Chapter 2
A Tale of Three Cities

Introduction

Police shootings are not restricted to colonial or repressive regimes. In democratic states, however, police shootings often engender controversy, especially if the latter are perceived as being questionable. To illustrate this process, particular incidents of police shootings in three major cities (New York, London, and Mumbai) are discussed in terms of construction of police accounts and the social reaction to these shootings. Common themes running across these police shooting stories are highlighted while acknowledging differences in context.

New York and London, as major international financial and business centres, have long been considered global cities; increasingly, however, other cities are emerging as “new geographies of centrality” with Mumbai being one of these emerging global centres of power (Sassen, 2000). Policing in these large metropolitan cities plays an important role in the making and sustaining of their preeminent status as global players. All three city police forces, the New York Police Department (NYPD), the London Metropolitan Police Service (the Met) and the Mumbai Police have their distinct individual characters that arise from an interaction among their history, reputation and work ethic, and the unique contextual setting of the cities they serve. All three have also been involved in controversial police shootings and embroiled in complicated legal proceedings as a result. The circumstantial and situational backdrop to the police use of deadly force in these different cities and indeed in different incidents in the same city are varied but there are some common threads that bind the case studies presented. This chapter does not attempt to conduct a comprehensive analysis of police use of deadly force in the three cities, instead it focuses on how particular cases were presented, the social reaction to them, and the wider relevance of the apparent similarities in the cases.

Secondary sources (media reports, academic articles, and official documents) are used to analyse the social construction of these shootings. Focusing on reported police version of events and the media and public responses to them, these particular cases are chosen based on the impact they had on cities of comparable importance and size (see Chap.3). Thus, allowing for a discussion of not only some of the circumstances in which the police shoot to kill, but also the various ways in which systemic protection
is offered to the police when this happens. In addition, highlighting similarities in the construction of mitigating circumstances to account for questionable use of deadly force draws out the wider relevance of focusing on the accounts of police officers in Mumbai when justifying the use of deadly force in the chapters to follow.

**Police Shootings in Three Cities**

Before unpacking the issues surrounding particular shooting incidents, certain common features were identified in the cases discussed in the three cities:

1. The police were involved in controversial shootings where an innocent (or allegedly) person was the “victim”.
2. The facts and sequence of events were accessible to the public through the construction and reconstruction of officer accounts and interpretation of the evidence by the media and the legal system. This process is mediated by powerful political forces that shape the debate and also whether and how the “story” will be accepted or contested, thus determining what “realities” and whose “realities” are being represented (Lawrence, 2000b).
3. Police officers involved tend to justify the use of deadly force via accounts that they think will be acceptable to their audiences and “make them look good”. This is sometimes deliberate, but often the result of distorted perceptions and mistaken memory recall given the stressful nature of the incident.
4. The cases have been specifically chosen because they created controversy and continue to be subject to intense scrutiny. The real and alleged glaring mistakes made by the police in use of force incidents were highlighted by the media and activists.
5. The strength of the adverse public reaction to the shootings and demands for inquiries and reforms are indicative of democratic forces at play and highlight the media’s role in the social construction of these incidents.
6. Though officers involved had to stand trial or face inquiries, they were seldom convicted or underwent disciplinary proceedings. The judge or jury preferred to give the benefit of doubt to police officers, despite clear mistakes in judgement and operational procedures identified in the incidents discussed.
7. Most controversial shooting incidents were followed by reforms in some or all of these – operational procedures, policy, legislation, and firearms training.
8. Finally, the question still remains whether similar procedural shortcomings that characterised these incidents would be highlighted in other cases where the “victim” was a criminal or terrorist and therefore considered “undeserving” or “fit for elimination”.

**New York: Shootings of Amadou Diallo and Sean Bell**

Many police departments in the USA, including NYPD either do not maintain accurate and reliable data on use of force incidents, or if they do, access to it is
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severely restricted (Kane, 2007). This makes it difficult to comment on a particular department’s record on the use of force and compare and contrast firearms discharge records across police departments. An analysis of 42 cases of police shootings recorded by the NYPD over a period of 4 years (2003–2007) showed that the average age of the deceased was 31 years, 41 were male, 35 of the 42 shot by the police were of Black or Hispanic origins, whereas seven were White, and the most common reason for the shooting was because the deceased either possessed or used a weapon (Gill & Pasquale-Styles, 2009). Evidently, the overrepresentation of minority communities, especially Black, in these figures has been a source of tension between the community and the NYPD. I now discuss two cases that aroused a great deal of controversy and exposed the NYPD to severe public criticism.

According to media reports, Amadou Diallo, a 23-year-old black unarmed street peddler, was shot 41 times in February 1999 by four NYPD officers belonging to a “tactical squad” in the Bronx area of New York. It was one of a series of police shootings in which four other black, unarmed men were shot dead by the police in the previous 13 months. The officers, who were on patrol, testified that one officer observed Diallo ducking back into his own doorway, an action considered as “acting suspiciously” by the officers. Officers reportedly believed he matched the description of a “young black man” wanted for rape committed a year ago. The police officers’ version suggests that as they stopped the car and approached the young man, identifying themselves as police officers, Diallo “acted suspiciously” and withdrew, at the same time reaching into his waistband. One of the officers shouted “Gun”, and believing he was retrieving a gun, all four officers began firing, totalling 41 shots and hitting Diallo 19 times (Harring, 2000). Diallo was neither armed nor the suspected rapist as events subsequently revealed.

Echoing the Diallo case, Sean Bell, another 23-year-old black unarmed man, was shot in the early morning hours of November 2006, outside a Queens Strip club by a group of five NYPD officers. According to media reports of the police story, a group of nine officers of the NYPD’s Club Enforcement Initiative rode out in unmarked cars to stakeout Club Kalua in the Queens area in order to set up a prostitution or drugs bust. Three undercover officers went inside the club and were supported by the others waiting in cars outside. At this time Sean Bell’s bachelor party was in full swing inside the club; he was to be married later that day. During the course of the evening undercover officer Isnora, observing the actions of a “fat” man in a white baseball cap had reason to believe that the man was carrying a gun. The undercover officers in the club were unable to make any arrests and at around 4 a.m., the officers decided to leave.

Officer Isnora reportedly observed Sean Bell and two companions, Guzman (the fat man in the white baseball cap) and Benefield get into an argument with a group of other men outside the club. Isnora was also said to have overheard Guzman say, “Yo, get my gun”. As the officers followed the men outside the club, Benefield was observed speaking on the phone (the officers said they thought he was calling for backup) just as all three men got into a parked car. Isnora followed the men as he called for police backup. Police cars drew up on either side of the road where Bell’s car was parked, confining the car carrying the three men. Reports suggest the men then got into the car which began to move, injuring one police officer, before crashing
into a minivan in an attempt to get away. Ostensibly believing the men to be armed, Isnora shot first, firing 11 rounds. Four other cops also fired, discharging 50 rounds at the car hitting Bell fatally four times, Guzman 13 times, and Benefield thrice, causing serious injuries to the latter two. There was no return fire from the three men in the car and as it later turned out, none of them were armed (Kolker, 2008; The New York Times, 2006). Potentially mitigating circumstances for the shooting were discussed in the subsequent trial. Three of the five officers involved in the shooting of Bell were black but the fact that white police officers were participating in the shooting, the incident was generally perceived as a racist shooting and analogies were drawn to the previous Diallo shooting.

