

I. Introduction

We Jews have a secret indulgence: we keep tabs on “Jews in the news”. We may only be 2.2% of the US population¹, but we get our share of faces in the news. It’s not just *Matissyahu* and *Natalie Portman*, either. We like to know that *Gene Simmons*, the lead singer of the heavy metal band *Kiss* is Jewish, although we may not want anyone else to know it. Even those of us who might not be the greatest fans of *Joe Lieberman* took some pride in his campaign for Vice President. When *Michael Mukasey* was appointed Attorney General of the United States, how many of us knew already that he was Jewish?

Yes, Michael Mukasey, an Orthodox Jew, is now the Attorney General of the United States. And don’t think American Jews aren’t conscious of his every step. The last thing we need is a Jewish Alberto Gonzales to make us look bad. Rest assured, Mukasey has proven himself to be an intelligent adjudicator and he composes himself well when questioned by Congress. However, it is important to look beyond a person’s demeanor to the choices they have made, and the implications of those decisions. I want to draw attention to Mukasy’s position on whether the practice of waterboarding is torture.

Remember, waterboarding is the act of binding and gagging a human being in a supine position with his head lower than his feet, and forcing water on his face until he drowns, only to be brought back to life a moment later. The tactic dates back at least as far as the Spanish Inquisition, when it was used against *conversos*, who had converted to Christianity, but were nonetheless suspected of being faithful to Judaism². When questioning Mukasey on this very subject, Senator Patrick Leahy recently exclaimed:

“Never mind that waterboarding has been recognized as torture for the last 500 years! Never mind that President Teddy Roosevelt properly prosecuted American soldiers for this more than 100 years ago! Never mind that we prosecuted Japanese soldiers for waterboarding Americans during World War II! Never mind that this is the practice of repressive regimes around the world! That is not America”³.

Executive Director of Amnesty International, Larry Cox, put it a different way: “Everyone in the world knows that waterboarding is torture and illegal...The U.S. government admits having done it. Yet the highest law enforcement official in the land refuses to investigate this scandal”⁴. Furthermore, the United Nations human rights official recently declared in no uncertain terms that the practice of waterboarding is

indeed torture⁵. Supporters of Israel may be skeptical of anything the UN has to say about human rights, but we must be careful not to overlook the fact that the world perceives this practice of the United States as torture.

During his confirmation hearing for the position of Attorney General, Mukasey refused to testify on whether waterboarding was torture, on the grounds that he did not yet have access to government documentation on the subject. More recently, during an interrogation on whether the destruction of CIA video-footage of waterboarding was an obstruction of justice, Mukasey again refused to testify on whether waterboarding is torture. This time, he argued that since waterboarding isn't currently authorized by the CIA, he could not take a position on it, even though it was the very subject matter of the tapes that had been destroyed. Within the last couple weeks, Mukasey has hardened his position. Because Justice Department lawyers under the Gonzales administration affirmed the legality of waterboarding in 2002 and 2003, Mukasey has refused to even investigate whether that ruling was correct. Surprisingly, this morning's New York Times revealed that the Justice Department is, at last, investigating its earlier assessment of waterboarding as legal.

Now, more than ever, American Jews must speak out against the practice of waterboarding because...

- 1. our tradition is as concerned for the health of all of God's creatures, as it is opposed to violating their dignity**
- 2. the strongest arguments in support of waterboarding directly contradict Jewish morals, values and ethics.**
- 3. we can put an end to the American perpetuation of this terrible practice forever.**

II. Jewish Tradition

Jewish tradition has always expressed a concern for all human beings. God's concern for all God's creations was so important, it was expressed in the first chapter of the first book of Torah, Bereishit 1:27:

וַיִּבְרָא אֱלֹהִים | אֶת-הָאָדָם בְּצַלְמוֹ בְּצֶלֶם אֱלֹהִים בָּרָא אֹתוֹ

God created humankind in God's image. In the image of God, God created him.

From this we learn that God views all human beings, friend or foe, as reflecting the image of God.

Admittedly, it is challenging for us to reconcile Osama bin Laden with the image of God. There are people in this world who exercise their free will with such wanton disregard for human life, that we can hardly perceive the image of God in them at all. We may judge these people, and we have a right to do so. In fact, our Torah unequivocally permits capital punishment under certain circumstances⁶. We must, however, distinguish capital punishment from torture, which is never permitted under any circumstances. When our government and our tax dollars are invested in torture, we are not innocent. “In regard to cruelties committed in the name of a free society,” said Rabbi Abraham Joshua Heschel, “some are guilty, while all are responsible”⁷. When we practice waterboarding upon the image of God, we defile God.

