

A Response to Rabbis Dorff and Reisner

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This paper was submitted as a response to the responsa written by Rabbi Elliot Dorff and Rabbi Avram Reisner, which were adopted by the CJLS in December 1990.

I find myself in a very unusual position. On the theoretical differences between Rabbis Reisner and Dorff, I am in greater sympathy with Rabbi Reisner's position. On the practical differences between the two, I find myself aligned more with Rabbi Dorff.

A brief explanation is in order.

As I see one of the central differences between the two, Rabbi Reisner presents the category of גוסס as the exclusively governing category, and Rabbi Dorff presents the possibility that טריפה may be an applicable category, though he does not preclude seeing גוסס as the primarily applicable category. In this dispute, I agree with Rabbi Reisner.

The centrality of גוסס as the governing category, however, is not the only critical factor from which his entire analysis flows. As he himself states in the מאי בנייהו, Rabbi Reisner insists on the inviolability of the principle of protecting even חיי שעה. Rabbi Reisner rejects putting "the quality of life, benefits and burdens analysis into the mouth of the Tosafot" on the basis of their claim in *Avodah Zarah* 27b (Reisner paper, note #22).

Rabbi Reisner must reject that possible reading of the *Tosafot* because he understands חיי שעה to be inviolable. He argues the position eloquently and quite persuasively, but, I think incorrectly. Rabbi Reisner himself refers us to the *Tzitz Eliezer* on this subject, but highlights only his apparent conclusion. In *Ramat Raḥel*, *siman* 28 (it is this which Rabbi Reisner calls "V.28"), and in Vol. 8, *siman* 15, chap. 3, Waldenberg quotes many sources which intimate that the principle of חיי שעה may not be as inviolable as Rabbi Reisner holds.

I fully understand wanting to hold חיי שעה absolutely inviolable. It appeals to us both theologically and ethically. Even more, affirming it

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prevents concern for the slippery slope. In truth, though, it cannot be affirmed with such certainty as Rabbi Reisner does. And, once that fact is recognized, the claim of the *Tosafot* on *Avodah Zarah* 27b becomes more and more tenable.

In the specific instances to which the *Tosafot* refer, the benefit of the individual is for life. But only the *a priori* assertion that *חיי שעה* is always inviolable makes Rabbi Reisner's deduction that the *Tosafot* cannot be intimating a benefits and burdens analysis necessary.

Rabbi Dorff, in fact, recognizes this fallacy. Indeed, later in his paper Rabbi Dorff actually prefers the argument as the basis for one of his positions. My objection to Rabbi Dorff's theoretical stance lies in his willingness to consider *טריפה* as an operative category for this discussion.