

THE BAIS HAVAAD

# HALACHA JOURNAL

Family, Business, and Jewish Life through the Prism of Halacha

VOLUME 5781 • ISSUE LXIII • PARSHAS CHUKAS



## (CENTER) MASS SHOOTING: HOW SHOULD POLICE STOP IMMINENT VIOLENCE?

Adapted from the writings of Dayan Yitzhak Grossman

On April 20, Columbus, Ohio police officer Nicholas Reardon shot and killed sixteen-year-old Ma'Khia Bryant. He had responded to a 911 call in which screaming can be heard as the caller asks police to come and says someone is trying to stab her.

Reardon's body camera showed...Bryant with a knife in hand and making movement toward another young woman, who falls backwards to the ground at the officer's feet.

Bryant then turns and moves toward another young woman...The video shows Bryant holding the knife and moving it in a motion that appears to be an attempt to swing the knife at the young woman's upper body. Reardon is heard saying "Get down" multiple times and then fires his weapon. Four shots are heard...

and Bryant falls to the ground...<sup>1</sup>

We have previously discussed in various articles the halacha governing the use of lethal force by law enforcement officers and other agents of the state; in this article, we consider the application of the laws of *rodef* to the killing of Ma'Khia Bryant.

### RODEF

A *rodef* (one who is "pursuing" another with lethal intent) may be killed in order to prevent the intended homicide.<sup>2</sup> This is not merely permitted, but mandatory.<sup>3</sup>

As we have previously discussed, the license to kill the *rodef* does not apply where the *nirdaf* (the

(continued on page 2)

<sup>1</sup> Bethany Bruner, Ma'Khia Bryant shooting: Columbus police release 911 calls, ID of officer involved. The Columbus Dispatch. <https://www.dispatch.com/story/news/local/2021/04/21/makhia-bryant-columbus-police-discuss-shooting-body-camera-video/7318569002/>.

<sup>2</sup> Sanhedrin 73a.

<sup>3</sup> Yad Hachazakah *Hilchos Rotzeiach Ushemiras Hanefesh* 1:6.

A PUBLICATION OF THE  
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 HaRav Yosef Grossman zt"l



### PARSHAS CHUKAS

#### GENERATION GAP

Excerpted and adapted from a shiur by  
 Dayan Yitzhak Grossman

And Moshe made a copper snake and put it on a banner, and whenever a snake bit a man, he would gaze upon the copper snake and live.

Bemidbar 21:9

The *navi* (Melachim II 18:4) relates that King Chizkiyah, who destroyed the *avodah zarah* in his time, ultimately destroyed the copper snake fashioned by Moshe because the people were using it for idol worship. According to the Gemara in Chulin (6b), R' Yehuda Hanasi used Chizkiyah's example to permit vegetables grown in Bais She'an to be eaten without separating *ma'aser*, even though *ma'aser* was taken in earlier generations from similar produce.<sup>1</sup> He explained that although Kings Asa and Yehoshafat (Chizkiyah's ancestors) had already destroyed the *avodah zarah* in their time, they left the copper snake intact so that Chizkiyah could add his own contribution to the struggle against idols (*makom hinichu lo avosav kedei lehigader bo*). Likewise, Rebbi argued that his ancestors left it to him to propose the halachic novelty that vegetables grown

<sup>1</sup> See the Gemara and commentaries there for more detail about the halachic issues involved.

(continued on page 2)

Q&A from the  
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### Groundhog Dray

**Q** A groundhog moved in under my new backyard shed and leaves mounds of dirt in the area. It also deposits dirt in my neighbor's backyard and tears up his grass. He demands that I hire an exterminator to get rid of the pest or a landscaper to put pebbles under the shed to deter it from returning. Must I do so?

**A** In general, a property owner has the right to raise an objection to something in his neighbor's property that directly causes him an annoyance. The Gemara calls this *giri dilei*—his arrows—akin to firing arrows into another's domain. The Gemara discusses the right to complain about (continued on page 2)

(continued from page 1)

pursued, i.e., the *rodef's* target) can be saved<sup>4</sup> by merely maiming the *rodef*. A rescuer who nevertheless chooses to utilize lethal force is guilty of capital murder,<sup>5</sup> although there is some dispute over whether this means that a court will actually execute him.<sup>6</sup>

From a practical perspective, the obvious difficulty is ascertaining whether nonlethal force is really a viable alternative. Police officers commonly retort to those who criticize them for the use of excessive lethal force that “shooting to wound doesn’t make sense scientifically, legally or tactically”<sup>7</sup> and point out how difficult it is to aim precisely in real-world situations. With respect to our case in particular, while some pundits have insisted that nonlethal intervention, such as shooting in the air, using a taser, or shooting the leg or other body part, should have been tried, others rejected these options as likely to have been ineffective;<sup>8</sup> and while some mental health professionals have claimed that someone trained in nonviolent de-escalation could have safely defused the situation<sup>9</sup>—though the attacker had already begun swinging the knife—at least some experts in the use of force by law enforcement have argued that Reardon acted entirely reasonably:

“I don’t know what the officer could have done differently,” [Bowling Green State University criminologist Philip M.] Stinson said. “Based on what I saw, there was no opportunity for the officer to de-escalate.”

<sup>4</sup> The Talmudic phrase “*nitan lehatzilo*” may refer to saving either the *nirdaf* from death or the *rodef* from the perpetration of murder. See *Tosafos Sanhedrin 73a s.v. Lehatzilo*; *Hagahos Vechidushei HaRashash ibid. 49a*, and see *Rambam* cited in the previous note.

