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IS “VITAL MOTION” A HALAKHIC CONCEPT?

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## IS "VITAL MOTION" A HALAKHIC CONCEPT?

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*Abstract: In this article, the authors analyze the Talmudic and halakhic sources upon which the concept of "vital motion" is based so as to evaluate whether the sources support the concept. Through this analysis, the authors present the view that vital and non-vital motion are not distinct halakhic categories. Rather, physical or physiological activity is understood in context as either meaningful or not, depending on whether it is assumed that the person or animal will continue living or not.*

### I. INTRODUCTION

In the Jewish tradition, the main definition of life is ensoulment or possessing the spirit of life (*nishmat ruach*).<sup>1</sup> Death, therefore, is defined as occurring when the soul or life force (*nefesh*) leaves the body. Examples of this definition being used even in a juridical sense can be found in two different passages in the Mishna. In the first passage, the Mishna states, "He who closes the eyes of a *yetziat nefesh* [a person whose soul is departing] is a spiller of blood."<sup>2</sup> In the second passage, the Mishna states, "A person does not defile [as a corpse] until his soul departs."<sup>3</sup> However, because a person's soul or life force is a spiritual entity, its departure cannot be empirically observed or

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<sup>1</sup> See *Genesis* 7:22, BT *Yoma* 85a.

<sup>2</sup> *Mishna Shabbat* 23:5.

<sup>3</sup> *Mishna Ohalot* 1:6.

clinically assessed.<sup>4</sup> Therefore, halakhic decisors had to determine how they might be able to draw the demarcation line between life and death based on physical and/or physiological conditions,<sup>5</sup> since “a judge has only what his eyes see.”<sup>6</sup>

The difficulty with relying on physical conditions to determine metaphysical events is demonstrated in the following Talmudic example: the Mishna states, “If a *zav*, a *zava*, a *niddah*, or a woman after childbirth has died, they still impart impurity to objects on which they are lying or upon which they are riding until their flesh has decayed.”<sup>7</sup> The Talmud expands on this Mishna to explain the impurity to which the Mishna refers is not the impurity of a corpse. Rather, it is the ritual impurity, unique to a *zav(a)* and a menstruating woman, where if they sit on an item, even one that cannot become ritually impure, and beneath that item is a vessel, the vessel becomes ritually impure through their sitting on the item above it. The implication is that, for the sake of this form of ritual impurity, these three types of people are considered to still be alive until their flesh decays. The reason for this is due to the fear that the person might simply have fainted, and be mistakenly taken for dead.<sup>8</sup> Yet, if the person’s flesh has started to decay, then it is clear that they are in fact dead.<sup>9</sup> Rabbi Moshe Sofer explains that the sages instituted this decree because the sages understood that people can only recognize that death has occurred given their expertise in identifying signs that a person’s physical constitution has changed. For those who are inexperienced in detecting signs of life, physical decomposition was the best indication they had to recognize that the person had died. For those who are more experienced, other signs could be relied upon, such as a heartbeat and respiration.

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<sup>4</sup> See 13 BLEICH, J. DAVID, ESTABLISHING CRITERIA OF DEATH, IN TRADITION: A JOURNAL OF ORTHODOX JEWISH THOUGHT 90-113 3 (1973) (“The traditional view is that death occurs upon the separation of the soul from the body. Of course, the occurrence of this phenomenon does not lend itself to direct empirical observation.”).

<sup>5</sup> The terms, physical and physiological, both refer to bodies; however, physical refers to the body itself while physiological refers to the body’s functions.

<sup>6</sup> BT *Bava Batra* 131a.

<sup>7</sup> *Mishna Niddah* 10:4.

<sup>8</sup> *Id.* See the alternative position of Rabbi Eliezer in the Talmud, who states that these people impart ritual impurity only until the belly of the corpse bursts. The former position only applies in cases where the corpse resembles a person who has fainted. In other words, once the corpse is clearly no longer alive, it no longer imparts this type of ritual impurity.

<sup>9</sup> *Resp. Hatam Sofer*, YD, no. 338.

