GARETH PEIRCE joined the firm of the radical solicitor Benedict Birnberg as a trainee, and was admitted as a solicitor in December 1978. For the past 30 years she has been involved in the defence of successive suspect communities.

During her career she has represented Judith Ward, a woman falsely accused of several IRA related bombings in 1974; Gerry Conlon of the Guildford Four; Moazzam Begg, who was held in extrajudicial detention in Guantánamo by the US Government; and the Bradford 12. The family of Jean Charles de Menezes instructed her firm in the inquiry into his death. She is a partner at Birnberg Peirce and Partners.

‘War on terror’: how has this changed the legal landscape?

This is a very diffuse and undefined term. The concept of there being a war has been used to destroy entirely important certainties in the law, and infected and contaminated the law so that the law is no longer applied as we understand it. This is what in many ways has happened. The Torture Convention, the Refugee Convention, the Geneva Convention, many of the international treaties we are bound by in this country have been side stepped. As well as a significant number of aspects of what we call due process have been jettisoned. We had no parliamentary debate to discuss the fact that what we were doing was effectively abolishing trial by jury. What we had rushed through Parliament was internment, locking people up indefinitely without a trial, accusing them of the most serious of criminal offences, of involvement in international terrorism, but then at the same time saying although there was evidence, the accused person wasn’t to see it and the evidence was to be considered in secret court and secret session.

In one fell swoop an individual could now be accused of a serious crime and be simultaneously told he would not have a jury trial and never know what the allegation was. It was a breath-taking innovation which the House of Lords ultimately declared unlawful, but no sooner did the accused men, succeed in their challenge after three and a half a years in prison, then something new was attempted.

This time Control Orders, no longer imprisonment as such but a form of house arrest, imprisoning you at home and within geographical boundaries, restricting what you did, restricting who you saw and again on the same secret evidence. Thus a further destruction of due process. In terms of what we thought fit to do and what we still think fit to do: exchanging information too with countries that use torture to obtain information, knowing that is what we are doing and yet pretending we have clean hands. This is what we have moved to. An utter destruction of our obligations under the Torture Convention as well when we try to deport people to torturing regimes, a destruction of our obligations under the Refugee Convention when we consciously co-operated with British citizens being sent to Guantánamo.
Bay as we did and our ministers did. What did that have to do with the rights of those individuals under the Geneva Convention if captured as the Americans claimed? If ‘enemy combatants’ they should have been treated accordingly, with the minimal rights and dignities accorded by international conventions. But they were not, and that they were not was with this country’s endorsement.

**Many Muslim communities believe they have been unfairly targeted and prejudiced. What do you think of this?**

If you target a community *en bloc* then the very essence of that is that it is making the whole community suspect and making every member of that community certain that that is how they are regarded and how they are to be treated, and further effectively requiring members of that community to actively protest their innocence. Because of the stigma, the prejudice, and the consequences, the community as a whole is frightened. Recurrent questions spoken or unspoken are posed to members of the Muslim community who are not running for public office, nor wanting a political post, nor applying for a job dependent on religious or political beliefs. ‘Where do you stand on this issue? What do you think about this issue? What grounds of Islamic belief do you adhere to or not adhere to?’

It is no business of the state to demand of its citizens that they articulate responses to such questions or be interrogated by what is after all a largely secular state albeit nominally Christian, about their faith. Nevertheless across the board this is a situation we have imposed on Muslims in this country. Individuals from the Muslim community do not anticipate if they travel they will travel freely; members of the Muslim community believe if they travel they will be subject to arbitrary stops and questioning. Regardless of their law abiding status, absolutely regardless of that, they are all suspects. And thus it has always been in the past with other suspect communities. The experience for the recipients is real and not imaginary, but is erected upon a basis of falsehoods reinforced by repetition of the danger an entire community is said to constitute, intended to justify the robbing of those suspect communities in turn of full basic rights, dignities and respect that belong to all.

**Are there any parallels between current experiences in the Muslim Community and those of the Irish Community in the 1970s and 1980s?**

Worldwide, populations, communities and groups who have suffered historically identical experiences understand in a way that nobody else does, the parallels. Now it is the Muslim experience as opposed to the Irish experience of only a few years ago, but it is in no way confined to those two experiences. The history of the black community in Britain, of the miners during the miners’ strike, of the Asian community throughout the 1970s and 1980s – all continually under attack whether by fascists or police and all criminalised generally but in particular when they defended themselves. ‘The enemy within’ as Thatcher called them.

The history of parallel struggles informs us and enlightens and inspires us but frighten-

Ingly we never learn from world history, we simply do not learn.

We don’t learn about the hideous mistakes of history nor from them, nor do we learn the causes and the effects. We don’t learn how injustice provokes reaction. We don’t learn how the folklore of injustice comes to be known and understood by the affected community as a whole, and not just in one country but worldwide.”

