

“My Children Have Prevailed Over Me”  
(A re-editing of the talks delivered by  
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Introduction

I

This past summer, one of the great Torah scholars and religious leaders in Israel, Rav Yehuda Amital, died at the age of 86. A survivor of the Holocaust, he studied at Yeshivat Hevron and he married the granddaughter of the great Rav Isser Zalman Meltzer. In 1969, he founded Yeshivat Har Etzion. Two years later he invited Rav Ahron Lichtenstein, the protégé and son-in-law of the Rav, to join him as *Co-Rosh Yeshiva*. For almost 40 years these two spiritual giants shared the same crown of Torah in love, harmony, and mutual respect. It was quite literally, a marriage made in heaven and a glorious tribute to the character, idealism, loyalty and *menschlichkeit* of both Rabbis.

As great a *Talmid Chacham* as Rav Lichtenstein is – arguably the greatest in the world today – Rav Amital carved out his own special place in the Torah world of modern Orthodoxy. Brilliant and insightful in all aspects of Torah, he was most revered for his human qualities. Respected as he was for his knowledge and the ability to communicate it, he was even more beloved by the students at the Yeshiva because of his humanity, humility, *simcha shel mitzva* and fearless leadership in ensuring that the Orthodox community in Israel served as a *Kiddush HaShem* in its connection to the State of Israel and the general population of Israelis.

This summer, we lost Rav Amital, but not his ideas or the model of Judaism that he represented. It is some of those ideas and that model that I would like to share with you. I can best do so by referencing one of the most famous discussions in the Talmud and then presenting Rav Amital’s unique interpretation of it.

II

In the Tractate Bava Metzi’ah (59b) there is a famous dispute between Rabbi Eliezer and the sages. Here is the text of that controversy as translated and explicated in the Art Scroll Talmud:

We have learned in a *Mishnah* that if someone cut sections (for an oven) and put sand between the sections in order to cement them together and the oven then came in contact with *tum’ah*, Rabbi Eliezer declares it to be *tahor*, while the sages declare it to be *tamei*.

(There is a basic rule that an item cannot be susceptible to ritual impurity (*tum'ah*) if it is not a vessel i.e. if it cannot hold contents. Only a vessel can become *tamei*. Rabbi Eliezer is saying that this oven is simply a collection of pieces and, therefore, it does not constitute a vessel while the sages are saying that since it functions like a vessel, it is a vessel and, therefore, it is susceptible to *tum'ah*.)

This controversy is known as the oven of the coiled serpent (*tanur shel achnai*). The coiled serpent refers to how the sages surrounded the oven with discussions like a coiled snake.

The Talmud then continues to relate how the controversy became more acute. Rabbi Eliezer advanced all the arguments in the world to defend his lenient ruling but the sages would not accept them. He said to them: "If the *Halacha* accords with me, let this carob tree prove it," whereupon the carob tree was uprooted from its place and moved 100 *amos* (about the length of a football field). . . The sages said to him: "We do not accept proof from a carob tree." He then said to them: "If the *Halacha* accords with me, let this water canal prove it," whereupon the water in the canal flowed backward. The sages said to him: "We do not accept proof from a water canal."

Rabbi Eliezer then said to them: "If the *Halacha* accords with me, let the walls of this study hall prove it," whereupon the walls of the study hall leaned and were about to fall. Immediately, Rabbi Yehoshua rebuked the walls and said to them: "If Torah scholars vie with one another in discussions about *Halacha*, what business is it of yours?" The walls, therefore, did not fall, out of respect for Rabbi Yehoshua. But neither did they right themselves out of respect for Rabbi Eliezer. They still continue to lean to this day.

Rabbi Eliezer then said to the sages: "If the *Halacha* accords with me, let Heaven prove it," whereupon a Heavenly voice proclaimed: "What argument do you have with Rabbi Eliezer whom the *Halacha* follows in all places!" Upon hearing this, Rabbi Yehoshua stood on his feet and declared: "The Torah is not in Heaven."

The *Gemara* then explains that the concept "It is not in Heaven", means that we pay no heed to a Heavenly voice in matters of *Halacha*, for the Torah was already given to mankind at Mt. Sinai. In other words, God wrote in the Torah that all decisions should be rendered according to majority rule and since the majority of the sages dispute Rabbi Eliezer's position the ruling goes against him regardless of any Heavenly intervention.