Currently, debate among halakhic decisors regarding what signifies death based on physical and/or physiological conditions has become entrenched between two main positions. One position holds that irreversible termination of respiration is a definitive signifier that a person has died, and this can be determined by neurological criteria.<sup>10</sup> The other position holds that irreversible termination of cardiac activity, or irreversible cessation of vital motion, is the definitive signifier that a person has died.<sup>11</sup> In this article, we will examine the Talmudic and halakhic sources upon which the concept of "vital motion" is based so as to evaluate whether the sources support this concept. This evaluation does not appraise the scientific or philosophical notion of vital motion; rather, it only tests whether it has juridical warrant according to the authoritative sources of Jewish law. Through this analysis, we intend to show that vital and non-vital motion are not distinct halakhic categories. Rather, physical or physiological activity is understood in context as either meaningful or not, depending on whether it is assumed that the person or animal will continue living or not.

## II. DEFINITION/DESCRIPTION OF VITAL AND NON-VITAL MOTION

A major proponent of defining the presence of life through the presence of "vital motion" is Rabbi J. David Bleich. Rabbi Bleich writes, "[I]t is not the mere presence of the heart or the function of the heart as a unique organ which is the essential indicator of life, but rather the 'movement' of the heart as a form of integrated, vital movement of the organism which indicates that life is present..."<sup>12</sup> Rabbi Bleich derives his notion of "vital motion," and therefore his concept of non-vital motion which he identifies as *pirkus*, from his

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<sup>10</sup> This is the position of the Israeli Chief Rabbinate, Rabbi Moshe Feinstein, and R. Gedalia Dov Schwartz among others.

<sup>11</sup> This is the position of Rabbi J. David Bleich, Rabbi Shlomo Zalman Auerbach, Rabbi Yitzhak Yaakov Weiss, Rabbi Shmuel ha-Levi Vosner, and Rabbi Eliezer Waldenberg among others. However, Rabbi Shlomo Zalman Aurbach held that if every cell in the brain were definitively dead, the patient should be considered dead.

<sup>12</sup> J. DAVID BLEICH & ARTHUR J. JACOBSON, *JEWISH LAW AND CONTEMPORARY ISSUES*, 308 (2015).

understanding of the Mishna in Ohalot 1:6 and of the commentary of Rabbi Shlomo Yitzchaki (Rashi)<sup>13</sup> in BT Yoma (85a).

The Mishna in Ohalot states:

A person does not defile [as a corpse] until his soul departs. Even if he is cut up or even if he is about to die, he [still] makes levirate marriage obligatory and exempts from levirate marriage, he feeds [his mother] *terumah* and disqualifies [his mother] from eating *terumah*. Similarly, in the case of cattle or wild animals, they do not defile until their souls depart. If their heads have been cut off, even though they are moving convulsively (*mefarksim*), they are unclean, like a lizard's tail which moves convulsively (*mefarkeset*)<sup>14</sup>

According to Rabbi Bleich, the Mishna in Ohalot distinguishes between two types of movement, namely, movement that indicates life, i.e. vital motion, and that which does not, i.e. *pirkus*. Convulsive movement, or *pirkus*, is that type of bodily movement that occurs after decapitation. Such movement cannot be indicative of life, since the Mishna states that the decapitated animal is unclean, which by definition implies that it is considered dead. However, by mentioning that *pirkus* is not indicative of life, Rabbi Bleich infers that there must be another category of movement that does indicate continued life. He writes:

It is evident that the Mishnah seeks to differentiate between two types of movement; movement which is devoid of vital significance, and movement which is indicative of life. The residual movement of a decapitated person or animal is described as a mere spasm and hence not indicative of life; the inference being that other forms of movement are indeed indicative that life is still present.<sup>15</sup>

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<sup>13</sup> Rabbi Shlomo Yitzchaki (1040 –1105), was a medieval French rabbi and author of a comprehensive commentary on the Bible and Talmud. See JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/rabbi-shlomo-yitzchaki-rashi> (last visited Mar. 20, 2020).

<sup>14</sup> Mishna *Ohalot* 1:6.

<sup>15</sup> *Id.*

In his view, the Mishna needed to identify the status of *pirkus* as an exception so as to affirm the underlying presumption that bodily movement is indicative of life.