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*Pictured at a Jean Charles de Menezes Family campaign meeting at the LSE in London in 2005 (Gareth was the family’s lawyer).*
Refugees who couldn’t return to their own countries. It would be returning to torture or death: or accepting and then fighting the new ‘internment’.

Although they won in the end the legal battle, it took years, and equally importantly, it broke families, individuals, communities. Initially, there were a dozen individuals and more later. Of those detained, two thirds became mentally ill. Psychologists and psychiatrists who pooled their knowledge found that indefinitely detaining people without trial carried the high risk of producing long term damaging effects. The helplessness and the despair of being imprisoned without being told why and never knowing if you would ever escape from the nightmare.

The Control Orders imposed as a substitute on their release were not liberating. The men concerned returned to their homes if they were married or to isolation if they were not, but now families too became subject to the crippling restrictions imposed upon the household as a whole. Police would storm into the house during the night claiming the individual concerned must have left the house because the electronic monitor was recording something, the electronic monitors regularly malfunctioned. The experience came to affect every member of the family personally, physically, mentally, psychologically. The men had to respond to telephone monitoring using voice recognition systems, on American machines which failed to recognise non-American accents. The machines triggered alarms, suggesting the person concerned had breached the conditions of the Control Order and therefore should be arrested. Police would again arrive at the house; the children would be crying; the family would be terrified and constant fear of arrest and return to prison was always upon them.

Children would fail at school who couldn’t do homework which required the internet because the household couldn’t have a computer. Why? Because that would link up the individual with something or someone suspicious of which he could be told nothing for unspecified reasons of national security.

One little boy took to wearing a watch around his ankle, he saw his father with an electronic tag and he thought that is what men did. How do you deal with year after year after year with the knowledge that you are not like other families? Nobody could visit, unless they were cleared and given permission by the Home Office. The individual concerned couldn’t meet people outside without permission of the Home Office either.

All of this has an effect too on the Government and Civil Service who administer the scheme, and the Security Service who provide secret information. It produces the confidence that they can continue, open endedly, to do it. Secret Courts and secret hearings are a very useful weapon in the arsenal of the executive who are unanswerable in the way police are answerable. Nobody knows what the case is. It is heard in secret, but yet courts have allowed the expansion and thus the appetite to increase their use.

Both parties in what is meant to be an adversarial system become cynical, the individual involved, and the wider community in which he lives become cynical that you can’t win; if you do, the Government simply moves the goal posts to introduce another different measure. The Government, equally cynically, considers it doesn’t really matter if in the end it loses in the courts, because after all it will have had the individual concerned imprisoned or under house arrest year after year after year while interminable legal cases wind their way through the courts at a snail’s pace. And it is bad, destructive and dangerous for it to be thought that we can’t apply the law to benefit the whole of society equally. It’s a dangerous recipe.

What is your view of PACE and in particular, the amendments to the Act since its introduction?

Solicitors must now be present with suspects in police stations and importantly present in all police interviews. It is an essential element in the protection of individuals and their rights. Although police can and still to a limited extent interfere with people’s access to lawyers, in
comparison with the absolute prevention of lawyers being present at all three decades ago, it is a very different circumstance. The practice of extracting false confessions by police brutality has been in large part eradicated.

However, the legislative reaction to those changes with which I disagree was that two things in consequence became acceptable. One, that it is deemed lawful to detain someone for the purpose of questioning whereas previously it had been said to be illegal to detain someone for that purpose. And second, further and yet further extensions of periods of detention for the purposes of questioning which previously were not lawful. In parallel the right to silence came to be severely diminished so that an inference could be drawn from failure to answer questions at the police station. That was an appalling quantum change. It was rationalised on the basis that the person detained was getting considerably greater protection than before by the guarantee of a lawyer’s presence and by the tape recording of interviews and the state, in return, could demand a ‘balance’. I regard that as entirely wrong. The absolute right to protection against self-incrimination has been ‘balanced’ out by the State itself to appease the State’s own endless appetite for yet greater powers.

Legislation has continued to ensure that the State is in control of due process rights; the right to silence diminished, the ability to detain for questioning, increased from 48 hours to seven days if the allegation relates to terrorism, then seven jumped to 14, then 14 jumped to 28. But underneath it all a new and different confidence has been generating namely that the ordinary processes of investigation and prosecution can be avoided altogether. Where we are now, far from being in an era of great protections, has become the most dangerous of all in which the rights of the individual have eroded to the most basic level and the powers of the State grown stronger and greater.

It is a constant battle to attain any degree of protection at all. Many guarantees have gone now that we regarded as enviable in the past.

“The absolute right to protection against self incrimination has been ‘balanced’ out by the State itself to appease the State’s own endless appetite for yet greater powers.”

Majida Bashir is a paralegal at Sonn Macmillan Walker solicitors and a member of the Haldane’s Executive Committee. Yasin Patel is a barrister at 25 Bedford Row