**London: Shootings of Harry Stanley and Juan Charles de Menezes**

The London Metropolitan Police, a largely unarmed force, has had relatively fewer incidents of police shootings as compared to either the NYPD or the Mumbai police. In the period between 1999 and 2009, 12 people were killed by the Met. Two significant shootings were of Harry Stanley in 1999 and Juan Charles de Menezes in 2005. Both these cases generated controversy and were subject to intense scrutiny.

Harry Stanley was shot dead on September 22, 1999 as he walked home from the pub. He was carrying a table-leg wrapped in plastic, which was earlier mistakenly identified as a sawn-off shotgun by a member of the public who called 999 (Emergency Services) with the information. Two officers (Inspector Sharman and Constable Fagan) of the Armed Response Unit responded to the call. On seeing Stanley carrying what appeared to be a shotgun, they challenged him and each fired one shot. One shot struck Stanley in the left hand and the other hit his head, killing him (IPCC, 2006b). Following the progress of how witness and officer accounts, forensic evidence, and expert testimony were used to construct and reconstruct the shooting makes interesting reading and reinforces the point that presentation of accounts and their interpretation ultimately determine what is considered justifiable and from whose viewpoint.

In the second incident, Juan Charles de Menezes, a 27-year-old Brazilian electrician was shot dead on July 22, 2005 by a group of Special Operations Metropolitan Police Service (MPS) officers in the train at Stockwell Tube station. In the wake of the July 7, 2005 bombings in London, intelligence reports suggested that Hussein Osman was a suspected failed suicide bomb attacker in an incident at Shepherd’s Bush station on July 21. Surveillance officers were observing a communal block of flats where Osman was said to be living. They were supported by officers from the Anti-Terrorist Branch to arrest and de-brief suspects if possible and specialist firearms officers to provide firearms cover (IPCC, 2006a). On the morning of July 22, as a young man (Juan Charles de Menezes) left the block of flats, plainclothes officers unsure whether this young man was Osman, followed de Menezes as he got
onto a bus (Kennison & Loumansky, 2007). Officers following de Menezes observed him getting off a bus, speaking on his mobile phone and running back to catch the bus, actions that appeared to be classic counter-surveillance behaviour.

In the immediate aftermath of the shooting, witnesses told TV reporters that the young man shot by the police, was wearing a suspiciously bulky overcoat, had jumped the ticket barriers and had run when challenged by the police to stop. Media reports suggested that officers chased de Menezes into the underground station where they had temporarily lost sight of him. Eyewitness accounts claimed three plainclothes officers followed him into the train and shouted, “Get down, get down”. The officers then allegedly tripped de Menezes, pushed him to the carriage floor and shot him in the head seven times (Thompson & Phillips, 2005). As it turned out, de Menezies was not a suicide bomber and there were several inaccuracies in the media reports revealed in the Independent Police Complaints Commission’s Report (IPCC, 2007).

**Mumbai: Shooting of Javed Fawda**

Mumbai police’s record on police shootings or police *encounters* will be discussed in detail in the following chapters. However, of the hundreds of shootings done by the police over the years, one of the most controversial cases was the shooting of Javed Fawda in 1997. According to the official version, Abu Sayama, alias Javed Talib Shaikh, also known as Javed Fawda,1 was shot dead in an *encounter* on the night of August 26, 1997 by a team of officers from the Crime Branch, Mumbai Police. According to the evidence of the officers involved in the *encounter* (The Aguiar Commission Report, 1998), they were acting on a tip-off that Fawda and his associates were expected in the Ballard Pier area of Mumbai late at night in order to commit a crime. Fawda was known to the police for his affiliations with a local organised crime group. Police officers planned to lay a trap to arrest them at the scene. Two teams of four and six officers of the Central Intelligence Unit (CIU) set off in cars at around 11 p.m. The teams took position at either end of Sprott Road (where reports indicated Fawda would operate). Some officers alighted from the car to take up hidden positions to observe passing vehicles. At about a quarter past midnight, officers observed a white car stopped on the road and the person sitting in the passenger seat alighted. Recognising this person as Javed Fawda, one officer brought out his service revolver and walked towards him saying, “Javed bhaagna nahi” [Javed don’t run]. Allegedly, Fawda whipped out a weapon from his waist and fired one shot at him. The officer fired back rapidly in self-defence. Another officer fired a shot at Fawda, who returned fire shattering the windshield of the police car, before collapsing on the ground. In the meanwhile, his associates in the car made a quick getaway. One officer managed to fire a shot at the passing vehicle. In all the police

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1 “Fawda” (Hindi), literal meaning rake, was a nickname that referred to Javed’s protruding teeth.
claimed to have fired six shots; on the other hand a pistol, with three live ammunition rounds, was recovered from Fawda. Police officers claimed to have taken the injured Fawda to the nearest hospital, where he was declared dead on arrival.

Comparing the Three Contexts

Though the shootings by the police in New York, London, and Mumbai occurred under different circumstances, there are superficial as well as structural similarities that span across the wide differences in the geographic, socio-economic, political, and cultural factors across these three cities and police forces.

*Ethnic Minority Victim*

Four victims in the cases discussed belonged to a minority community. Diallo and Bell in New York were black, de Menezies in London was Brazilian but mistakenly identified as being of Asian origin, and Fawda was a Muslim man in a city with a majority Hindu population. Initially, there was a brief suspicion that Stanley was Irish (at a time when the Irish Republican Army (IRA) was a threat in London), but was actually of Scottish origin. However, whether Fawda or Stanley was visually as clearly distinguishable from the majority population as in the other cases is unclear. All three city police were accused by the media of targeting men belonging to minority communities that were stereotypically associated with crime and/or terrorism.

Brunson (2007) suggests that policing in the United States has an almost Pavlovian2 response to race, implying that police officers are conditioned to suspect black men as criminal or dangerous, regardless of their involvement in criminal activities. Skolnick, as early as 1966, referred to American police officers’ suspicion of black men as “symbolic assailants” – a suspicion which leads to overpolicing in different forms, from frequent stops and searches through to use of excess force. Racialisation of policing has a long and extensively documented history in the United States (see Jones-Brown, 2007). The consistency with which young black men continue to be disproportionately killed by the police gives rise to questions whether these are indeed isolated “mistakes” or whether the police display a pattern of stereotypical responses to black males.

This is not to suggest that the police display a deliberate prejudice against ethnic minorities. Research showed that background factors such as racial segregation, homicide rates, size of police force, high levels of deprivation, large ethnic minority populations (Liska, 1992) as well as levels of community violence and community

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2 Referring to Ivan Pavlov’s famous conditioning experiments in which he “trained” dogs to associate the ringing of a bell with receiving food, eventually “training” the dog to salivate on hearing the bell ring, even in the absence of food.
Comparing the Three Contexts

composition (Smith, 2004) have an impact on police use of force. Liska and Yu (1992) hypothesise that larger the non-white population the greater the threat to the interests of the white population. This in turn is directly related to the extent of repressive measures adopted by the police. Thus, the NYPD’s record on use of force against young black men might be anchored in wider reasons but it does not refute the allegation that police operational decisions are based on racial profiling. Correll, Park, Judd, Wittenberg, Sadle, and Keesee’s (2007) research showed that police officers’ racial bias in the USA is rooted in the community’s shared racial prejudices and stereotypes. Despite this, officers are less susceptible to racial bias while invoking the decision to shoot as compared to the general population.