Rabbi Bleich utilizes his distinction between vital and non-vital motion to explain Rashi's commentary on the passage in BT Yoma 85a. The passage in Yoma is as follows:

The Rabbis taught: [If, on Shabbat, a person is buried under rubble,] until what point does one check [to clarify whether the victim is still alive? They said: One clears] until [the victim's] nose. And some say: [One clears] until [the victim's] heart... Rav Pappa said: The dispute [with regard to how far to clear the rubble to check for signs of life applies when the digger begins removing the rubble] from below [starting with the feet] to above. But [if one cleared the rubble] from above to below, once he checked as far as [the victim's] nose he is not required [to dig further,] as it is written: "All in whose nostrils was the breath of the spirit of life" (Genesis 7:22).<sup>16</sup>

Rashi comments, clarifying the question, "until what point does one check [to clarify whether the victim is still alive?]," as follows: "if the person resembles a dead person in that he does not move his limbs." Rashi is providing a visual depiction of the scene. If the person is lying motionless, he may still be alive, and one should check in order to see if one can still save him or not. Rabbi Bleich, however, formalizes the explanation to support his distinction between vital and non-vital movement. He writes:

Thus, there arises a need for a distinction between motion which is a veridical criterion of life and mere *pirkus*, or convulsive movement, which is not a sign of vital animation. Accordingly, Rashi comments that other criteria of death assume significance only if the victim or patient appears to be dead as evidenced by the fact that 'he does not move his limbs' because, in the case of a person who has not been decapitated, bodily

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<sup>16</sup> BT Yoma 85a.

movement, in and of itself, is an absolute sign of vitality.<sup>17</sup>

Rabbi Bleich's reading of Mishna Ohalot serves a justificatory support for his understanding of Rashi's comment in BT Yoma 85a.

### III. HALAKHIC SOURCES THAT QUESTION WHETHER *PIRKUS* IS A NOVEL HALAKHIC CONCEPT

As seen above, according to Rabbi Bleich, "*pirkus*" as non-vital or convulsive movement connotes movement of a body part that has been separated from the body, implying that all bodily movement by a person whose body is still intact indicates "an absolute sign of vitality."<sup>18</sup> However, the Talmudic and halakhic literature does not always seem to support this view. There are instances in the Talmud where a person or animal displays bodily movement, yet is nonetheless declared as dead. There are also instances where the Talmud specifically uses the word "*pirkus*", yet the Talmudic discussion concludes that the person or animal is still very much alive. Given these examples, "*pirkus*" should not necessarily be viewed as a strict halakhic category. Rather, the term may be seen simply as describing convulsive movement, which is then deemed either indicative of continued life or mere spasmodic movement depending on context.

#### A. Examples Where Bodily Movement Is Not An Absolute Sign Of Vitality

In the passage in BT Hullin 21a, the sages attempt to determine when to establish that a given person or animal begins to impart ritual impurity, which arises contemporaneously with the person's or animal's death.<sup>19</sup> These cases challenge the clear boundary lines between life and death, since they are cases where the person or animal

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<sup>17</sup> 3 J. DAVID BLEICH, CONTEMPORARY HALAKHIC PROBLEMS, 182 (1989).

<sup>18</sup> *Id.*

<sup>19</sup> BT *Hullin* 21a. The comparisons between humans and animals in these discussions demonstrate that even while the Jewish tradition maintains that humans are qualitatively different than animals, death for both humans and animals occurs in the same ways.

imparts ritual impurity even when they show signs, i.e. movement, that may seem to indicate life. The passage reads as follows:

Rabbi Shmuel bar Nahmani says [that] Rabbi Yohanan says: If one ripped [a person] like [one cuts] a fish, [lengthwise, he] imparts impurity in a tent. Rabbi Shmuel bar Yitzhak says: And [that is specifically if he was ripped] from his back. Shmuel says: If one rendered [the animal like] a shard [*gistera*] [by cutting it in two widthwise, its halakhic status is that of] an unslaughtered carcass [*nevelah*]. Rabbi Elazar says: If the thigh [the hind leg of the animal] was removed and its recess is obvious, it is an unslaughtered carcass [*nevelah*]. What are the circumstances of its recess being obvious? Rava said: [It is] any [situation] where [the animal] is collapsed [and even so its hind leg] is visibly lacking.<sup>20</sup>

Rashi comments on the phrase, "imparts impurity in a tent," that this is the case, even if the person is still moving (*mefarkes*).<sup>21</sup> In this example, though the person's back has been severed lengthwise, his body remains intact. According to Rabbi Bleich's understanding of Rashi's comment from *Ohalot*, the person's movement should be "a veridical criterion of life" and not "mere *pirkus*." However, Rashi explicitly uses the term "*pirkus*" to explain the intact body's convulsions after the person has been declared dead. Similarly, Maimonides rules, "If [a person's] backbone is broken together with most of the surrounding flesh, he was torn apart like a fish from his back, he was decapitated, or he was cut in half from his stomach, he imparts impurity, even though some of his limbs are still making convulsive movements (*merafref b'echad m'eivaraiv*)."<sup>22</sup> Rabbi Yaakov ben Asher<sup>23</sup> in the *Tur*, Rabbi Yosef Karo, and Rabbi Yechiel Michel Epstein<sup>24</sup> seem to understand Maimonides and the Talmudic passage in the same way, since they all write with respect to a person

<sup>20</sup> *Id.*

<sup>21</sup> Rashi, BT *Hullin* 21a, s.v. "metameh b'ohel."

