

My friends, for a while now the nation has been focused on George Zimmerman's acquittal. Then this past week, one of my few favorite TV shows called "The Newsroom" had as one of its subplots the impending execution of a black man for murder, based on a true story. Staffers tried to get the anchor to advocate for clemency as all appeals had been exhausted. He refused, and just when you thought he might be wavering, the news came that the man had been put to death. The story was written in such a way as to make the viewer believe that the State of Georgia had executed an innocent man.

So tonight's sermon is really a question. There is something known as Blackstone's Formulation, which says, "It is better that ten guilty escape than one innocent suffer." There are many versions of this. Blackstone was British, and lived in the middle of the eighteenth century. Benjamin Franklin raised Blackstone by a factor of ten, saying it was better that 100 guilty go free than one innocent suffer. They probably didn't know it, but the idea came, and as far as I know came originally, from the Jewish scholar Maimonides who four centuries earlier said simply, "It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death."

Note that Maimonides does not say better than one innocent suffer, but that one innocent be put to death. And for the purposes of discussion, I am going to rephrase Maimonides so that we are talking about apples and apples and ask the following question: Is it better than a thousand guilty murderers go free than put a single innocent to death?

Your answer might immediately be yes, that is better. Your answer may remain so. My own answer comes later, and I urge you not to try to guess what it is. Suffice it

to say that I did not choose to speak on this topic to be satisfied with a facile answer to the question.

First of all, any question must be answered in context. The popular bumper sticker "War is Not The Answer" begs the query "What is the question?" Is it how to convince another nation to accept a change of language in the Free Trade Agreement? War is not the answer. Is the question how to stop the Axis powers from taking over all of Europe? War certainly was the answer. In what context are we asking tonight's question?

Maimonides was not only a halakhist but a philosopher. Remember, he phrased his statement as follows, "It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death." He did not say acquit a thousand guilty murderers. So if our goal is a legal system that is philosophically pure, one might well agree or disagree with Maimonides, in which case those people can sit in leather chairs, stroke their beards, smoke their pipes, and debate the issue, as philosophers are wont to do.

Perhaps Maimonides was speaking as a halakhist, as a legal expert. In the way he phrased his statement, perhaps his goal was that the legal system never have innocent blood on its hands. That is far more practical than the purely philosophical argument, and I can certainly agree that it is better than one thousand guilty thieves be acquitted than one innocent person executed.

That is precisely why I said I wanted to change his wording for the purposes of discussion. I changed it to "Is it better than a thousand guilty murderers go free than put a single innocent to death?"

If your goal is still that the legal system never get the blood of the innocent on its hands, then nothing has changed. But what if there is a higher goal? What if the goal is to save as many innocent lives as possible, because virtually nothing in Judaism supersedes the value of human life?

My friends, this has nothing to do with any news story or television show. This is what I believe to be the truth. If the legal system acquits one thousand guilty murders, more than one innocent life will be lost because a significant number will murder again. If one innocent man is executed, one innocent life is lost.

Don't you hate that? I hate that. The truth can be vile, ugly, and cold.

So what is my opinion? I have two. If we are talking about thieves and other non-violent criminals, sure, count me in with Blackstone and Franklin and especially Maimonides.

But what if we are talking about murderers, rapists, child molesters? Please do not leave her tonight saying your rabbi wants innocent people to die rather than a murderer go free. I said nothing of the sort. Here is your takeaway from tonight. I have a general hatred of platitudes. There are no situations in which I hate platitudes as much as I do in the way I rephrased Maimonides, "It is better than a thousand guilty murderers go free than put a single innocent to death." That demands more than a platitude that allows to walk away from the question feeling good. There is only one acceptable answer to my tweaking of Maimonides: We cannot let murders go free, nor can we, in the age of DNA evidence, execute a single innocent man. The death penalty demands a higher burden of proof, not proof beyond a

reasonable doubt, but proof beyond a shadow of a doubt. With all due respect, if you can live with any other answer, I would be willing to hear it, but I think at this time that you would be letting yourself and society off too easily, and that is never the job of the Jewish people.