In 2005, De Menezes was mistakenly identified by Met officers as a suicide bomber whom they had under surveillance. Evidence presented to the Independent Police Complaints Commission (IPCC) revealed that de Menezes was never properly identified because a surveillance officer was relieving himself at the very moment he was leaving his home. There was considerable confusion about the identity of the man under surveillance and incorrect racial profiling meant officers mistook a person of Brazilian origin to be of Asian origin and thus “racially suspect”; even though he was also identified as being a white male by one of the officers in the surveillance team (Pugliese, 2006). In New York, the police policy of “racial profiling” (Skolnick, 2007) and inaccurate racial profiling by officers in London could arguably be considered responsible for the “mistakes” that occurred in the police shooting incidents described (Banks, Eberhardt, & Ross, 2006; Vaughan-Williams, 2007). On the other hand, critics of this view might justifiably argue that both the Diallo and de Menezes cases were of specific mistaken identities and had nothing to do with racial profiling.

In the case of Javed Fawda, racial profiling was not a clear option as there are no overt racial characteristics marking Muslims out as different from the majority Hindus, though they might be distinguishable on the basis of facial hair and clothes. However, the predominantly Hindu-dominated Mumbai police have often been accused of targeting Muslim minorities. “Police officers, particularly at a junior level appeared to have an in-built bias against Muslims” was the damning finding of the Inquiry Commission’s Report into the religious riots in Mumbai (Srikrishna, 1998: 3.13) a few years prior to Fawda’s shooting. In Fawda’s case, there were allegations that the Mumbai police had targeted a Muslim youth who had putative connections to organised crime.

It has been argued that the police tend to shoot civilians who have been disproportionately involved in serious criminal activities and explained in terms of officers’ exposure to dangerous places and persons (Fyfe, 1980; Sherman & Cohen, 1986; Sherman & Langworthy, 1979). Research has found a link between civilian homicides and police shootings alternately known as the “community violence” perspective (Sorenson, Marquart, & Brock, 1993) or “danger-perception” theory (Macdonald, Alpert, & Tennenbaum, 1999). Accordingly, those perceived as having a greater involvement in violent crime are more likely to be targets of police shootings, thus explaining the greater likelihood of police shooting victims belonging to ethnic minority communities.
Mistaken Identity and Beliefs

Diallo was an unarmed street peddler standing outside his own doorway in the Bronx when he was shot. NYPD officers believed that Diallo matched the description of a suspect wanted in a year-old rape case. When approached by the officers, he was seen to have “acted suspiciously” and they believed that he reached out to his back pocket to withdraw a gun. The officers had made wrong judgements on both counts in Diallo’s case.

Similarly, Bell and his two associates were emerging from a strip club where they were celebrating the imminent nuptials of Bell later that day. Officers staking out the night club believed one or more of them possessed illegal firearms. As Bell got into an argument with another person outside the club, police believed that it would end up in trouble involving guns. The three men got into a car and allegedly as they moved off officers shot at them in an attempt to stop them from making a getaway. But none of them were found possessing weapons at the time.

In London, a member of the public informed the police that Stanley was carrying a sawn-off shotgun and officers who responded also believed that the table-leg wrapped in blue plastic looked like a shotgun. Though Stanley was actually Scottish, the reporting member of the public thought he was probably Irish and by implication an armed terrorist. Stanley’s reaction on being challenged led them to believe that their personal and the public’s safety were in danger as Stanley raised his arm carrying the wrapped object. Officers were accused of acting in a prejudicial manner because they believed him to be an armed Irishman, in the wake of the IRA violence in London at the time. However, the officer’s testimony, that he was unaware Stanley was Irish, was accepted by the Surrey Police (Surrey Police, 2005).

In the second British incident, police operatives followed de Menezes because they mistakenly identified him as Hussein Osman, a suspected suicide bomber. His suspicious behaviour on the way to the station was considered classic counter surveillance. It was believed that he had entered the underground train in order to unleash a suicide bomb attack. It was alleged that officers believed de Menezes was wearing a bulky overcoat in the middle of summer and was carrying a backpack, ostensibly similar to those used in earlier bomb attacks, and reacted in a suspicious manner when challenged by the police (Gregg, 2006). The IPCC enquiry revealed that de Menezies reboarded the bus because Brixton station was closed and had called his associate to inform him that he might be late for an appointment (IPCC, 2006a). CCTV images revealed that de Menezes walked calmly into the station and was neither wearing a bulky overcoat nor acting suspiciously. It was also later revealed that the reports of de Menezes jumping the barrier were attributed to a ticket collector who had mistaken an armed officer vaulting over the barriers for the “victim” (de Menezes) and briefed the media accordingly. There are no CCTV images once de Menezes entered the platform area, but the IPCC investigation concluded that this was a result of technical faults and that there were no cover-ups on the part of the police. Confusion about actual orders issued and some lack of co-ordination between the various teams of officers meant that instructions to “intercept and stop the suspect from getting on a train” were interpreted as stopping
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the suspect “at any cost”, allowing armed officers to shoot de Menezes under operation Kratos, which was the Met’s adopted policy of “shoot-to-kill” when dealing with suicide bombers.

It was alleged that in 1997, the Mumbai police killed Abu Sayama, alias Javed Abu Talib Shaikh, a humble peanut vendor, mistaking him for some other notorious gangster Javed Fawda. However, the notion of mistaken identity was dismissed by the Aguiar Commission but there were several questions raised about the extent of danger to the officers by Javed allegedly reaching towards his waistband on being challenged by the police.

While the NYPD and the Met police had mistaken the identity of Diallo and de Menezes, the Mumbai police were accused of mistaking Javed Fawda for a dreaded criminal linked to the Abu Salem gang while his family claimed he was a poor street vendor struggling to maintain his family amidst extreme poverty (Rattanani, 1997). There was a great deal of confusion around the establishment of the identity of the “victim”. Family members alleged that the deceased person was neither a criminal nor called Javed Fawda, instead was called Abu Sayama. On the other hand, the police claimed that the deceased was Javed Shaikh, also known as Javed Fawda on account of his protruding teeth. Police records of fingerprints of one Javed Talib Shaikh, previously arrested and charged with murder, matched the fingerprints of the deceased person. The Judge presiding over the Inquiry Commission ruled that there was no case of mistaken identity and that the person killed, Abu Sayama, was also perhaps known as Javed Fawda (The Aguiar Commission Report, 1998).

However, the inquiry into this allegation and its subsequent dismissal makes interesting reading as it showed the complex conditions in which the Mumbai police had to, and continue to, operate in establishing the identity of a person under difficult circumstances. Circumstances such as the absence of centralised personal criminal or DNA records, a huge city characterised by a large floating population where fake identities can be purchased easily, where births and deaths are not necessarily registered in the municipal offices, where ration cards3 of dubious authenticity (the main document establishing identity and residence, especially amongst the poorer and illiterate classes and slums) proliferate unchecked, where no social security records are maintained for the population, where enrolment in compulsory education is not enforced, and where police registration of criminal cases is often haphazard and misleading at times.