<sup>22</sup> *Hilkhot* *Tumat* *Met* 1:15.  
[https://www.chabad.org/library/article\\_cdo/aid/1517151/jewish/Tumat-Met-Chapter-1.htm](https://www.chabad.org/library/article_cdo/aid/1517151/jewish/Tumat-Met-Chapter-1.htm)

<sup>23</sup> Rabbi Yaakov ben Asher (1269-1343) was a well-known rabbi in the Holy Roman Empire and Spain.

<sup>24</sup> Rabbi Yechiel Michel ha-Levi Epstein (1829-1908) was a rabbi in Lithuania.



who suffers one of these fatalities, “even though he is still alive, he is considered as if dead.”<sup>25</sup> It cannot be the case that these rabbis are proffering that one treat a person who is dying as if dead, since such a suggestion would contradict the general Talmudic principle to value life, no matter how much a person has left. It would also contradict the explicit Halakha, found in the *Shulhan Arukh* (written by Rabbi Yosef Karo), which states “one in a dying condition is considered a living being in all respects ... And whosoever closes [the dying person’s] eyes before death [which may hasten death] is regarded as one who sheds blood.”<sup>26</sup> One must, therefore, understand the meaning of the phrase, “even though he is still alive, he is considered as if dead,” to mean that despite the fact that the person still shows indications of life, as demonstrated by his convulsions, these situations render a person to be deemed dead, and we should understand that any movement they make is not halakhically significant. As such, in this case, bodily convulsions, i.e. *pirkus*, have a different connotation than the one in the Mishna in Ohalot. In Ohalot, *pirkus* describes movement of a body part that was severed from the animal. Here, *pirkus* describes movement of the person himself. In both cases, movement is deemed not to be determinative of life, but it is not the *pirkus* itself – as opposed to other “vital” motion – that establishes the ruling. Rather, it is how the movement is understood within the greater context of the situation.

With respect to conceiving of “*pirkus*” as a halakhic category, Maimonides’ ruling is interesting in two respects. First, his ruling does not differentiate between bodily movements of a limb that has been separated from the body or bodily movements of a corpse that is intact. In all of these cases, bodily movement is not considered halakhically significant to indicate continued life. Second, if “*pirkus*,” as non-vital movement, were an established legal category, the term should be used consistently so as to make explicit the legal ramifications in the event that it occurs. However, Maimonides does not use the term, “*pirkus*,” to describe the person’s bodily movements in this situation, even though Rashi does. Rather, he uses the term “*merafref*.”<sup>27</sup> In the Talmudic literature, the term “*merafref*” is not found with reference to human convulsive movements. The term refers to the fluttering of a

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<sup>25</sup> *Tur/Shulchan Arukh, Yoreh Deah 370; Arukh Hashulhan, Yoreh Deah 370:1.*

<sup>26</sup> *Shulhan Arukh, Yoreh Deah 339:1.*

<sup>27</sup> The term “*merafref*” is related to the term “*yerofafu*” in Job 26:11 (“The pillars of heaven tremble [*yerofafu*] and are astonished at His rebuke.”).

bird's wings,<sup>28</sup> or the ripples on the surface of milk on a plate.<sup>29</sup> With respect to the fluttering of a bird's wings, the Talmud explicitly likens it to *pirkus*.<sup>30</sup> It therefore does have the connotation of convulsive movement, but it does not mean that these terms are formal legal concepts. It is more likely that they are synonyms that describe similar types of movements, though one may be more appropriate to use in one situation over another.

