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 כְּתַבָּה וַגַּם as the exclusively governing category, and Rabbi Dorff presents the possibility that כְּתַבָּה וַגַּם may be an applicable category, though he does not preclude seeing כְּתַבָּה וַגַּם as the primarily applicable category. In this dispute, I agree with Rabbi Reisner.

The centrality of כְּתַבָּה וַגַּם as the governing category, however, is not the only critical factor from which his entire analysis flows. As he himself states in the עֵין בְּני יָהוֹ, Rabbi Reisner insists on the inviolability of the principle of protecting even כְּתַבָּה וַגַּם. 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 אבּוֹדָה זָרָה 27b (Reisner paper, note #22).

Rabbi Reisner must reject that possible reading of the Tosafot because he understands כְּתַבָּה וַגַּם 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 רָמַת רוֹפֵל, 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 כְּתַבָּה וַגַּם may not be as inviolable as Rabbi Reisner holds.

I fully understand wanting to hold כְּתַבָּה וַגַּם absolutely inviolable. It appeals to us both theologically and ethically. Even more, affirming it...
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 חיה היא 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 חיה והימין as an operative category for this discussion.