In all these cases, the police were accused of misjudging the danger posed by the “suspect” and of using excessive deadly force against them. The relatively large number of bullets fired by the officers in most of these cases was repeatedly cited by the media almost as if it demonstrated the “trigger happy” nature of policing in these cities. However, research into the use of lethal force by police officers has

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3These were issued to families to enable them to purchase government subsidised essential commodities such as sugar, kerosene, oil, rice, etc. in the years after independence when such commodities were in short supply. In this case, the ration card presented to the court to establish Abu Sayama’s identity created more confusion as it claimed a different name for Javed’s father from that in the police records and the Missing Person report filed by his sister on August 28, 1997.
demonstrated that perception, judgement, and reaction times of police officers in stressful situations can be hugely complex (see, e.g. Bumgarner, Lewinsky, Hudson, & Sapp, 2006; Lewinsky, 2002; Lewinsky & Hudson, 2003b). Testing officer reaction times under laboratory conditions demonstrated that the more stressful the situation the more slowly a person is likely to respond to changes in the situation. Thus, once officers begin shooting under perceived stressful conditions, while doing many other activities simultaneously and sequentially, their reaction time to stop shooting will be longer (Lewinsky & Hudson, 2003a). This might explain the large number of bullets fired in some of these cases.

**Special Police Squads**

In all incidents discussed, questionable deadly force was employed by officers belonging to special squads and not regular beat or patrol officers. In New York, the Street Crime Unit tactical squad (Diallo) and undercover plainclothes officers, part of the Club Enforcement Initiative (Bell); in London, the special arms unit (Stanley) and undercover surveillance officers from special branch and armed officers from specialist firearms department (CO19), who formed part of Operation Theseus (de Menezes); and in Mumbai, special Crime Branch officers (Fawda) were involved. In all these cases, the officers involved were part of some special tactical operational teams, by necessity, in many cases.

Punch (1985) has described in detail a number of earlier police scandals around what he calls “strategic corruption” and misconduct that have emanated from special police units and have enveloped the police forces in both New York and London. Specialised units, whose operations are often cloaked in secrecy, possess a sense of invulnerability from outside supervision and control. They are especially prone to becoming “unduly creative” in their quest for achieving high results. Such creativity might lead them to break rules, circumvent the law in many cases, often becoming outright corrupt. The numerous examples of such units point to the necessity for stricter supervision of such units and demanding greater accountability and transparency in their operations (Punch, 2000). Though accountability mechanisms have existed in democratic states to ensure that these units work within the law, especially in cases where deadly force has been employed, the actual operational details of these units are often fiercely protected by the police organisation. Although, the lack of transparency as compared to ordinary policing might well be a prerequisite for the effective functioning of these units.

**Post Facto Construction of Plausible Story**

In the cases discussed there were allegations, especially in the media, that a plausible story justifying the use of force was carefully constructed by the police. Official accounts are mainly produced for various audiences using publically
acceptable and legally justifiable reasons for shooting (Waegel, 1984). This was more evident in the officer testimonies and accounts presented before the courts and inquiry commissions looking into these incidents. Several discrepancies in the official version and evidence gathered from other sources, gave rise to the suspicion that sometimes despite careful construction of an acceptable story, not all loopholes were plugged. The conflict between witness and officer accounts and the physical evidence in police shootings can be scientifically explained in some cases (Panorama, 2006), but inevitably raises suspicion that perhaps there was some manipulation of facts.

Bumgarner et al. (2006: 13) found that academic studies broadly tend to consider police violence as “always a matter of misconduct and usually a matter of criminality”. Similar doubts were raised in the particular cases discussed. Research has indicated that hindsight bias (i.e. perception of an incident is influenced by the outcome knowledge) plays an important role in the way an incident is perceived by the actors involved and others observing or commenting on it (Villejoubert, O’Keeffe, & Alison, 2006). In incidents where the “victim” was not found in possession of a weapon, observers perceived less danger to the police officers on the scene and police use of deadly force tends to be considered less justifiable under those circumstances. Research has also lent support to the contention that stressful situations such as shooting incidents can distort officer perceptions in different ways leading to accounts conflicting with each other and with the facts (Beehr, Ivanitskaya, Glaser, Erofeev, & Canali, 2004; Lewinsky, 2002; Lewinsky & Hudson, 2003a, 2003b).

In the Diallo case, Harring (2000: 11) openly suggests that police officers had to “fabricate a story to cover the ‘roust’. The ‘young black rapist’ cover story served well since it easily permitted stopping and questioning any such person in the Bronx”. Further, Herring adds that since undercover officers blend in with the community and “look more like thugs”, Diallo’s reaction on being challenged by them could scarcely be called “acting strangely” as they perhaps routinely failed to identify themselves as police officers. This would cast severe doubt on the justification of shooting as a “reasonable exercise of self defence” as the “provoker of a violent encounter cannot then claim self-defence” (Harring, 2000). Waegel (1984) found that police occupational shared knowledge that accounts centring on suggestive moves that have worked in the past often led to similar accounts being applied again to explain subsequent incidents. Perhaps this may have led officers to say that the suspect (Diallo) appeared to reach towards his waistband. However, while no weapon was recovered from Diallo he was found with his wallet in his hand, which lends credibility to the police story that Diallo reached in his pocket to withdraw something that they thought was a gun.

In the Sean Bell case, plain clothed officers again said that they had reason to believe that Bell or his two friends were in possession of a gun/s and were about to engage in violence against another individual or make a getaway when challenged by the police. But no guns were recovered from the three individuals from the car nor was there any corroborating evidence to support the police apprehension that a violent confrontation was imminent.
In the Stanley case, officers were allowed to confer with a solicitor, as per the national procedure operating at the time, before writing up their accounts of the shooting. Though there were inconsistencies in the officer accounts which cannot be adequately accounted for, there was also considerable consistency in the two accounts, giving rise to the allegation that they were fabricated in order to justify the shooting. The IPCC ruled that there was no evidence of deliberate attempts to falsify the evidence, and “perceptual distortions” might account for the discrepancies, the remarkable consistency in the accounts might be the result of either sharing of mistaken recollections or accounts being substantially correct. The accusation of post facto construction of a plausible story in the Stanley case was initially upheld by the Surrey police investigations on the basis that the officers’ very accurate and detailed descriptions of Stanley’s movements were inconsistent with the forensic facts. However, graphic visualisation techniques and expert testimony were used to explain that Stanley might have reacted to the first shot in his hand and turned away in the split second (a classic response to a bullet shot received while facing the attackers) before the second bullet hit him in the back of the head (Surrey Police, 2005). These findings were independently confirmed by a behavioural scientist, Lewinsky, who claimed that this interpretation of the forensic evidence was most consistent with the reports of the shooting.

In the de Menezes case, officers justified shooting him in the head several times because they believed that he was a suicide bomber and posed a grave threat to public safety. However, as it was subsequently established, this was incorrect. More incriminatingly it was revealed that the Brazilian electrician had already been restrained by a surveillance officer before being shot seven times in the head and once in the shoulder (Cowan, Campbell, & Dodd, 2005). This combination of factors adds weight to the assertion that the story was a post hoc construction to justify the shooting. However, the IPCC (2006a) enquiry established that the shooting was not pre-meditated nor was it authorised by the operational commander but resulted from the confusion created by a plainclothes officer trying to restrain de Menezes in the carriage. On the other hand, Kratos actually permits summary execution of potential suicide bombers in public interest, thus making this case slightly different from the other cases discussed.