The term "*mefarper*" rather than "*merafref*," on the other hand, is oftentimes used in the Talmud to refer to human convulsions that are indicative of life at the moment but that death is inevitable and imminent. Examples include the following:

"...The father of the boy[, i.e., the young priest who was stabbed,] came and found that he was convulsing (*mefarper*). He said: May [my son's death] be an atonement for you. But my son is still convulsing (*mefarper*) [and has not yet died. Therefore,] the knife[, which is in his body,] has not become ritually impure [through contact with a corpse]...."<sup>31</sup>

"The Sages taught, [regarding the verse 'If one be found slain in the land which Hashem your God has given you to possess it, lying in the field' (Deuteronomy 21:1): 'Slain' (*hallal*) [indicating one killed by a sword,] but not one who was strangled (*hanuk*); 'slain,' (*hallal*) but not [one who was found still] convulsing (*mefarper*)."<sup>32</sup>

"The Sages taught...: How does the court describe testimony based on conjecture? The court says to the witnesses: 'Perhaps you saw this man about whom you are testifying pursuing another into a ruin, and you pursued him and found a sword in his hand, dripping with blood, and the one who was ultimately killed was convulsing (*mefarper*). If you saw only this, it is as if

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<sup>28</sup> *Bereshit Rabbah* 2:4.

<sup>29</sup> *Bereshit Rabbah* 4:8.

<sup>30</sup> *BT Hullin* 38b.

<sup>31</sup> *BT Yoma* 23a. <https://www.sefaria.org/Yoma.23a?lang=bi>.

<sup>32</sup> *BT Sotah* 45b. <https://www.sefaria.org/Sotah.45b?lang=bi>.

you saw nothing, and you cannot testify to the murder,<sup>33</sup>  
since your testimony is conjecture.”<sup>33</sup>

Maimonides uses the term “*mefarper*” to connote just these situations where death is inevitable and imminent, but the person is still alive.<sup>34</sup> As such, Maimonides’ use of the term “*merafref*” in the particular instance of the Halakha above may be a scribal error, in which case one can assume the proper word should be “*mefarper*.” Though, if this were true, then “*mefarper*” would not exclusively imply that the person convulsing is still alive at the moment, which runs contrary to the use of the term in the Talmud. Alternatively, Maimonides may have intentionally chosen “*merafref*” instead of “*mefarper*” to imply that the movements in the Halakha above are seemingly indicative of life, yet are not absolute signs of vitality. Rather, in the instance where a person’s backbone is broken together with most of the surrounding flesh or he was torn apart like a fish from his back, bodily movement should be seen in the same way as it is in a case of decapitation, which is also included in Maimonides’ list, i.e. as not halakhically relevant. This does not make “*merafref*” a specific legal category for Maimonides, just as “*pirkus*” is not a specific legal category for him. Both terms, whether they indicate movements of a body part that is separated from the whole or movement of the whole body itself, are simply synonyms for spasmodic movement, whose halakhic implications should be interpreted in light of the context of the situation.

The following is an example where *pirkus* is used to describe bodily movement of humans, which may support Rabbi Bleich’s understanding of “*pirkus*” as non-vital movement, yet it is not

<sup>33</sup> *Sanhedrin* 37b; *Shevuot* 34a.

<sup>34</sup> See *Hilkhot Rotzeah u’ Shmirat Nefesh* 3:9, “Similarly, a person is liable for execution ... [if] he held his hand over a colleague’s mouth and nose until he left him [convulsing] (*mefarper*), unable to live...the person who caused the victim’s death is executed; it is as if he had strangled him by hand.” See *id.* at 9:11, “[Deuteronomy 21:1 states:] ‘[w]hen a corpse (*hallal*) is found...’ *Hallal*, [the term used for corpse indicates a person slain with a sword,] and not strangled to death, nor a person convulsing (*mefarper*); these are not implied by the term *hallal*.” See also *Hilkhot Sanherin* 20:1, “A court does not inflict punishment on the basis of conclusions which it draws, only on the basis of the testimony of witnesses with clear proof. Even if witnesses saw a person pursuing a colleague, they gave him a warning, but then diverted their attention, punishment is not inflicted on the basis of their testimony. Or the followed the pursuer into a ruin, and they found the victim slain, yet in convulsing (*mefarper*), and the sword dripping blood in the hand of the killer, since they did not see him strike him, the court does not execute the killer based on this testimony.” Concerning this and the like, *Exodus* 23:7 states: “Do not kill an innocent and righteous person.”

