and Positional Asphyxia.

The College of Policing states that ‘all uses of force must be proportionate, lawful and necessary in the circumstances. Officers will be accountable for all instances where force is used’ and they ‘must be aware of potential risks to the suspect or detainee when using control and restraint techniques and should be guided by the National Decision Model’ (2013). Proportionality is emphasised throughout the National Decision Model, with a focus on using the minimum amount of force needed to control the suspect or detainee. However, the correct amount of force needed in certain situations may be subject to opinion, for example, the need to place a knee on a suspect’s back whilst in prone position may be considered a proportionate amount of force used by some, yet others may see it as an overuse of force. There are no real clear guidelines around what is proportionate.

The War on Terror: the use of force by the state’s military abroad

War crimes: a catalogue of atrocities against Iraqis

In December 2020, International Criminal Court prosecutor Fatou Bensouda declared that there was a ‘reasonable basis to believe’ that atrocities such as wilful killing, torture, inhuman/cruel treatment and rape may have been committed by the British armed forces. She said that since 2014, ‘my office has been rigorously examining allegations of crimes committed by UK nationals in Iraq during the course of the UK’s military involvement in Iraq. In particular, [it] has focused on a subset of allegations related to the mistreatment of Iraqi detainees in UK custody. [ICC prosecutors have] previously found and today confirmed that there is a reasonable basis to believe that members of the British armed forces committed the war crimes of wilful killing, torture, inhuman/cruel treatment, outrages upon personal dignity, and rape and/or other forms of sexual violence.’ There had been a ‘confined number of incidents’ that ‘appear to correspond to the most serious allegations of violence against persons in UK custody,’ she said. ‘[My office] further found that several levels of institutional civilian supervisory and military command failures contributed to the commission of crimes against detainees by UK soldiers in Iraq.’ The establishment of the UK’s Iraq historic allegations team was a response to the ‘admitted failures of the British Army at the time to conduct effective investigations,’ she noted (Guardian, 2020).

On December 9th, 2020, the International Criminal Court (ICC) published its 180-page report on UK war crimes in Iraq after the 2003 invasion.

The preliminary examination has found that there is a reasonable basis to believe that various forms of abuse were committed by members of UK armed forces against Iraqi

civilians in detention. In particular, as set out below, there is a reasonable basis to believe that from April 2003 through September 2003 members of UK armed forces in Iraq committed the war crime of wilful killing/murder pursuant to article 8(2)(a)(i) or article 8(2)(c)(i), at a minimum, against seven persons in their custody. The information available provides a reasonable basis to believe that from 20 March 2003 through 28 July 2009 members of UK armed forces committed the war crime of torture and inhuman/cruel treatment (article 8(2)(a)(ii) or article 8(2)(c)(i)); and the war crime of outrages upon personal dignity (article 8(2)(b)(xxi) or article 8(2)(c)(ii)) against at least 54 persons in their custody. The information available further provides a reasonable basis to believe that members of UK armed forces committed the war crime of rape and/or other forms of sexual violence article 8(2)(b)(xxii) or article 8(2)(e)(vi), at a minimum, against the seven victims, while they were detained at Camp Breadbasket in May 2003.

(p. 4)

The report was based on evidence that pointed to

serious incidents of abuse in military detention facilities and other locations, including: “hooding of detainees, sensory deprivation and isolation; sleep deprivation; food and water deprivation; the use of prolonged stress positions; use of the ‘harshing’ technique (sustained aggressive shouting in close proximity); a wide range of physical assault, including beating, burning and electrocution or electric shocks; both direct and implied threats to the health and safety of the detainee and/or friends and family . . . 184 executions and threats of rape, death, torture, indefinite detention and further violence; environmental manipulation, such as exposure to extreme temperatures; forced exertion; cultural and religious humiliation; as well as wide-ranging sexual assault and humiliation, including forced nakedness, sexual taunts and attempted seduction, touching of genitalia, forced or simulated sexual acts, as well as forced exposure to pornography and sexual acts between soldiers”. The communication alleged that “[b]etween them, these victims make thousands of allegations of mistreatment amounting to war crimes of torture, or cruel, inhuman or degrading treatment, as well as wilfully causing great suffering, or serious injury” and that “[c]lear patterns emerge of the same techniques being used for the same purposes in a variety of different UK facilities, over the whole period that UK Services Personnel were in Iraq, from 2003 to 2008.

