

Rendition is Abduction

*Lord Steyn
interviewed by
Jon Snow*

In November 2003, Lord Steyn's described Guantánamo Bay as a 'legal black hole' (see Spokesman 81). He was then a senior English judge (Lord of Appeal in Ordinary), and his remarks attracted wide attention. He gave this interview to Jon Snow of Channel 4 News in December 2005. We are publishing it with the agreement of Channel 4 to make it more widely available.

Jon Snow: *Lord Steyn, when asked to talk about the whole question of torture, about rendition, the US Secretary of State said that the captured terrorists of the 21st Century do not fit easily into the traditional system of criminal, military justice. Isn't it a reality that what is happening is a response to a kind of human behaviour that international law isn't used to having to deal with?*

Lord Steyn: It is undoubtedly from 9/11 onwards a new situation, and modern terrorism involves far greater risks to the public. But, in my view, it is even more important now that one must stand by human rights law, respect the treaties. The need for them has not been lessened, but increased.

Jon Snow: *The Americans are saying that European lives have been saved by carrying people from one place to another. They deny torture.*

Lord Steyn: I can't see that that is a proposition that can be sustained. Specifically when you refer to torture it is very important to know what is meant by torture. I'm speaking purely as a lawyer. The US administration has adopted a definition of torture which is extremely narrow. It involves causing death, total organ failure and so forth. The true definition is much wider and it includes coercive questioning.

Jon Snow: *Do you therefore think that in a way Guantánamo Bay is a template for what is happening?*

Lord Steyn: I think Guantánamo Bay is the clue to much of what we have seen unravelled. We have seen a scale of lawlessness unravel which in my opinion is the logical extension of Guantánamo Bay because Guantánamo Bay involved taking prisoners from Afghanistan, and many other places, to an island where there

would be a lawless black hole where they can never escape from, where they have no right to trial. This logically is not very different from what the Americans call rendition, which, in truth, is abduction. It is not authorised by international law and the connection between this and Guatánamo Bay is very close.

Jon Snow: *So you use the phrase lawlessness of states behaviour. A very strong phrase and when counterbalanced with, say, the scene in Israel yesterday, when five civilians were killed by a suicide bomber, who's the lawless party?*

Lord Steyn: Of course everybody condemns terrorism – it's a scourge, an outrage. But we do not improve the modern world or make it safer by adopting methods that have outraged a very large part of the world. They've outraged the devout Muslim world, the moderate Muslim world. It is just simply a fact that events for example like Abu Ghraib would have outraged moderate Muslims throughout the world.

Jon Snow: *Let's leave aside the question of torture which in a sense you've dealt with. Is it legal to move people around the world from one detention centre to another?*

Lord Steyn: It is undoubtedly not legal. One must go back to the Geneva Convention and the matter is governed by the Geneva Conventions and prisoners must be dealt with in accordance with the Geneva Conventions. And the Geneva Convention is not something you can opt into or opt out as you like. Those are binding conventions.

Jon Snow: *Don't you accept the American's view that these are not prisoners of war but merely illegal combatants?*

Lord Steyn: No. The argument that they are illegal combatants because they didn't wear uniforms is not one a court would find terribly impressive. So I wouldn't accept that. But in any event, if the Geneva Conventions are not binding then customary international law is of the same effect, and the United States is undoubtedly bound by customary international law.

Jon Snow: *But you'd accept that there's obviously a conflict about whether this is legal or not? Even the British Government has gone some way to saying what is happening is legal.*

Lord Steyn: It is true that the British Government has said through the Defence Secretary that what the Americans are doing in Guantánamo Bay is legal, but that is a very surprising thing for the British Government to have said. I have a copy here of what the Defence Secretary said. Mr Hoon said: 'There is no doubting the legality in the way these combatants have been imprisoned.' He added: 'There is

no doubting the legality of the US to move them for trial.’ That’s at Guantánamo Bay. That’s a very surprising thing for the British Government to have said, and I’m not sure the British Government would want that to be repeated today.