necessary that it does so. The Talmud notes that once a child is born, he inherits property from his mother if she dies. This statement implies that a fetus does not inherit property. The reason that a fetus does not inherit property is because it is presumed that a fetus will die *in utero* before the mother dies, and a deceased son does not inherit property from his mother or anyone else for that matter. The Talmud then questions the presumption that a fetus will die *in utero* before the mother dies by citing an incident where a woman died and then the fetus made three spasmodic movements (*pirkusi*). Regarding these movements, the Talmud cites Mar bar Rav Ashi, who states, "[j]ust as with the tail of the lizard, which convulses (*she'mefarkeset*) [and the movements do not indicate life for the tail, so with the movements of the fetus.]"<sup>35</sup> However, it may be that Mar bar Rav Ashi was not disregarding the convulsions of the fetus because he conceived of *pirkus* as a halakhic category per se. Rather, he could have been dismissing the particular *pirkus* of the fetus as being similar to the particular *pirkus* of the lizard's separated tail. In both instances, the movement would be significant, were it not for other factors. For the lizard's tail, the factor is that it is no longer connected to a living animal. For the fetus, the factor is that it cannot live independently without the support of its mother until it is (about to be) born. This analysis is in line with the position that the fetus is halakhically considered to be a like the thigh of the mother,<sup>36</sup> which in this example are both still attached.

### B. Examples Where "*Pirkus*" Is A Sign Of Vitality

In addition to the existence of Talmudic passages where bodily movement, according to Rabbi Bleich's understanding, should be seen as a sign of vitality but nevertheless is not, there are also Talmudic passages where the presence of "*pirkus*" does indicate that the animal or person is still alive. For example, with respect to *pirkus* of animals, the Mishna relates, "one who slaughters an impure animal for a gentile and it is still twitching (*mefarkeset*), it can render impure with the impurity of foods (*tumat okhlin*),<sup>37</sup> but not with the impurity of

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<sup>35</sup> BT *Bava Batra* 142b.

<sup>36</sup> BT *Hullin* 58a.

<sup>37</sup> *Tumat Okhlin* are contracted by food items that become ritually defiled by contact with a dead body and can then defile other food and drink.

carcasses (*tumat nevelah*) until it dies or until its head is chopped off.”<sup>38</sup> The reason why it can render impure with the impurity of foods (*tumat okhlin*) but does not have the status of *nevelah* is due to the different legal prohibitions for Jews and non-Jews regarding eating animals. At the moment of slaughter, the animal may not be eaten by the Jew because it is not a kosher animal. For Jews, however, ritual slaughter deems an animal to be dead, so that it may be eaten even if a Jew is religiously prohibited to do so for *kashrut* reasons (i.e. considered as food). For a non-Jew, the animal is prohibited because it is still considered alive, and non-Jews are prohibited to eat live animals according to Noahide law. In this example, *pirkus* is halakhically significant as an indication that the animal is still alive, albeit for the purpose of non-Jews’ observance of Noahide law. Based on this, “*pirkus*” would not connote a legal category of “non-vital” motion, since the movement is an indication that the animal is deemed alive, at least according to Noahide law even if not according to Halakha.

With respect to *pirkus* of fowl, the Talmud gives the following ruling: If one trampled fowl with his foot, or threw it against a wall, or if an animal crushed it, and it is convulsing (*mefarkeset*); if the animal [remained alive] from the time of the injury until twenty-four hours later, and a person then slaughtered it, it is kosher [provided no other defect is found that would have caused it to die within twelve months, which would render it a *treifa*]. Rabbi Elazar bar Yannai said in the name of Rabbi Elazar ben Antigonus, “It requires examination [after slaughtering, to make sure it does not have a defect that would render it *treifa*].”<sup>39</sup> Maimonides rules according to the anonymous statement,<sup>40</sup> and Rabbi Karo rule according to Rabbi Elazar ben Antigonus.<sup>41</sup> Yet, according to both Maimonides and Rabbi Karo, the animals movements are not simply relegated as halakhically irrelevant. Rather, in this instance, the fowl’s movement is an indication that it is still very much alive, since the fowl may be slaughtered afterwards.

<sup>38</sup> Mishna *Taharot* 1:4.

<sup>39</sup> BT *Betzah* 34a. See also BT *Hullin* 56a.

<sup>40</sup> See *Hilkhot Shechitah* 9:20. Maimonides rules according to the anonymous statement because it is an explicit Mishna.

<sup>41</sup> *Yoreh Deah* 58:2. See also HALAKHAH. BACH. YOREH DEAH, SIMAN 58:2, [https://www.sefaria.org/Bach%2C\\_Yoreh\\_Deah.58.2.1?lang=bi&with=all&lang2=en](https://www.sefaria.org/Bach%2C_Yoreh_Deah.58.2.1?lang=bi&with=all&lang2=en).

