

Punishing the innocent

Gareth Peirce
interviewed by
Moazzam Begg

Gareth Peirce is a human rights lawyer whose long list of clients includes the Birmingham Six, the Guildford Four, Guantanamo detainees, the family of Jean Charles de Menezes, and many of the men detained without trial or under a control order in the United Kingdom. She spoke to Moazzam Begg who is himself a former Guantanamo detainee and now the spokesman for the organisation Cageprisoners which first published the exchange on its website (www.cageprisoners.com), from which we reprint these excerpts. A video of the complete interview is also available there, and DVD copies can be obtained from East London Peace and Justice. Moazzam Begg's comments and questions are in italic type and Gareth Peirce's in ordinary type.

Perhaps you don't remember, Gareth, but one of the first times I met you, you said that, it was the Irish first and I can see now it's the turn of the Muslims. This was before September 11th had taken place. Did you ever envisage that we'd be in the situation that we are today that you would have to defend people who are held without charge and without trial again?

No. I'm sure none of us, whatever observations we might have made, probably in the same way that people at the beginning of the conflict in Northern Ireland would never have envisaged thirty years of sustained nightmares. I don't think we could ever have thought that things would come to how they are now.

We both visited Northern Ireland, I think it was last year, at the opening of the Free Derry Museum and I was very taken by the powerful message that was given out at that meeting, at the opening of the museum, meeting many people, including Martin McGuinness, for the first time in my life and seeing that people now were going through the peace process, had gone through a process which began in a sense with internment, and then Bloody Sunday followed as a result of that internment. Is it correct to say that what we have today is akin to internment? Is it the same? Is it different?

I think internment, as it was imposed upon the Nationalist community, was probably the wake up call to the Nationalist movement that they had to stand up and fight. And the repression of protests against

internment in particular, the civil rights marches and the murders by British soldiers of civilians on Bloody Sunday, those were the ways in which the armed conflict in fact began and fuelled volunteers enlisting because there was no other way. And I think probably looking back it would not ... We're all aware that, looking back, Nationalists in Northern Ireland would now say we would never have advanced to the point of shared power in Northern Ireland had there not been an armed conflict – that's the way retrospectively history would be viewed. But equally looking back it would be seen that there would never have been an armed conflict and should never have been an armed conflict if equality and sharing of power had ever been there in the first place; so it's become a circular route of history, and the lesson, I suppose, we learn is those thirty years of conflict need never have happened and that's perhaps what is now so frighteningly clear. We needn't be in the situation we are in now, we simply need not be in it and there are so many ways in which the state is viewing people and acting towards them and implementing legislation to deal with those people that's just plain wrong and it's mad, it's a completely mad construction in relation to many of the people who are at the receiving end.

Is there a parallel? Do you see something happening at that time that is happening again? Or is it different?

If one takes the straight parallel of internment it's a pretty even equation. There was just a locking up of the wrong people as a symbolic exercise to achieve a political end. To that extent, our internment in 2001 was a very similar exercise. However, were one to be a member of the Muslim community in this country now, I think there would be a different feeling than to have been a member of the Irish community in the past, and I think that there was all along a comprehension by the politicised Irish community that allies were needed, political allies were needed, no matter the extent of the armed conflict that was raging; that somewhere along the line there needed to be a progressive, political dialogue – even if it was not with the British state, with allies: the Irish government, or Irish Americans or the worldwide community. It is much harder now, I would think, to identify political allies in the world. The allies that the Muslim community deserves to have appear to come from informed non-governmental organisations, campaigning organisations who comprehend the attack that is being made on human rights, rather than organisations, countries, regimes, administrations that comprehend that there has to be a political

shift. It's more a comprehension of how the law has been distorted, that appears to be the only lifeline to hang on to, more than a way of moving towards a recognition that the world cannot go on like this; we cannot go on with this level of political and religious incomprehension. We cannot. We are in a state of grave danger.

The day I returned from Guantanamo and I met you and spoke to you, you told me the next day you could not be there with me for the interviews with the police because you told me you had to rush off to the House of Lords to issue a decision in the case of the internment, the Belmarsh detainees. I still never really understood what that meant in terms of a decision being made by the most powerful legal body in the country and then in practical, tangible terms, it meant nothing, when they were re-arrested. Can you just explain that to me?