Jon Snow: But if your position is right, how is it that the international legal system has so totally failed when it comes to Guantánamo, which is now nearly four years old?

Lord Steyn: That is true, of course. Guantánamo Bay went straight up to the US Supreme Court and the Supreme Court appeared to give decisions in favour of the detainees, but a couple of months ago there was a decision to the effect that it was lawful to try these prisoners by military commissions on the island. And now the matter is going back to the US Supreme Court, and we’re all in limbo four years later.

Jon Snow: The question of black sites, the question of not declaring where these people are being held – why is that not accepted by international law if the politicians in the system are saying: ‘Look, this is defending innocent lives from assault by people who want to kill them’?

Lord Steyn: The answer to that is relatively straightforward. International law consists of treaties, and in this particular case the relevant treaties are the Geneva Conventions, and they govern the position of people who are detained, and the detainees must be treated in accordance with that law. But that is buttressed, strengthened too, by customary international law, which is largely to the same effect. Now that is binding law. That’s not something someone can opt in or opt out as one chooses – it is binding law that binds the United States and it binds the United Kingdom Government.

Jon Snow: But as things stand, it is law that is being broken in your terms. What is the cumulative effect then of Guantánamo, of removal and of black sites?

Lord Steyn: The cumulative effect of all these matters is lawlessness on a truly grand scale. It has the effect of giving a setback to international law, to humanitarian law – human rights law – for a very, very long time. And what was built up after the Second World War ensured an international rule of law. I’m specifically referring to Nuremberg, to the United Nations Charter, the Universal Declaration of Human Rights, the international covenants. I’m referring to things like Pinochet, the creation of the International Criminal Court, all those events are hugely damaged by what has been done here.

Jon Snow: What about those countries that allow these things to happen?

Lord Steyn: As far as that is concerned, we can go back to Nuremberg. The person who tortures, who beats up prisoners, can be guilty of torture depending on

the level pain that is inflicted. But it doesn't end there. The person who authorises someone to do the beating may be guilty of torture and of a war crime. And what's more, somebody who set up a system calculated to cause such events to take place himself could be guilty of war crimes.

Jon Snow: *But the very concept of a war crime is an enormous statement. You are actually saying people who are doing this at the moment may be guilty of a war crime?*

Lord Steyn: If prisoners are tortured at Guantánamo Bay or at black sites – if they are – those who commit those acts will be guilty of war crimes, and those who authorise it can be similarly guilty of war crime.

Jon Snow: *Does the landing of the plane, does the knowledge of passage of an individual through your country perhaps destined for mistreatment, amount to a war crime?*

Lord Steyn: It's going to depend on degree. But once there is knowledge of the detainees may be tortured, there is a risk that those who facilitate these flights may be guilty.

Jon Snow: *Let me press you then, the British authorities may be guilty of war crimes?*

Lord Steyn: If the British authorities were fully aware of the purpose of the flights. If they were aware that these were attempts to take detainees to places where they could be tortured, of course there is the risk that the British authorities may themselves be guilty of war crimes. But it is dependent of proof.

Jon Snow: *What do you say to the civil power who says; 'We are confronted by a threat to our citizens from the suicide bomber which is without precedent, we have to adapt. And your system of international law isn't adapting fast enough'?*

Lord Steyn: I give the answer that President Barak, the president of the Israeli Supreme Court – and a very outstanding lawyer – has given to that. The answer he gives is that a democracy must sometimes fight with his hands tied behind his back. And that way it becomes stronger, not weaker.

Jon Snow: *What then do we ask of our government from a legal perspective?*

Lord Steyn: From a legal perspective, I would say we are at least entitled to ask of our government that it must stand up to the international rule of law, that it must do so unambiguously and publicly. That necessarily involves that there should be no kow-towing to the lawlessness of the US administration.