(p. 11)

Most damning of all,

Available evidence suggests that failures to follow-up on or ensure accountability for ending such practices became a cause of further abuse. The obvious conclusion is that such mistreatment was systematic and had a systemic cause, which further suggests that there are hundreds more such victims. There are considerable reasons to allege that those who bear the greatest responsibility for the crimes are situated at the highest levels, including all the way up the chain of command of the UK Army, and implicating former Secretaries of State for Defence and Ministers for the Armed Forces Personnel.” It further asserted that the UK Government was unwilling to genuinely investigate and prosecute low-level perpetrators, while no efforts have been made to investigate and prosecute high-level perpetrators.

(p. 12)

The war crimes had, in fact, started a little earlier, when the US–UK coalition invaded the country through airstrikes, killing thousands of Iraqi civilians. Crimes against the unarmed population were committed not only through mistreatment, but also (and primarily) through the chosen method of warfare.

War crimes: lethal airstrikes

Air power would overwhelm the enemy with great rapidity. The Rapid Dominance concept inspired *Shock and Awe*, which has become associated with air power in Operation Iraqi Freedom (OIF) – the invasion of Iraq – in 2003. ‘Time-sensitive intelligence information’ was used ‘to launch an attack on a building in which it was thought Saddam Hussein was dining. Saddam was not killed in the attack, but the conflict was marked with a number of time-critical air attacks against enemy command-and-control systems with the aim of quickly achieving the desired level of dominance over the Iraqi regime’ (Jordan et al., 2008, p. 206).

The resulting casualties of *Shock and Awe*, March–April 2003, were as follows: nearly 7,500 Iraqi civilians were killed; 3,977 during March and 3,438 during April.

The military carried out a Rapid Dominance operation characterised by ‘absolute knowledge and understanding of self, adversary, and environment; rapidity and timeliness in application; operational brilliance in execution; and (near) total control and signature management of the entire operational environment’ (Cockburn, 2016, p. 136). The operation was coordinated by a High-Value Target Cell in the Pentagon, an advanced version of the system that tracked Milosevic in 1999. According to a Pentagon analyst, in the context of Iraq, ‘If you’re doing HVT, on Saddam Hussein, you have to know where he is at all times, who are his security retinue, where they are. You look for patterns, but our predictive ability was low’. The analyst recalled,

The shortest kill chain we managed (the time between getting the intelligence and the bomb/missile impacting) in the 2003 war was forty-five minutes. That was the strike on the al-Saath restaurant in Baghdad. We thought that Saddam was there. He wasn’t, but we did kill a bunch of civilians.

(Cockburn, 2016, p. 137)

Military technology aims to inflict maximum damage to the enemy, while minimising their own losses of manpower and material. The use of killer drones in precision air strikes can be part of an effective military tactic. Unmanned aerial vehicles (UAV) have advantages compared to piloted aircraft – primarily the protection of life on the part of those who strike, but also on the ground, due to their ‘surgical precision’, which spares civilian lives. Yet, technology can lull us into a false sense of security, suggesting that conflicts can be won from a distance without resulting in the deployment of large numbers of personnel.

Myth 1 – drones are *precise*

It’s ‘precision bombing’

In Iraq, over 4,000 civilians have been killed in drone strikes since they resumed in 2014. Figures from the UN Assistance Mission in Afghanistan (UNAMA) show the number of civilian casualties from US strikes rose from 158 in the first half of 2018 to 430 in the same period in 2019. The total number of civilian casualties from air strikes in the country rose by 39%, to 519. By August 1, 2019, in 1,773 days of 14,570 coalition airstrikes in Iraq and 19,785 in Syria, up to 13,000 civilians had been killed, of which 2,300 were children. Drones can wait and watch for a target to appear, then immediately launch a missile, thus shrinking the ‘kill chain’ to almost zero. ‘But that means you’re taking the decision on the fly, with no time to really assess potential collateral damage, like who else is in the house, or whatever,’ according to a former inmate of the High-Value Target Cell (Cockburn, 2016).

Myth 2 – drone warfare is *ethical*

It’s not mass murder when we do it

Human beings are denied the right to surrender and are instead executed for being members of a group defined by the killers as evil. Those executed are presumed ‘guilty’, without arrest,

questioning or subsequent conviction. The aim is to kill, not capture. Targeted killing becomes normalised, leading to increasing human rights abuses and raising questions about guilt and innocence. Like a *deus ex machina*, technology is thought of as appearing in a sticky situation to swiftly reward the just and punish the unjust. The reality of this technology does not resemble gods appearing to save the heroes and punish the villains. Insight into the reality of air-strikes and drone warfare is found in the words of David Rhode, who called it 'hell on earth'.