The government had gone through a number of deceits. It had told the Council of Europe that in December 2001 this country was facing a grave emergency so that the fabric of the nation was threatened, so that a dozen men had to be locked up indefinitely without trial. That was never true. The factual claim was false for all to see. The legal claim sustained itself over three and a half years until the House of Lords ruled. That was a significant victory in a number of ways. It reaffirmed that the courts in this country were capable of assessing and delivering a profoundly moral message; that we will not stoop to that kind of legislation, we simply will not, whatever the odds. But all of that legislation came in on the excuse of 9/11, which frankly had nothing to do with this country until we made it something to do with this country. But there followed thereafter another excuse, and that was the bombings in London of July 7th 2005, five months after the interned men were released.

And were these men ever said to have any link, or any association?

No, nothing, absolutely nothing whatsoever. They were young British men, very quickly within a couple of days from Leeds known to have carried out the bombings on their own; not Arabic speakers, British nationals. There has never been any suggestion that they were motivated by, inspired by, connected with the foreign national Arabic speaking Algerians, Jordanians, Palestinians, Libyans who have been interned. Nothing to do with them. However, within days the Prime Minister again took the same group of men for his symbolic response. This country is

going to face up to this grave emergency. How? By changing the rules of the game. This is what he said, changing the rules of the game. How does he do it? He will lock up these men once again and, this time, deport them to their own countries who will torture them and probably kill them. For three and a half years, he had said we can't deport them because they'll be tortured and therefore we will lock them up indefinitely without trial. Now he was saying suddenly overnight that we can ...

Based on the infamous memorandums of understanding.

Although with Algeria, they didn't ever achieve a memorandum of understanding, in the end they gave up, but nevertheless the deportations were ordered. The same tiny little group of men who were there to become the scapegoats for the administration to show that they were tough on terror, shoulder to shoulder with Bush, dealing with an emergency in an utterly illogical, false, unjustified way. But it didn't really matter to the mass of this country because these were outcasts, outcasts from society. They didn't belong, they were foreigners, they had no rights – that's how in general we perceive it here.

These men have become, as you've said, outcasts and it would have been understandable had they been charged with a crime or had some evidence been put forward about them being involved in some sort of activity against the British government or in general. But that's never happened. And I remember you told me that they've not even been interrogated.

No, no they've not ever been questioned. There's much debate as to whether the police need powers to question people for 7, 14, 28, 90 days. They've never been questioned at all, never.

And the Security Services have never asked a question about them?

No, no, no, no. No, they've made an assessment. What the assessment is we don't know because the processes that have been constructed are to have courts that hear secret evidence so that the person himself will not know the evidence.

I remember when you wrote to me in Guantanamo Bay, one of the things you told me about, the Combatant Status Review Tribunal, which was this sort of kangaroo court, which didn't have any legal jurisdiction and you

told me I shouldn't take part in it because it's something that includes secret evidence, you don't get witnesses, there's no appeals process – in fact there's no process, it's simply a military panel making a decision on your life. This seems to me ...

It was somewhat hypocritical of me to write that, wasn't it? Given what was happening here.

Because the lawyer also does not get the right of hearing the evidence, also.

Yes.

And this is where they determine a person's – not guilt, because they have not been charged with a crime – but a person's security threat level almost. And as a result of these secret proceedings they are either continually kept in prison or put out under a strict regime of control orders, or have placed upon them UN sanctions, or in some cases get deported or extradited. The average person would be extremely surprised to hear this, to learn that these great terrorist threats to this country have not even been questioned. How does the government respond when you ask them to produce the evidence, to say what is it that my clients have done for which they are paying this ultimate price?

Well, one discovers there's been a range of dishonesty here to get the legislation through Parliament, internment in the first place in 2001. A number of Parliamentarians quite rightly said that we have jury trial in this country, we have proper process of accusation; and they were reassured that this would also be a last resort if this legislation comes in and there will always have been a careful decision by the Crown Prosecution Service before we resort to the last resort of secret evidence. But after these men were arrested, we wrote to the Crown Prosecution Service, the Director of Public Prosecutions, and said please just tell us the dates when you took these decisions not to prosecute and who took the decision, what did they have in front of them. When the letter came back, saying actually we never took a decision at all, about any of them. So the legislation was passed on a fraudulent basis in the first place but it is sustained itself even when that legislation was condemned by the House of Lords; its message continues and its decision continues in that the same men were made the subject of control orders, released to forms of home house arrest, again on secret