Police officers in Mumbai said that they fired in self-defence only when they were attacked by Fawda, who was suspected of intention to commit a serious crime. A pistol with live rounds was allegedly recovered from Fawda by one of the officers, but this evidence was improperly recorded, diminishing its evidentiary value. In addition, there was no documentary or physical evidence to back up the story that a police vehicle had been damaged in the incident. Additional evidence of other officers involved in the incident and eyewitness accounts were not recorded in the original police investigation. There was also no attempt to locate and recover the escaped white car in which Fawda’s accomplices allegedly got away, and the vehicle registration number reported was found to be incomplete. No traces of blood were found either on the spot where Fawda allegedly collapsed or in the vehicle that is said to have transported him to hospital. In addition, there appeared to be no explanations for why Fawda got down from the car, as no one was seen
waiting for him, nor were there any suggestions that he had got down to check the car because it had broken down. Finally, no evidence was presented to corroborate police intelligence that Fawda was coming to Sprott Road to either kill someone, or deliver guns/explosives, or meet a potential extortion victim. There was little to corroborate the police story which appeared to have been constructed post hoc.

In all the cases, the police chose to present their story as an example of non-elective shooting in self-defence (or defence of others in the de Menezes case). While in the New York and London cases, officers were mistaken in their beliefs, about the victim’s identity, their possession of deadly weapon, or that they were about to attack the police or pose a grave threat to people’s life or property. In Mumbai, doubts about Fawda’s mistaken identity were erased by the Aguiar Commission but the authenticity of the *encounter* was not. Crucially, officers in New York and London admitted to making a mistake in identifying the victim but maintained that the use of force was justified under the circumstances. On the other hand, Mumbai police continued to assert that Fawda was a “hardened” criminal who possessed a firearm and fired it when challenged by the police. This made the use of deadly force against him justifiable in their eyes, even if the Aguiar Commission was not satisfied that it was either reasonable or necessary to do so.

**Raising Dust**

In the Diallo and de Menezes cases, there were “leaked” media reports that these men were illegal immigrants. There were attempts to discredit Diallo by saying that he behaved suspiciously when challenged by the police either because there were allegations of drug use or that there were some irregularities in his immigration status (Sturcke, 2007) indirectly hinting that somehow his illegal status provided mitigating circumstances or justified his shooting in some twisted way. Diallo was accused of having lied to the immigration authorities and one of theories accounting for the shooting was that being an illegal alien, he thought that the four police officers were actually Immigration officers, coming to catch and expel him from the country. He therefore acted suspiciously, becoming inadvertently responsible for his own shooting (Rivera, 1999).

Similarly, there were tabloid reports alleging that de Menezes had a forged visa stamp on his passport (The Sun, 2005) intending to prove that he was a man with something to hide and was afraid of the police. It was a tentative argument that sought to back the police version of events that de Menezes ran when challenged by police officers. However, this particular story was not highlighted prominently in the mainstream media. It was not seriously suggested that because the two men were illegal immigrants, they deserved their fate; but there was some attempt made by the police to cast doubts about the antecedents of the victims, in order to defend their “over” reaction to perceived “suspicious” behaviour.

In the cases of Sean Bell and Javed Fawda too, there were police attempts to divert attention away from their mistakes by adding “mysterious twists” to the
story: in the case of Bell, there were rumours of a “mysterious fourth man” who got away and who presumably was in possession of a gun. The fourth man was never found and attempts to find him were a wasted exercise (Gardiner, 2007). Officers in Mumbai too maintained that the white car that brought Fawda to Sprott Road escaped from the scene and though one officer noted down a registration plate number and even shot at the car as it passed by, no car of that description or number was ever found (The Aguiar Commission Report, 1998). In both cases, valuable police time and resources had been spent on looking for what could be called “red herrings” in an attempt to deflect attention away from the actual shooting incident.

### Policing Policy

While some of the shootings were perhaps the result of some official or unofficial departmental policy, all of them could be considered to be a part of a larger call for extraordinary police responses to deal with a “war-like” situation. In New York, it was a war on drugs or crime, in London, it was part of the war on terrorism (O’Driscoll, 2008) and in Mumbai, a war on a combination of organised crime and terrorism. One of the main justifications put forward by the police was that the shooting was commensurate to the level of threat or danger posed to society by certain members, be it criminals or terrorists. In these cases, mistakes might occur, but the resulting deaths would count as collateral damage in the “war” being waged by the police (see, e.g. Button, 2005).

In New York, the official firearms policy notwithstanding, a tendency to shoot “suspicious” black men first and ask questions later seemed to operate – something that was perhaps internally tacitly accepted in the department. Organisational support may have been indirect in the reluctance of the Commissioner to take disciplinary action against the officers, but the detectives union president, in fact criticised the City Mayor for having “rushed into judgement” when he expressed the opinion of many New Yorkers that “excessive force” seemed to have been used in the Sean Bell shooting (Haberman, 2008). Research has long recognised that the police tend to use disproportionately greater force against Black (as against White) suspects, including lethal force (Geller, 1982; Smith, 2004). However, NYPD’s aggressive policy, especially of stopping and searching black men, is not guided by racial profiling but based on similarity of appearance to a suspect identified by witnesses or victims, according to officers (Skolnick, 2008) – an explanation offered by the officers in the Diallo case. The overly aggressive style of policing by the NYPD has a history of causing friction with the local minority communities and cases such as Diallo and Bell only aggravate such tensions.

In the Stanley case, officers were said to have been compliant with the national procedures before and in the immediate aftermath of the shooting incident. However, as a result of the investigations, these were found to be faulty and were subsequently reformed (IPCC, 2006b). When the officers involved in the incident were suspended,
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nearly a quarter of all armed officers in the Met threatened to lay down their arms in protest creating a crisis for the Met. One of the reasons for this protest was reportedly because they wanted some clarity in the guidelines telling them what they should do under similar circumstances (Allen, 2004). The Crown Prosecution Service (CPS) and IPCC ultimately decided that there was insufficient evidence to either prosecute or initiate disciplinary proceedings against the officers.

In the aftermath of the 9/11 terrorist attacks in the USA, the London Met had adopted a clearly defined policy called “Operation Kratos”, which advocated a “shoot-to-kill” policy to tackle suspected suicide bombers (O’Driscoll, 2008). The de Menezies shooting was a direct result of the application of this policy. The shooting was supported by the then Commissioner of the Met, Ian Blair, who called it a “tragic mistake”. The Met was accused of obstructing the IPCC inquiry by restricting access to the investigators for almost 3 days after the incident (Vaughan-Williams, 2007). There was systemic reluctance to prosecute or even condemn the act of the officers involved in this incident by the CPS in 2006.

In Mumbai, police officers interviewed during this research explained that there was a tacit organisational approval for adopting a policy of eliminating “hardened” organised criminals in “encounters”, which will be explored in the chapters to follow.

Regardless of an explicit or implicit policy supporting police shootings, all three police organisations shared a similar attitude that condoned these shootings and attempted to protect the officers involved in the shooting. The tendency for police organisations to protect their officers and erect a “blue wall of silence” has been well documented in the USA, UK (Punch, 1985; Skolnick, 2008) and, as this research showed, in India.

**Trial by Smoke**

In all three cities, investigations were conducted in the discussed cases of police shootings and officers faced trial in New York and Mumbai. Though democracy demands accountability, there is a suspicion that courts and juries are ultimately inclined to find police officers not guilty of criminal conduct in these cases.