Like its concern for all human beings created *Btselem Elohim*, in the image of God, Jewish tradition has also given great weight to *Kavod HaBriot*, the dignity of all human beings. The rabbis in the Talmud ruled that Human Dignity is so important, it overrides any rabbinic precept⁸. Elsewhere in the Talmud, *Kavod HaBriot* is said to override even a prohibition from the Torah⁹. The medieval legal scholar, Meiri, observed: “*Kavod HaBriot* is very highly valued; there is no principle that is more highly valued.”¹⁰. When we subject a human being to the indignity of waterboarding, we violate our responsibility to *Kavod HaBriot*.

As Moses Maimonides observed, in the *Mishneh Torah*, regarding those who have committed crimes, and are condemned to imprisonment, they too merit freedom from degradation¹¹. According to the Rambam, one “should be careful not to do anything to injure their dignity. His sole concern should be to enhance the glory of God, for whoever dishonors the Torah is himself dishonored by people, and whoever honors the Torah is himself honored by people”. We do not honor the Torah when we permit our

government to practice waterboarding. We honor the Torah when we do everything in our power to prevent torture.

III. Counterpoint

There are those who believe that the practice of waterboarding is legitimate after all. When asked if he would support the decision to apply waterboarding again, Vice President Dick Cheney declared, “You’re damn right I would”. He went on to describe the practice as a “tougher program for tougher customers,” that has “produced information that has saved thousands of lives.” In reply, I would point out that when we practice torture, we not only do ungodly things to God’s creations. We also diminish our own values to the point where we become as barbaric as the terrorists themselves. Furthermore, if our evidence against these “tougher customers” was so strong, we wouldn’t need their torture-tainted testimony to convict them. Lastly, it remains to be seen whether the information acquired actually saved any lives. The information was obtained long after 9/11, and so it certainly didn’t save any of those 3,000 lives. And, whatever information *was* garnered did *little good* for some 4,000 US soldiers we’ve lost in Iraq, not to mention hundreds of thousands of Iraqi civilians. Besides, as we well know, people will say anything under torture.

One might argue that Jewish tradition does not know from terrorism, and therefore a response to such a modern phenomenon is unprecedented, maybe warranting a radical approach such as waterboarding. To this, I would note that Jews have sadly been well acquainted with massacres and the practice of torture upon us from time immemorial. Our Torah records that Amalek ambushed the Israelites in the desert. Our Talmud teaches that the Romans burned Akiva and many others at the stake. Hebrew historians from the Fifteenth Century report that the Spanish Inquisition subjected many Jews to cruel forms of inhumanity. Need I mention the Holocaust? And yet, at none of these junctures in Jewish history, do we hear of the permissibility of practicing torture upon a suspect to extract information. Jews know the effects of torture first hand, and we should not wish it upon our worst enemies.

There are times, according to Jewish tradition, when extreme measures may be exercised against a terrible individual for the sake of saving the lives of innocent civilians. The closest thing in Jewish tradition to a terrorist, may be the *Rodef*: a pursuer presumed to be after the life of another. A *Rodef* is considered an imminent threat and a present danger, and it is permissible to stop a *Rodef* at all costs, even to kill him if necessary to save the life of another. In Exodus 22:1, we learn of the thief who is seized while breaking and entering. If the homeowner were to beat him to death in self-defense, there would be no bloodguilt. But if a single day has passed, and the homeowner finds and kills the thief, out of revenge, then there *is* bloodguilt, after all. This goes to show that what we do in the heat of the moment, to prevent a clear and present danger is one thing, but what we do after the fact must follow moral and humane rules and procedures.

Hypothetically, the only circumstance in which I could imagine that enhanced measures might be permissible, would be if there were a “ticking bomb” and the suffering of one guilty individual could save the lives of hundreds of innocent civilians. One of the problems with the *Rodef* analogy is the issue of “clear and present danger”. An alleged terrorist in CIA custody is not in active pursuit of anyone. There are no “ticking bombs” in Guantanamo or Abu Graib, where detainees have been held *incommunicado* for years. Even if there were a clear and present danger, our Talmud teaches that there must be no other means available to stop the *Rodef*, before extreme measures are permitted.