Myth 3 – their use is *legal*

If the war is legal, so is the weapon

According to International Law and the Geneva Conventions, all parties to a conflict must distinguish between combatants and non-combatants, the latter of whom are 'protected persons'. The use of drones was meant to be both ethical and legal, respecting the law and protecting the vulnerable, yet in Iraq the methods that killed the *most civilians per event* were aerial bombings. If an aerial bomb killed civilians, it tended to kill many. To protect civilians from indiscriminate harm, as required by international humanitarian law, military and civilian policies should prohibit aerial bombing in civilian areas, unless it can be demonstrated – by monitoring civilian casualties – that civilians are being protected. As harming non-combatants is illegal, policymakers, war strategists and the groups and societies that support them bear moral and legal responsibility for the effects that particular combat tactics have on civilians, including the weapons used near and among them.

War crimes: use of depleted uranium

The Iraqi government filed a lawsuit on December 26, 2020 against the United States' use of depleted uranium munitions, which has resulted in a rise in cancer, strokes and birth defects.

The United Nations estimates that in the past 30 years, the US used at least 2,320 tonnes of DU on Iraq, with the highly toxic substance affecting both American servicemen and Iraq's civilian population. According to Iraqi government estimates, the Middle Eastern nation's cancer rates jumped from 40 cases per 100,000 people in 1991 to 800 per 100,000 in 1995, and 1,600 per 100,000 by 2005.

In addition to Iraq, the US and NATO have used DU munitions in Bosnia Yugoslavia in 1995 and 1999, and against Daesh (ISIS) in Syria in 2015. Along with the United States, the USSR (and later Russia), Britain and France have used their reserves of DU to manufacture armour-piercing ammunition. However, only the US and the UK have used these weapons in wartime, with Britain reportedly firing roughly three tonnes of the substance during the 2003 invasion.

(Hathalyoum, 2021)

The use of shells, bombs and missiles containing depleted uranium is prohibited. Depleted uranium is toxic, particularly when inside the body, and can cause environmental damage if it enters the food chain. The International Committee of the Red Cross (ICRC) has produced a study of the customary international law of armed conflict. There are a number of rules, derived from Additional Protocol I to the 1949 Geneva Conventions, of relevance to depleted uranium:

- Besides the rules against directly targeting civilians, there is also a rule prohibiting indiscriminate attacks – attacks that cannot distinguish between civilians and civilian objects (on the one hand) and combatants or military objectives (on the other). (Rule 11 of the ICRC CIL Study).
- In addition, there are general bans under IHL on weapons that cause superfluous injury or unnecessary suffering (Rule 70 of the ICRC CIL Study) or weapons that are inherently indiscriminate (Rule 71 of the study).

- Finally, of relevance, is the ban on weapons that ‘are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment’ (Rule 45 of the ICRC CIL Study). This latter rule sets a high (some would say too high), and cumulative threshold, which many assume would exclude ‘ordinary battlefield damage’.

(Van Schaack, 2016)

Those whose lives don’t matter

The 25,000 civilians killed since 2003 by the coalition were not deliberately targeted, we are often told. They were ‘collateral damage’. Roger Sylvester’s 1999 killing in Tottenham was also not premeditated. The police officers did not get called to an incident to kill, but only to arrest. That the man they arrested died was little more than an accident.

That Iraqi civilians were being killed was no reason to halt the airstrikes. That Roger Sylvester couldn’t breathe was no reason to stop holding him down.

Black people who have died in police custody in the UK include:

Roger Sylvester, age 30 (1999) cause of death suffocation

Smiley Culture, age 48 (2011) cause of death stab wound

Mzee Mohammed-Daley, age 18 (2016) cause of death cardiac respiratory arrest

Joy Gardner, age 40 (1993) cause of death cerebral hypoxia (brain deprived of oxygen)

Trevor Smith, age 52 (2019) cause of death gunshot wound

Jimmy Mubenga, age 46 (2010) cause of death cardio-respiratory collapse

Dalian Atkinson, age 48 (2016) cause of death cardiac arrest after being restrained and tasered

Mark Duggan, age 29 (2011) cause of death gunshot wound

(Akpan, 2020)

What the deaths in custody of black people have in common with those deaths of Iraqi civilians is this: their lives did not matter. It did not matter that they died, that they suffered, that they were hurt, maimed or poisoned. At worst, the deaths were ‘unfortunate’. And the reason they did not matter was because they were much lower in the biological and social hierarchy that our culture has constructed. *Scientific racism* is discrimination based on biology, on genetic inferiority; it has allowed us to create hierarchical rankings that are permanent and unchanging. It is this type of racism that resulted in the killing of George Floyd, Mark Duggan, Jimmy Mubenga and so many others. *Cultural racism* is discrimination based on inferiority of culture, on certain groups and communities being ‘barbarians’, ‘uncivilised’ or ‘backward’, compared to our ‘high-cultured’ selves. It is this kind of racism that has resulted in the deaths and abuse of innocent Iraqis by US–UK coalition forces.