In New York, police officers involved in the shooting of Diallo and Bell were prosecuted and underwent trial by jury and judge, respectively. Harring’s (2000) hugely critical assessment of the Diallo case identified several problems with the trial. To begin with, a consequence of the massive public reaction to the Diallo shooting was that the venue of the trial was shifted to Albany primarily as a conservative reaction to the heavily minority juries in the Bronx. The judge granted the motion to shift the venue to Albany and the prosecution’s decision not to contest the motion was considered inexplicable and incompetent. Harring further suggests that the prosecution failed at successfully cross-examining the officers; challenging the officers’ claim of self-defence; and raising the “race” issue which was foremost in the public discourse. Instead of the officers being found guilty of excessive use of deadly force, the NYPD officer training and firearms control policy were considered responsible...
for the terrible “accident”. The trial of the officers in the Diallo case “served as a context to legally justify New York’s ‘aggressive policing’ policy, concluding that the killing of Diallo was an ‘accident’, an unavoidable consequence of good police work” (Harrington, 2000: 9). Finding police officers not guilty of criminal conduct in such cases has been the norm in most jurisdictions, as all these cases illustrate. However, there have recently been a spate of cases in India where officers have been charged with and the courts have found police officers guilty of murder in encounter cases.4

The trial of three police officers in the Sean Bell case in 2008 also began with a request for a change of venue. When this motion was denied by the court, the officers preferred instead to waive a trial by jury and exercised their right to have a bench trial, in which a judge alone determines guilt or innocence. Presumably officers did not expect to have the support of minority jurors in the Queens area (Kolker, 2008). The judge of the State Supreme Court found the officers not guilty of criminal behaviour but was critical of their “carelessness and incompetence” (Haberman, 2008). Police critics alleged that there was a racial element involved, even if the officers involved were black, because their approach towards three white men walking out of the club would have been very different. Stereotypes associated with young black men makes them more susceptible to being at the receiving end of police use of force (Kolker, 2008, citing Reverend Sharpton). The judge, in his ruling, gave greater credence to the officers’ testimony that they believed they heard one of the victims mention possession of a weapon while he did not find the testimonies of the other two “victims” (Benefield and Guzman), who denied any such talk “believable” (Baker, 2009). A year after the verdict, federal prosecutors had still to reach a decision whether federal charges were to be brought against the officers and who, in the meanwhile, had requested that internal departmental proceedings against the officers be stalled until a decision was reached. Civil lawsuits against the officers initiated by Bell’s fiancee and the other two victims have also been forcibly delayed in the process (Baker, 2009).

In the Stanley case, there were several investigations into the incident: an independent investigation of the case by the Surrey police, two inquests, three reviews into the investigation carried out by the Crown Prosecuting Service, a number of court challenges made to the decisions taken in the case, further investigation by the Surrey police and finally an IPCC report on whether the officers involved should face disciplinary proceedings. Officers were accused among other things, of misjudging the situation resulting in inappropriate actions, exaggerating the perceived threat posed by Stanley, and collaborating after the incident to produce fabricated accounts to justify the shooting. Charges against the officers were found to be unsubstantiated and the officers neither faced trial nor disciplinary proceedings due to insufficient evidence.5

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4 The Delhi encounter case which occurred in 1997 where ten officers were imprisoned for life in 2007 for mistakenly killing two businessmen. Several senior officers were arrested for murder in encounters in Gujarat, India, in 2007 and the case is pending trial.

5 See, for example The Guardian (2005), “Policemen Escape Charges Over Table Leg Killing”, October 20, 2005.
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Following the de Menezes shooting in 2005, the IPCC conducted an independent investigation into the incident. This 6-month investigation highlighted “failures in procedures and communications” in the operation and the IPCC recommended that the CPS would like to consider whether the conduct and actions of some officers might be liable for criminal prosecution. However, after reviewing the evidence, the CPS announced its decision to only prosecute the Office of the Commissioner of the Metropolis for breach of the 1974 Health and Safety at Work Act (IPCC, 2006a). There were to be no criminal charges brought against any of the officers involved in the shooting. A trial by jury in 2007 found the MPS guilty of a “catastrophic series of errors” during the operation that led to firearms officers shooting de Menezes. The MPS was fined and ordered to pay costs after the jury found it had breached health and safety rules and failed in its duty to protect members of the public in the killing of the innocent Brazilian. However, unusually the judge ordered the insertion of a caveat in the jury’s decision that the senior police officer in charge of the operation should not be held personally responsible for the tragic accident (Sturcke, 2007).

In 1997, alarmed with a growing number of encounters two civil rights bodies, the People’s Union of Civil Liberties (PUCL) and the Committee for the Protection of Democratic Rights (CPDR), along with the Samajwadi Party, petitioned the Mumbai High Court to conduct an inquiry into these encounters. The High Court found prima facie evidence of a disturbing pattern in police actions in encounters and ordered an inquiry into two of them (the killings of Javed Fawda, and Sada Pawle and Vijay Tandel in 1997). Judge A.S. Aguiar carried out the inquiry in 1998. His report was made public in September 1998. The Judge found the encounters to be fake. One of them, he said, may never have taken place in the way described by the police, and in the other, the victims appeared to have been unarmed.

There were two parts to the case of Javed Fawda: first, of mistaken identity, and second, deliberate police murder. As mentioned above, while the court found that there was no evidence to support the charge of mistaken identity, the inquiry found adversely against the police that “the deceased Javed Fawda, alias Abu Sayama, alias Javed Abu Talib Shaikh was not killed in the encounter as claimed by the police. It is doubtful whether any such encounter took place” (The Aguiar Commission Report, 1998, paragraph 148: 30). The commission found several weaknesses in both the documentary and forensic evidence, raising serious doubts about the authenticity of the police account. Cross-examination of the police officers revealed that when they went to allegedly arrest Fawda, they were unaware that he was a known gangster or dangerous criminal, which meant that there was no reason for them to be waiting at that spot for the deceased. Examination of the subsequent police investigation revealed that the officers had not taken steps to preserve the fingerprints on the pistol allegedly recovered from him, raising doubts whether Fawda had actually fired at the officers, or indeed whether it was in his possession at all. Though several rounds were allegedly fired, only two empties were recovered from the spot, and none from the vehicle whose windshield was supposedly shattered.

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*A political party that purports to promote interests of the Muslim community, but which does not have a very strong support base in the state of Maharashtra or in Mumbai.*
by one of the shots fired by Fawda. The windshield itself had been replaced and the
car put to use without facts having been recorded satisfactorily. The vehicle in which
Fawda was said to have arrived was allowed to get away despite the fact that
the police had prior information and its description. The most damaging fact for the
police case, however, was the absence of blood stains or pool or blood at the scene of
offence where the injured and profusely bleeding Fawda was lying and also the absence
of blood in the car by which the injured was taken to the hospital. There were no
independent witnesses to support the police version and one of the officers involved
in the incident who had a previous history of violence was described by the report
as “a trigger happy cop” which lent strength to the commission’s conclusion that
Fawda was killed in cold blood.