evidence and then some of them made available for deportation, again on secret evidence. But in fact, worse was to come, because we now have discovered that the government has sent the findings of this secret court to each regime, each torturing regime to which it wishes to send this particular group of men. It is a complete breach of every guarantee given to every asylum seeker that your application for asylum will be treated in confidence. We've sent the asylum claims to Algeria, and Jordan and probably Libya, and therefore we have placed the same hapless group of men at even further risk – we've sent their asylum claims, and we've sent the findings of SIAC – the Immigration Appeals Commission that has considered secret evidence. And when one man, Benaissa Taleb, an Algerian, went back in despair – although he was on bail here the conditions were so horrific he decided he would risk torture to leave his wife and daughter here with the ability to have a better life, in the hopes he would not be detained. He was detained; he was tortured, interrogated, charged on the basis of a false confession obtained from torture. And at his trial, the Algerian judge said, 'How dare you claim asylum in another country, that's a betrayal of our country, Algeria. It is an absolute treacherous betrayal to have claimed asylum'. So the very fact of claiming asylum ...

...is itself guiltworthy. It's devastated people's lives. It's destroyed, not just the men and their ability to be men for their families, but also the effects – whether it's imprisonment without trial, whether it's the control order regime – I've spoken to several people, either the prisoners or under control orders who speak of finding this a paradox in Britain, of a country that is supposed to be one of the bastions of freedom, liberty and justice, where in fact many of them had sought asylum for that reason in the United Kingdom, and laws are being created specifically for these men; men who still have not been charged with a crime. Some of them, as you said, have opted to return home facing torture; one I've spoken to recently, Abu Rideh, is on hunger strike, has tried to harm himself, as a result of these strict measures that he has on him. His family life is completely upside down as a result of it. Is there any hope for them at all?

For a long time, probably misleadingly, not intentionally, lawyers have said to the men there is hope, this legislation can't be right. We can win internment. Control orders can't be right; we can win this in courts. Deportation to countries that torture, with memorandums of understanding, can't be right; we could win this. But the people we

represent become very tired and very cynical and very disbelieving. They will say perhaps you were right but it took three and a half years for internment to be overturned. Perhaps you were right about deportation, but we have been in prison now for three years – another three years, on top of the three and a half from internment. And those men will say even if we win, look at the cost to our families or to the community and – even more cynically – if we win, the government will simply introduce something else. So the prospect of normality of life has become nil and it's an endurance test in which the government has all the time in the world on its side and men see their lives disappearing; young men who are single see no prospect of ever being able to marry and have a family; men who are married with children, see the children growing up without fathers at all; or with fathers at home in circumstances that are destructive of a normal family life. I think, to be frank, people given a choice would never, never want to be here. Refugees would never have chosen to come here if they'd ever known this was ahead of them and if there were any prospect of another country, a safe third country, no one would be here for a moment. But what we're doing is meant to be sending a message to the world, isn't it? We're not acting only in relation to our domestic borders; we're trying to encourage other countries to behave in the same way.

I had a meeting with a judge, a judge advocate, a general from the US military about three weeks ago. He was so adamant that detainees' cases in Guantanamo could be won, through fighting their case in the court and ultimately to the Supreme Court. In fact, he felt so confident that the tie he had on which had Supreme Court frontages on it, he took off during dinner and gave it to me. And I thought to myself, no one has been released from Guantanamo as the result of any legal proceeding, even when the Supreme Court decision was passed in Rasul vs Bush. But at least in the cases in Guantanamo and in my case in particular, when you were working on it, there was a public outcry, eventually. And that is what ended up securing or bringing about our release to the embarrassment and so forth, but in the case of the men here who are held, not in similar circumstances, but under similar attitudes of the law, or of the government, where they don't have the right to challenge their detention; why is it that the public simply – to be as blunt as possible – doesn't give a damn?