Gokay and Hamourtziadou argue,

Cultures have always compared themselves with each other and were ranked by their wealth and their ‘high’ culture. Those classified as ‘inferior’ could improve, become less ‘barbarian’ and more ‘civilized’ by assimilating the ‘higher’ culture. However, ‘scientific’ racism, which has its roots in the nineteenth century, the notion that one can and should establish a social hierarchy based on biological markers, does not allow for that. Discrimination based on biology means that hierarchical rankings are permanent, unchanging, because they are ascribed rather than achieved.

(Gokay and Hamourtziadou, 2016, p. 1)

From the late 19th century, ‘nations were increasingly differentiated on the basis of their success in war, empire-building, colonization, industrialization, population growth, science and “high culture”. It was a short step to see these rankings as reflecting biological determinants’ (Hannaford, 2015, p. 121). Social differentiation has been used for inclusion and exclusion throughout history, but ‘scientific’ racism and the relationship between culture and race as

the principal point of differentiation is a modern phenomenon. Claims based on biological and cultural superiority are often mixed (Gokay and Hamourtziadou, 2016, p. 2).

On July 30, 2020, the BBC reported that Metropolitan Police officers were four times more likely to use force against black people compared with the white population, according to new figures. Restraint techniques were also more likely to be used on black people, because police, according to a service officer, found black people ‘more threatening and aggressive’.

The Met used force 159,000 times in 2019–20, with more than a third of cases involving black people. While force was used on white people more often, the rate of incidents was lower compared to the proportion of London’s population that was white, according to Greater London Authority estimates. (. . .) Restraint techniques and unarmed skills – which include wristlocks, strikes, takedowns and ground-pinning – are three times as likely to be used on black people than on white people, according to BBC analysis of Met Police data.(. . .) In 2019–20 the Met used restraint 18 times on black people per 1,000 of the population on average. For white people, restraint was used five times per 1,000 of the population. The Independent Office for Police Conduct (IOPC) has launched an investigation into several incidents of apparent disproportionate use of force across London.

(BBC News, 2020)

| Use of force figures at a glance |
|--|
| Met Police 2019–20 |
| 159,419 use of force incidents were recorded |
| 48 black people per 1,000 population had force used on them |
| 13 white people per 1,000 population had force used on them |
| 5,310 Met officers were injured while carrying out use of force |
| 84% of incidents resulted in an arrest |

Source: Met Police

It was reported that Assistant Commissioner Nick Ephgrave expressed concern over the disproportionality in the use of force. ‘The behaviour described is entirely alien to our ethos and our training’, he said. ‘There is no place in policing for anyone who would treat someone differently simply because of their race or indeed any other characteristic’ (BBC News, 2020). Mr Ephgrave added that he did not know if there was ‘unconscious bias’ among Met Police officers, but ‘every action is scrutinised’ and it is through being open and transparent that the police hope to be judged by the public.

In theory, all principles, rules and guidelines are in place, in the UK at least. The Peelian Principles regarding the mission of the police force, which is to prevent crime and disorder, and its right to use the minimum degree of physical force necessary to restore order, provide the blueprint. According to the College of Policing, when using restraint techniques, officers must be aware of potential risks to the suspect or detainee and should be guided by the National Decision Model. The prone position is not meant to kill, only to enable an arrest. At international level, laws and conventions regarding military conduct during wars have been in place since WW2 and have all been either initiated or signed by the UK. If all rules, laws and principles are in place to ensure no human rights violations take place, or at least go unpunished, where does the error lie? If we, who proudly live in a liberal democracy, have a system of government where rights and freedoms are recognised and

protected, and the rule of law is there to stop the state abusing our rights and freedoms, how can we be guilty of such brutality, at home and abroad? In 'The far right's rise within armed forces is a global threat to democracy', Paul Rogers writes,

The suspected rise of the far right among military and police forces may be exacerbated by the language and attitudes of the many authoritative national leaders. (. . .) But leaders don't have to be belligerently open in their views. If those further down the chain of command – including the armed forces, police and intelligence agencies – know that certain views are accepted, their behaviour can be influenced by that sense of security.

(Rogers, 2021)

Our purported principles are too often ignored, our rules and laws broken, our values compromised. The theory does not always tally with the practice of the laws, rules and principles that our liberal democracy is said to be founded on. The error lies not in the letter of the law, but in its execution.

Note

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