<sup>5</sup> *Sanhedrin 74a*.

<sup>6</sup> See *Yad Hachazakah Hilchos Rotzeiach Ushemiras Hanefesh 1:13*; *Kesef Mishneh ibid.*; *Tur, Bais Yosef and Bedek Habayis C.M. siman 425* (the discussion of *rodef* has been omitted from some editions of the *Tur* due to its sensitive nature); *Mishneh Lamelech and Ma’asei Rokeach ibid.*

<sup>7</sup> *Police Firearms Officers Association, “Shooting to Wound.”*

<sup>8</sup> *Paul Bois. Cuomo, Lemon Double Down in Defense of Officer Who Shot Ma’Khia Bryant. The Daily Wire. https://www.dailywire.com/news/cuomo-lemon-double-down-in-defense-of-officer-who-shot-makhia-bryant.*

<sup>9</sup> *Merushka Bisetty. Ma’Khia Bryant didn’t have to die. A technique called deescalation could have saved her. Vox. https://www.vox.com/first-person/22409527/makhia-bryant-deescalation.*

[James] Scanlon (a retired Columbus police SWAT officer who has served as an expert witness at trials in use-of-force cases) said use of a Taser isn’t an appropriate response “to a lethal-force situation,” and police are trained to target only one thing when they shoot to protect themselves or others—“center mass” of the person they’re trying to stop.

Officers are trained “to shoot until the threat is neutralized,” he said.<sup>10</sup>

When evaluating reactions to police behavior in such cases, it is of course important to remember that “most human affairs come down to depending on whose ox is gored.” Ma’khia Bryant was black; when *Gidone Busch*, who was an Orthodox Jew, was shot and killed two decades ago by police officers in *Borough Park* after threatening and attacking them with a hammer, a significant portion of the local *frum* community was unwilling to accept the officers’ perspective that they had had no alternative to lethal force:

[S]everal hundred angry residents of the largely Hasidic neighborhood [took to] the streets to protest what they said was excessive force by the police...

[M]any of the people who poured into the streets last night complained that the police could have subdued him far less violently. “He was sick, and he did things that were strange, but it’s not right to shoot him so many times,” said *Mochie Klein*, 28, one of the protesters.<sup>11</sup>

(There are, of course, numerous differences between the two cases, as there always are.)

### KATAN HARODEF

While sixteen-year-old *Bryant* was a minor under secular law, she was an adult according to

<sup>10</sup> *John Futtu. ‘No opportunity’ to de-escalate: Use-of-force experts say Columbus officer obeyed training in shooting Ma’Khia Bryant. The Columbus Dispatch. https://www.dispatch.com/story/news/crime/2021/04/22/columbus-police-shooting-makhia-bryant-appears-lawful/7318300002/.*

<sup>11</sup> *Andy Newman. Disturbed Man Wielding a Hammer Is Killed by Police in Brooklyn. The New York Times. https://www.nytimes.com/1999/08/31/nyregion/disturbed-man-wielding-a-hammer-is-killed-by-police-in-brooklyn.html.*

(continued from page 1)

animals in a neighbor’s property. For example, *Bava Basra 23a* tells of a property owner who operated a bloodletting practice that attracted ravens that fed on the blood. After his neighbor complained about the noise and mess, he was ordered to rectify the matter.



RAV ARVEH FINKEL

*Chazon Ish* (*Bava Basra 1:1*) explains why this annoyance is considered *giri dilei*. Because ravens normally feed on blood, bloodletting directly invites ravens. Based on this, *Pis’chei Choshen* (Vol. 6 Ch. 13 note 30) rules that an apartment owner may prevent his neighbor from putting garbage on his porch that attracts insects. This is *giri dilei*, because insects are naturally drawn to trash.

*Pis’chei Choshen* further says that adding an awning that attracts birds to your apartment porch is not *giri dilei*, because providing birds a comfortable location isn’t considered an invitation to the birds as providing food would be. It’s an indirect cause, so the neighbor has no right to object to the noise and filth.

Like the case of the awning, your shed doesn’t invite groundhogs, it’s just a comfortable spot that groundhogs like. This is not considered *giri dilei* and you don’t need to remove it.

halacha. But even a minor who is threatening someone’s life may be killed. Although the *Talmud* records a dispute over whether a minor is subject to being killed as a *rodef*,<sup>12</sup> the halacha follows the view that he is.<sup>13</sup>

<sup>12</sup> *Sanhedrin 72b*.

<sup>13</sup> *Hilchos Rotzeiach 1:6*.

(continued from page 1)



in *Bais She’an* were actually not subject to *ma’aser*.

The notion of *makom hinichu lo avosav* has been used in various halachic contexts by later *Acharonim*. For example, the *Tshuras Shai* argued that one must construct a *shul's ezras nashim* (women’s section) in such a manner that the women cannot see the men. He acknowledges that

this was not practiced in earlier times, but he feels it is halachically required and cites the principle of *makom hinichu lo avosav*.

The *Satmar Rebbe* argued in *Divrei Yoel* that such a stringency is not necessary. He says that the principle of *makom hinichu lo avosav* applies only when one offers a different approach from others in the same halachic league, such as *Chizkiyah, Asa, and Yehoshafat* (all kings), or *Rebbi and earlier Sages* (all *Tana'im*); but later *Acharonim* cannot disagree with *Torah* author-

ities from earlier generations, because they were on a much higher level. They certainly had reasons for permitting women to observe the men in *shul*.

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