The matter did not end there, shattered by the adverse finding of the Aguiar
Commission, the Mumbai police then sought to appeal against this finding by
applying to the High Court. A division bench of the High Court consisting of two
judges not only ruled that the police encounter of Javed Fawda was true and genuine
and took place in the exercise of the right to private defence of the officers concerned,
but also criticised Judge Aguiar’s earlier report and findings (The Indian Express,
1999). This bench felt that the police had not questioned any independent witnesses
during the subsequent investigation because there could not have been anybody
present as the encounter had taken place at midnight and at a deserted spot, to substan-
tiate the police version. Also since a lot of blood had been found in the chest cavity
and pericardium area, it was clear that the deceased had bled internally and there
was very little oozing which accounted for not much blood being reported on the
spot. The evidence provided by the post mortem and ballistic experts on behalf of
the police was also found to be acceptable. In addition, the Judge was criticised for
calling one of the officers involved, a “trigger happy cop”, as the latter had been
acquitted by the High Court and the appeal against the acquittal was still sub-judice
in the Supreme Court.7 The High Court bench proceeded to lay down guidelines for
good practice to be followed by the police in all future instances of encounters.
Thus, the Mumbai High Court’s verdict that the Fawda encounter was legal served
in actual fact as a signal to the police that their actions were condoned by the legal
system, almost as a go-ahead for more “proactive policing” as interviews with
police officers revealed.

**Trial Outcome**

Trials in the cases discussed in all three cities ended in a “Not guilty” verdict. In
true democratic tradition, the public and the criminal justice system in all the three
cities have often been severely critical of the police for their perceived abuses.
However, very rarely have police officers been found guilty of killing even in cases
where clearly mistakes were made.

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7 “HC gives police clean chit in Javed Fawda shootout case”, The Times of India, Bombay edition,
February 25, 1999.
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Bumgarner et al. (2006) suggest that police use of force is prima facie presumed to be improper and excessive unless there is evidence to prove otherwise. In addition, in cases where the physical evidence appears to contradict officer accounts, the officer is rarely given the benefit of doubt, especially by the media and the public. However, judges and juries recognise the difficult choices that police officers have to make and tend to give them the benefit of the doubt (Blumberg, 1989; Geller & Scott, 1992; Pedicelli, 1998; Uldricks & van Mastrigt, 1991). In the Diallo and Fawda cases, there were very few or no witnesses to the incident. In the Bell case, the judge preferred to accept the police officers’ version of events against that of the two others injured, given their criminal history and the inconsistencies in their story. Finally, even though accounts of several witnesses in the carriage to the de Menezes shooting contradicted the police story of having shouted “armed police” while entering the carriage, these were deemed to be inaccurate versions attributed to the shock of seeing the shooting by the IPCC investigation (IPCC, 2007). The jury decided to give the benefit of the doubt to the police officers, in the imminent aftermath of the July 7 bombings as the contextual background to the incident.

Public Reaction

Public reaction to police shootings is an important indicator of the robustness of democratic process in demanding police accountability. The public reaction to the Diallo and Bell shooting in New York, especially among the ethnic minority community was one of anger and protest against the court’s verdict in favour of the police officers. Public demonstrations were held to protest against perceived police brutality and racism. In London, the de Menezes shooting did not provoke open demonstrations or protests but generated lively discussions and debates as reported in the media. In Mumbai, neither the shooting of Fawda, nor the adverse findings of the Inquiry Commission, nor the overturning of the same findings by the High Court, evoked any sizable public reaction. The shootings were possibly the fallout of the “moral panic” created by the war on terror and crime. It might be argued that media representations of “folk devils” (Cohen, 1972) in the guise of suspected terrorists or criminals became part of the public’s “shared imagination”. Thus, these police shootings did not evoke instant sympathy in the elites, the business communities, and the majority community regardless of class in the three cities, just as Breuil and Rozema’s (2009) research on public acceptance of death squads in cities as diverse as Medellin (Columbia) and Davao (Philippines) indicates. However, it might just be the fact that ordinary people did not have the time or inclination to fight battles that were not their own, as interviewees in Mumbai suggested.

The immediate aftermath of the Diallo shooting in New York provoked a spate of angry protests from the black community in the Bronx. Allegations of racism were aired in protest marches and demonstrations. The jury’s verdict of not guilty evoked disappointment in the family and friends of the “victim” and there were calls for the resignation of the officers involved. On the fourth anniversary of Diallo’s death, the street where he lived was renamed Amadou Diallo place, a move
that was welcomed by city officials as something that would help the community to heal (Hernandez, 2003). However, there was uproar in the minority community in response to the acquittal of the police officers in the trial, including days of demonstrations and arrests. Ten years down the line, public protests over the death of Diallo and the legal and disciplinary inaction against the officers responsible continue with hundreds of people still courting arrest in civil protests (Louis, 2009).

Sean Bell’s shooting provoked a public response that decried the police action, but protests against the judge’s decision to acquit the three main accused officers of any charges in the case were stronger nearly a year-and-a-half after the actual shooting in April/May 2008. While the state judge’s acquittal of the police officers charged in this case was muted in the immediate aftermath of April 25, 2008, a larger protest demonstration was held a few days later in New York. In the largest public protest involving over 1,000 demonstrators against the acquittal of three detectives in the shooting death of Sean Bell, the police reported that 216 people were arrested as carefully orchestrated demonstrations in six locations in the city halted traffic at busy intersections in Manhattan and Brooklyn (Lueck, 2008). The protests were mainly peaceful and a form of civil disobedience in which people signed up to be arrested to protest against the court’s verdict. These demonstrations in New York were mirrored by a smaller one in Atlanta to protest the verdict, although there were no arrests. A street in Queens was renamed Sean Bell Way in his memory, a move that received support from the city council but angered the police as it apparently sent a wrong message to youngsters that it is ok to behave as Bell did (Bode, 2009). Renaming streets in memory of “victims” of police killings appears to be popular in New York to demonstrate public support for those killed and keep the cause of demanding justice in their cases alive.

Public campaigns led by Harry Stanley’s family led to two inquests and several investigations into his death by the Surrey police, CPS, and the IPCC. There was anger at the refusal of the CPS to charge or prosecute the officers. Vaughan-Williams (2007) traces the public reaction in the UK to the shooting of de Menezes by the Met as initially being one of public sympathy for the officers who seemed to have made a “tragic mistake” in the immediate aftermath of the July 22 bombings in London. Notably there was some concern on the part of Muslim communities who feared for their safety. There were instant calls for the Met Commissioner’s resignation from some quarters and in the media, but he did not comply (Thompson, 2005). However, whatever public sympathy there was initially, did not last long and the British public’s increasing dissatisfaction with the Met and the Commissioner led to collective action in the form of public vigils and demonstrations, especially after the Met’s decision to plead not guilty to the Health and Safety charges brought against its officers (Freedland, 2006). Though the police response to the war on terror evoked debate in the media and activists in the UK, the public, by and large, were somewhat removed from protesting vociferously against the police action.

In Mumbai, the public reaction to Fawda’s *encounter* was “business as usual”. It was seen as another incident in a long line of similar police shootings. As we shall
Comparing the Three Contexts

see in the later chapters, there was considerable public apathy towards police encounters and in some cases there was some public support for what was seen as justified elimination of a “hardened criminal”. This particular case did not evoke a public outcry. Only one political party and some activists protested against the shooting on the grounds of religious discrimination by the police, who were accused of predominantly targeting Muslims. The media coverage of the story was just a little more in-depth than other encounter stories as a result of the petition filed in the High Court by one NGO (PUCL) for a judicial inquiry into 100 cases of police encounters by the Mumbai police. However, this interest soon fizzled out in the absence of public sympathy for the “victim”.