Mukasey has argued that enhanced interrogation techniques such as waterboarding, which he describes in his own words as “heinous” and “cruel”, must be weighed against the value of the information they produce¹². Similarly, one might argue that what we learn about a pattern of terrorism in the past can teach us how to prevent future operations. However, there would be no clear and present danger, there are more reliable means to extract information than resorting to torture, and it could lead to disastrous consequences for our own soldiers in captivity. Waterboarding doesn’t prevent future terrorism. It is utilized to elicit information about a past activity such as the destruction of the World Trade Center. I know of no case in Jewish history, where it would be permissible to use torture to find

out information about an event that occurred in the past. On the contrary, in the Talmud, we learn that "A person may not incriminate himself"¹³. This *halahic* prohibition against self-incrimination has been enshrined in the Fifth Amendment to the US Constitution.

Although extreme circumstances require extreme measures, who is in a more precarious position than Israel, who conceivably could extract invaluable information through methods such as waterboarding? And yet, in 1999, the Israeli Supreme Court ruled that torture and other cruel, degrading and inhumane means of interrogation are illegal. I quote:

"Although a democracy must fight with one hand tied behind its back, it nonetheless has the upper hand. The rule of law and the liberty of an individual constitute important components in its understanding of security. At the end of the day, they strengthen its spirit and this strength allows it to overcome its difficulties."

There may be cases in which individuals have violated this rule. Regardless, it is important that this is the official public policy. In the US, we can learn a great deal from Israel's model.

IV. Resolution

I suppose you're wondering, now what do I do with all this information? I propose that we all write letters to Attorney General Mukasey. I want to share with you a letter I've written to Mukasey:

Dear Attorney General Mukasey,

Your appointment as Attorney General was an inspiration to Jewish people across America. We are fortunate to live in a day and age when one of our own is entrusted with the important responsibility of preserving and protecting the rule of law in this country. Because you are Jewish, we know that your judgment is guided by your Jewish heritage of morals, values, and ethics.

I would hope that your position on waterboarding would be influenced by the Jewish tradition of recognizing the image of God in every human being. I would pray that your position on waterboarding would be in keeping with the Talmudic concern for *Kavod HaBriot*, respect for the dignity of all human beings. I would expect that your position on waterboarding would bear in mind the many times torture has been practiced upon Jews throughout history.

Regrettably, your failure to take a clear and emphatic stance against the practice of waterboarding is a poor reflection upon the Jewish people. God forbid the world perceive that a Jew endorsed such a heinous and despicable affront to humanity. We must be a “light unto the nations”, not a stamp of approval for behavior our Torah would never condone. Please consider the Rambam's observation regarding a judge’s responsibility to respect the dignity of suspects: “whoever dishonors the Torah is himself dishonored by people, and whoever honors the Torah is himself honored by people.”

I believe that our Jewish tradition would condemn waterboarding as an unethical act of torture and an illegal human rights violation of the worst magnitude.

Sincerely,

Ari Rosenberg

Don’t use my words. Write your own letter, from your own perspective. For those who are looking for more information on the subject, I will be distributing flyers from Rabbis For Human Rights after the service. They have been speaking out against US sponsored torture for years and they have recently come out against Mukasey’s failure to take a stand.

- **Let us not turn a blind eye to United States government sponsored torture in the form of waterboarding.**
- **Whether or not it is currently in practice, let us come clean on our total repudiation of waterboarding.**
- **Let us also do everything in our power to see that waterboarding is never again practiced in our name.**

כן יהי רצון

So may it be.

¹ <http://www.jewishvirtuallibrary.org/jsource/US-Israel/usjewpop.html>

² http://www.washingtonpost.com/wp-dyn/content/article/2008/02/07/AR2008020701542_pf.html

³ <http://www.democracynow.org/2008/1/31/headlines#3>

⁴ http://www.washingtonpost.com/wp-dyn/content/article/2008/02/07/AR2008020701542_pf.html

⁵ <http://www.nytimes.com/aponline/world/AP-Mexico-UN-Human-Rights.html?sq=waterboarding&st=nyt&scp=3&pagewanted=print>

⁶ E.g. Deuteronomy 21:22ff.

⁷ Heschel, Abraham J. “The Reasons for My Involvement in the Peace Movement.” Moral Grandeur and Spiritual Audacity. 225.

⁸ BT Brachot 19b.

⁹ BT Shabbat 81a-b and Megillah 3b.

¹⁰ Commentary to the Babylonian Talmud, Brachot 10b.

¹¹ Hilkhhot Sanhedrin 24:10.

¹² <http://www.youtube.com/watch?v=QFHgzH5SBZc>

¹³ Sanhedrin 9b.