With respect to interpreting *pirkus* as a sign of vitality for people, the Talmud states, "Why is it taught in a baraita: If one unintentionally cut the two passageways of another person, or most of the thickness of the two, he is not exiled? [The wound is definitely fatal. Therefore, one who unintentionally wounds another in this manner should be exiled. The Talmud answers: With regard to that baraita,] Rav Hoshaya said: We are concerned that perhaps the wind aggravated his condition and actually caused his death, in which case the perpetrator is not culpable for the death and should not be exiled. Alternatively, perhaps [the victim] hastened his own death."<sup>42</sup> The Talmudic discussion concludes by saying that the practical difference between the two possibilities is either where someone cuts the victim's trachea and esophagus in a house of marble, which was closed on every side so that there was no wind, and the victim convulsed (*v'parkeis*). In this situation, the person's convulsions (*pirkus*) might have hastened his own death. On the other hand, in a case where someone cuts the victim's trachea and esophagus outside where there is wind, and the victim did not convulse at all (*v'lo parkeis*), the wind may be seen as a contributing factor to the person's death. According to the reasoning of the Talmudic discussion, convulsion (*pirkus*) is interpreted to indicate that the person is still alive, for only then can the movement in fact contribute to the person's death.<sup>43</sup> In fact, Maimonides rules, "Even if the killer severed the victim's windpipe and esophagus, if the victim remained alive for a short while, the killer is not exiled on his accord. Therefore, it is only when the victim died without *pirkus* at all, or was killed in a place that was not open to the wind - e.g., a closed marble building, or the like - that the killer is exiled."<sup>44</sup> Based on this Talmudic passage and Maimonides' ruling, *pirkus* in this case is an indication that the person is still alive. It is not used as a halakhic category which connotes non-vital movement.

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<sup>42</sup> BT *Yevamot* 120b-121a. See also TALMUD. YEVAMOT DAF 120b.15, THE WILLIAM DAVIDSON TALMUD, <https://www.sefaria.org/Yevamot.120b.15?lang=bi&with=all&lang2=en>.

<sup>43</sup> BT *Yevamot* 121a. See also TALMUD. YEVAMOT DAF 121a. THE WILLIAM DAVIDSON TALMUD, <https://www.sefaria.org/Yevamot.121a.1-2?lang=bi&with=all&lang2=en>.

<sup>44</sup> *Hilkhot Rotzeach uShmirat Nefesh* 5:2. See also ROTZEACH USHMIRAT NEFESH - CHAPTER FIVE. (Trans. by Eliyahu Touger), [https://www.chabad.org/library/article\\_cdo/aid/1088921/jewish/Rotzeach-uShmirat-Nefesh-Chapter-Five.htm](https://www.chabad.org/library/article_cdo/aid/1088921/jewish/Rotzeach-uShmirat-Nefesh-Chapter-Five.htm).

#### IV. CONCLUSION

The purpose of this article is not to dismiss the position that cardiac activity and vital motion is a definitive signifier that a person is still alive. We recognize that the debate this topic engenders disagreement for the sake of Heaven (*machloket l'shem Shamayim*),<sup>45</sup> and the respective positions should be seen as words of the Living God (*divrei Elokim hayyim*),<sup>46</sup> even if one position may eventually become the main normative ruling in the future.<sup>47</sup> Nor have the authors of this article sought to appraise the concept of vital motion from a scientific or philosophical viewpoint. Rather, the authors' objective was to evaluate the assumption that the halakhic concept of vital motion can be inferred from the existence of a halakhic category of non-vital motion, i.e. *pirkus*. Through our analysis of the relevant authoritative sources of Jewish law, we believe that we have shown that *pirkus* is not a distinct or exclusive halakhic category. Rather, physical or physiological activity is understood in context as either meaningful or not. This finding challenges the assumption that one can infer the concept of "vital motion" from the concept of "*pirkus*." The concept of "vital motion" must therefore find different legal support upon which it can rely for juridical justification.

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<sup>45</sup> Mishna *Avot* 5:17.

<sup>46</sup> BT *Eruvin* 13b.

<sup>47</sup> *Id.*; see also BT *Berakhot* 36b, (which states, "u'Bet Shammai b'makom Bet Hillel, einu mishna.").