We're a pretty apathetic country politically. We're a pretty xenophobic country. It's always an easy populous message to wave the flag of no more immigrants, no more refugees, enough's enough. And if you add that basic

concept to terrorism then the equation's complete. These are people that the nation were being encouraged to think no country would want within their borders; countries made to think these are dangerous people. As no one has ever talked to them I can't see how any one can properly assess what they are. But those who are detained, or not detained, some of whom you have met, many of whom I have met, talking to them, we're quite capable of seeing that they are people who are not a threat – far from it. If we had some ability to talk intelligently and sensibly to people who are themselves intelligent and sensible we might find that this country is simply looking in the wrong direction. And if there is to be any hope or prospect of the world becoming a safer, saner place, it has to be on a basis of comprehension and understanding. And at the present moment that is spectacularly missing. I am sure you see that far more vividly than I.

When peace eventually came to Northern Ireland, they had to negotiate with those very same members they had demonised and said were the leaders of the terrorist movements, and cells and the political wings and so forth. And bizarrely before Tony Blair left, one of his lasting actions, I suppose, will be that he was the man who brought Martin McGuinness and Ian Paisley together – and still it seems bizarre. Yet we're looking at some of the people we've just mentioned, who are not involved and never been charged with being involved in any acts of terrorism in this country – they are clearly in some cases dissidents from their countries, because that's how they and why they sought political asylum here. But the government makes it look as if these people are not only part of the problem, but they are the problem. But based on the Northern Ireland example, are they not really part of the solution?

I would have thought that any sane intelligent person could comprehend that, but I think it's not just talking to the people themselves and finding out that they are not as painted, that's one thing. But the second aspect that's missing is that what those people are representative of; as you say, they are dissidents, opposed to the regimes from which they've fled – no doubt about it, and justifiably so. We're talking about regimes that torture people, that kill people, that commit genocide, where hundreds of thousands of people are disappeared, countries that are recipients and agents of the American rendition programme. Those are the regimes we're talking about. And one of the men who is relied upon significantly as a focus of the legislation, what did he do to attract the condemnation of his country, Jordan? He protested against the invasion of Kuwait by Saddam

Hussein. He was the voice in Jordan that said Jordan should not have supported Saddam Hussein, as it did. And for that he was tortured and for that he was perceived as a dissident and fled. Now it seems to me that there is a wilful and deliberate unethical foreign policy here, in that for our own economic and strategic reasons, we embrace these torturing regimes, and therefore we are in the position where those regimes complain, as they have vociferously, that their dissidents are here; we then move against them in the name of the War on Terror. But to achieve a world order that is just, we cannot forever uphold those regimes, we cannot forever support them. We fail to understand that the world conflicts that are the most insoluble must be solved and they become solved by some form of comprehension. We are just slavishly following a path of incomprehension, and these men who are here are simply part and parcel of that incomprehension.

A great number of the men who have been detained under these anti-terror legislation measures or been put under these control orders are actually from Libya. And I think that's an important case in point, because it demonstrates how many of these Libyan men were given asylum readily by the United Kingdom over the past couple of decades; and then all of a sudden, after the War on Terror an agreement is made between Gaddafi's Libya, who was a pariah for the last thirty to forty years, and now all of a sudden has become relatively friendly between the United Kingdom and the United States of America. It's nothing to do with justice. It's all to do with interests. How does one explain that, as somebody who lives under a control order regime, for example, when everybody he knows, everybody he deals with on a day to day basis he has to inform that I'm under this control order regime and therefore the warning lights come on? How can he explain that interests have changed, I have remained the same, I've never changed at all? Can he do that at all?

There is an element in going through the motions of legal representation before SIAC, before the administrative court of control orders, where all of it seems so nonsensical. You're talking about whether there should be a boundary drawn around a premises in Leicester that allows a Libyan dissident to go to one gym or another gym. It's all completely barking mad. We're talking about young men, or once young men, who, in anybody's view, courageously stood up to this outrageous tyrant, who is also insane – Gaddafi – who stood up, who protested, who said this regime should not continue. And now their lives are to be conducted with geographical lines

drawn around. They are not a threat to national security. It is mad to assess them with this. And yet we're so far down the road of the rubber stamp from internment being applied to control orders, being applied to deportation, that there's no longer any capacity for anyone to stand up and say the Emperor has no clothes on – at all.

Yes, that's true. One of the other things that came out, after the September 11th attacks, in the legislation in the United Kingdom, is this fast track or supposed fast track extradition treaty with the United States of America which is non reciprocal. It has caused great consternation amongst the Muslim community in the case of Babar Ahmad and others. Is there any merit in this at all? Is there any merit, as far as the Americans are concerned? Is there a real case that somebody can somehow after all of these years, will a person like Babar Ahmad, or Haroon, or any of the other guys that are under extradition, will they ever be able to rightfully defend themselves if that ever transpires, if they are ever extradited?