In Mumbai and London, the war on organised crime and on terror evoked greater public sympathy for police actions despite questions being raised about the methods employed by the police. In contrast, in New York, there was considerable public agitation against the perceived racial bias in the police shooting incidents discussed.

**Impact of the Shootings on the Police Forces**

Experts on police firearms policy in the Diallo case gave their expert opinion that the prevailing firearms training and procedural guidelines in New York empowered police officers, who believed that their own or someone else’s life was in imminent danger, to continuously shoot at the trunk of the suspect till he/she was completely immobilised. This implied that the shooting of 41 bullets by four officers into Diallo was just “a disaster waiting to happen: it was only a matter of time before three to four officers would empty their weapons by mistake” (Harring, 2000: 14). Poor training and a faulty “police firearms discharge policy” were blamed for the “accidental” shooting of Diallo. In the immediate aftermath of the Diallo shooting there appeared to be little change in the NYPD “aggressive policing tactics” under Mayor Giuliani. Other incidents of police shooting of black “suspects” provoked mass protests and the fall in Mayor Giuliani’s poll ratings was perhaps indicative of the wider white community’s disenchantment with his aggressive policies (Harring, 2000).

The aftermath of the Sean Bell shooting brought about calls for sweeping changes to police procedures by senators, activists, and possible mayoral candidates (Phillips, 2008). A tri-level legislative task force, a citizen-led initiative, put forward several proposals for reforming procedures in a “Report on Improving Public Confidence in Law Enforcement and our Criminal Justice System”. The New York City Police Commissioner ordered an independent study of department firearms training by the Rand Corporation (The Post Standard, 2008). The report found that deficiencies in officer training, especially scenario-based exercises, and the unavailability of alternative weapons of force were responsible for a higher number of officer shootings than could otherwise be justified (Rostker et al., 2008). In response to the Bell case, the NYPD began to administer mandatory breath
analyser tests for all officers involved in shootings and introduced expanded use of Tasers as an alternative to lethal force (Phillips, 2008). Reportedly, due to revamped police procedures, improved training and disciplined use of force after the shooting of Sean Bell, fatal police-involved shootings were reported to have plummeted even as the size of the NYPD increased (Pineda, 2009). However, the minority ethnic community and civil rights groups still remain to be convinced that the NYPD has done all it can to allay their suspicion that black young men will continue to be targets of lethal use of force. This dissatisfaction was further strengthened when the mayor claimed to increase the accountability of the NYPD by bolstering the Civilian Review Complain Board (CRCB) with the injection of $1.4 million; claims that were disputed, instead the CRCB budget was actually slashed by the Mayor, raising suspicion that there was only a token intention to discipline overly aggressive police officers (Gardiner, 2008).

Policing in the UK has traditionally been by consent and minimum use of force. However, even though the official Firearms Manual is available on-line, the prevailing perception is that “police rules of engagement” are secret and unpublished to prevent giving unfair advantage to assailants (Kennison & Loumansky, 2007). To contain the aftermath of the Stockwell shooting, the police published a public information document on Operation Kratos on the internet to justify their use of force (Kennison & Loumansky, 2007). Following the Stockwell shooting, Home Secretary Clarke did not accept that a “shoot-to-kill” policy existed, but maintained that the police had to right to use lethal force to prevent a serious crime being committed (Home Affairs Select Committee, 2005). The police “shoot-to-kill” policy, nevertheless, came under greater criticism and scrutiny especially from the civil libertarians, some sections of the public and the media. However, the exact impact of the de Menezes shooting on policing organisational policy has not been made public.

Year on year growth in encounters since 1993 ground to a halt in 1998, when the Aguiar Commission’s enquiry into the Fawda case ruled that Mumbai police officers involved were guilty and that the encounter was faked. The research revealed that the entire department was under tremendous stress and anxiety as the actions of some of their officers were under scrutiny. The judicial inquiry created considerable controversy and led to a temporary hiatus in police encounters. The Mumbai police later appealed against the conclusions of this inquiry to the Mumbai High Court, which returned a verdict in favour of the police. The High Court’s ruling in late 1999 that Fawda’s death was not a false encounter was like a signal to the Mumbai police that it was all right to continue conducting encounters, provided procedural inadequacies identified by the High Court were rectified in future cases. The High Court had laid down guidelines for police actions in encounters that have been used ever since as a checklist by the police to ensure that at least the paperwork conforms to them. As will be shown later, cleared of the charges of conducting false encounters, the Mumbai police appeared to have been given a free hand to conduct encounters and indulged in a spree eliminating alleged criminals in larger numbers in the immediate years following the High Court verdict (Zaidi, 1999).
Summary

Police shootings in three different cities by police forces with wide-ranging differences in ethos, operational procedures, and firearms policies, occurring under very different circumstances and situations, are compared in this chapter. Despite several differences there were nevertheless identifiable strands of similarities that bound these various stories together. In all the cases discussed, there were allegations of mistaken identity and mistaken assumptions by the police (some of which were substantiated) and there was suspicion of systemic attempts by the police organisation to protect the officers involved. There were several discrepancies in the official police stories, giving rise to the allegation that these were constructed post hoc in order to justify the shooting. Many of these discrepancies could be attributed to hindsight bias or the stressful situations under which officers acted in such incidents. These incidents were perceived to be the result of police stereotypes and prejudices that targeted ethnic minority victims.

All the incidents evoked some form of public protest: big public demonstrations, populist media campaigns, civil liberty activists agitating for “justice for the victims” and sometimes politicians condemning police actions. Despite this, in all the cases, police officers involved were let off without charges or acquitted when prosecuted, regardless of whether the trial was by jury, judge, or a bench of judges. This does not in any way reflect on what actually happened in those police shooting incidents, but emphasises the process of negotiation and political struggle for how stories and accounts are constructed, interpreted, and sometimes reconstructed and re-interpreted by the media and the legal system but with a presumption of good faith on the part of the police officers involved. There may be public protests against perceived police violence and excess use of force and calls for greater police accountability in the aftermath of such shooting incidents but there is still appears to be a reluctance to convict police officers of criminal charges in these cases, perhaps justifiably so given the nature of the difficult decisions to be taken by officers under extremely stressful conditions.

Finally, a comparative analysis of particular cases of police shooting incidents across New York, UK, and India emphasising the universal themes that bind them together serves to underscore the point that sometimes abuses can occur in developed and developing democracies which enjoy a free press and an independent judiciary. Dismissing cases of police excesses as confined exclusively to third world underdeveloped countries or to dictatorial or military regimes is a mistake that one can scarcely afford to make. A universal policing culture of secrecy which protects officers behind “blue walls of silence”, the rhetoric of “war on crime or terror”, combined with public reluctance to prosecute police officers, demonstrably can allow excess use of deadly force to recur almost anywhere.

In the next chapter, moving from the universal to the particular the focus will shift to police use of deadly force in one particular city, Mumbai, in an attempt to understand what makes the police in a free and vibrant democratic society use deadly force with apparent impunity.
Permission to Shoot?
Police Use of Deadly Force in Democracies
Belur, J.
2010, XVII, 226 p., Hardcover