They are not meant to be able to properly defend themselves. What they will face when they go there is being detained in isolation, under special measures, imposed on them pre-trial, which will pretty much break any strong human being. If they're convicted, they will probably spend the rest of their natural lives in identical situations, virtual isolation in a Supermax prison. The evidence against them will be constructed from corrosive methodology in which witnesses for the prosecution are encouraged to become witnesses by threats; if you don't do this, you will be made an enemy combatant and locked up in Guantanamo, or in a military brig; or yourself get life imprisonment without parole. The prospects are horrific and the men here fighting extradition know it. The only advantage, slight advantage, is that this greedy American extension of its jurisdiction has come to embrace the banking community here and therefore bankers are getting sent. British Aerospace employees are being questioned now because we in this country stopped a prosecution for corrupt payments to Saudi Arabia by British Aerospace. That is now becoming an area of interest for American prosecution. There is going to be an awful lot of squealing going on if our upper echelons of business are vulnerable to American prosecution. But the argument is the same: if there is a proper prosecution to be brought the natural forum should be the country in which the person lives and from which the evidence is gained. In the case of Babar Ahmad, that will be here. The man was allegedly running a website, with a collective of people of Islamic interests, and simply because the

service provider was arbitrarily based in Connecticut his extradition is now sought for trial in Connecticut.

That's his only link to the United States.

He's never been to Connecticut. The whole of the readership of Azzam.com, which was the website, was cyberspace, worldwide, anyone could have a look. But it's Connecticut that's after him. But it's this appetite, this same appetite that kidnapped you and took you to Guantanamo; America *über alles*, America the Superpower, America has the right and the ability to make everyone subject to it.

Yes, often I say I've never been to America – America came to me.

It did.

Through extraordinary rendition. Babar has never been to Connecticut but he may be sent there through extradition, which almost sounds like extraordinary rendition. What is the prospect for all of these people, all these people detained under these measures? The common denominator of course is that they are detained without charge or trial. And even people who have been charged or convicted of crimes, today we can see for example someone can be convicted of writing poetry, convicted of downloading something from the internet – that's a significant change from the time of the Troubles in Northern Ireland. Is there any precedent for that sort of thing that you've ever seen before? Thought crimes?

There were aspects of that in a way. Look, the IRA was a military organisation carrying out military campaigns, setting off bombs, murders, kidnaps. You could know what was being done. You could arrest, you could prosecute for substantive offences. There was a subtext as well that attempted to be censorship which was a pretty spectacular failure, with broadcasting ban, ludicrous. But it was seen as ludicrous and in a way the Nationalist community gained some strength from that. This is more worrying because it's so confusing, it's so inscrutable, it's going backwards. I know when you came back from Guantanamo, and we were talking about the fact people were being interned and what for. Well, insofar as they knew it was because they supported Chechen resistance. And you commented, 'Oh, has that become a crime since I've been gone?' Well, the answer is it never was a crime, it isn't a crime but it is somehow being devolved into being a crime,

in the sense it's terrorism now. Self-defence or self-determination has been twisted into being terrorism, by somehow attaching liberation struggles through expanding definitions into something that is criminalised. And that is utter confusion. If one was a lawyer and someone came to you and said, is it a crime for me to support a resistance struggle. You would say, no, the United Nations Declaration of Independence tells you that you can. The United Nations Declaration of Human Rights tells you that it's appropriate to overthrow a tyrant as a last resort, it's appropriate to support an entity that is able to claim self-determination. That's all gone by the board – the definition of terrorism now says all of that is a crime. Any attempt to overthrow any government anywhere in the world is now terrorism, and therefore it's all a political decision on the part of our government as to what it will go after and what it won't. And who can know where they stand? People go to lawyers and say if I publish this book, if I put up this website, is it legal or not? He will say in theory it's legal, but in practice it well could be a crime, and so there is no certainty. And people, there are many people in prison now who haven't a clue why they are there, absolutely no idea; and there are some young people convicted who do not know, do not understand why they've been convicted. They've searched the internet, they've looked at things, they've left a trace on their computer and suddenly that's a crime ...

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