Rabbi Nassan met Elijah the Prophet and asked him: "What was God doing at that moment when Rabbi Yehoshua rejected the heavenly signal and repudiated the ruling of Rabbi Eliezer?" Elijah responded: "He (the Holy One) was smiling and said: "Nitzchuni banai - "My children have prevailed over me; Nitzchuni banai – my children have prevailed over me."

What is the meaning of this response of God as reported by Elijah? It appears to be that God has *nachas*, as it were, that his children have prevailed over him in interpreting the Torah and that they actually override God's opinion.

On the surface, it would appear that God is saying that once He gave the Torah to us. It is no longer in God's hands. It belongs to the Jewish people. The *Halachic* scholars in every generation have to decide what the Torah means, to interpret its words even if it means overriding God's opinion or original intention, as it were. What the scholars say the Torah means is what the Torah means.

Any legal system works this way. The Constitution of the United States essentially means whatever the Supreme Court Justices in a given generation say it means. It is up to the judges in every generation to interpret the constitution. Similarly, the Written Law means what the Rabbinic authorities of the Oral Law say it means. That is the living tradition that God gave to us at Mt. Sinai.

This is the way the controversy in the Talmud, known as the Oven of Achnai, is generally read and interpreted. Rav Amital, however, in a Rosh Hashana discourse, delivered some years ago and summarized this past Elul by his student, Shlomo Zuckier, (Editor in Chief of Yeshiva University's Kol Hamevaser) understood this Talmudic passage on another level entirely.

What, he asked, were Rabbi Eliezer and the *Chachamim* really arguing about? What is the essence of the dispute about whether an oven put together with pieces is an oven or not, and therefore, susceptible to *tum'ah* or not?

Rabbi Eliezer says that there is an objective truth operating here. Objectively, this oven is a *pot pourri* of shards; it is a bunch of pieces glued together. Hence it is not a vessel which means it lacks the ability to become *tameh*.

The *Chachamim* agree that Rabbi Eliezer is right from an objective point of view. Subjectively, however, from a human perspective, he is all wrong. This collection of pieces looks like an oven, functions like an oven and, therefore, is an oven. As such, it is classified as a vessel and it can become *tameh*.

Where is God in all of this? Rav Amital claims that God essentially agrees with Rabbi Eliezer because God functions on a level of objective truth. However, when God smiles and says: "*Nitzchuni banai* – my children have prevailed over me," what he is really acknowledging is more than simply a majority that is overruling His opinion. He is saying that humanity cannot live life on a level of absolute, objective truth. Human beings function on a subjective level and we can only try our best; and God happily accepts that effort. Ultimately, God agrees that the *halacha* should be decided that way, taking into consideration human needs, human strivings and human failings.

I had many discussions about *Halacha* with Rav Amital. I found that he invariably ruled with the human condition in mind. Let me present two examples of Rav

Amital's subjective approach – one very serious, the other somewhat humorous though no less serious for the person involved.

Let us take the serious one first. A secular Jewish family came to Israel from the former Soviet Union and settled in Efrat. One of the two sons in the family was about to be married but his brother, an avowed atheist and a *farbrenter* Communist, told him that if, God forbid, he (the marrying brother) should die childless, he (the unmarried brother) will refuse to participate in the *chalitza* ceremony which is necessary in order to release the widow to marry again. To him, the ceremony was repulsive and barbaric and he was adamantly opposed to participating in it.

By way of further clarification, the ceremony of *chalitza* is extremely rare all over the Jewish world but not necessarily so in Israel. In Israel, where young men serve in the army and, therefore, their lives are in danger, it is, unfortunately, not so rare for a man to be killed in action while his wife is childless. The wife needs *chalitza* to be performed by a surviving brother, if one exists, in order for her to be able to marry again.

Rabbi Shlomo Riskin, who was to be the officiant at the marriage ceremony, did not want to take this responsibility upon his shoulders and ignore possible consequences. He took the matter to Rav Amital. Rav Amital ruled that the young man should marry his bride conditionally (*al tenai*). When putting the ring on his bride's finger, he would say: "You are wedded unto me with this ring according to the law of Moses and Israel on condition that if I die before you have given birth to a child, the marriage is nullified *ab initio*. In effect, the marriage would be annulled from the moment it began.

The subject of conditional marriages is discussed in the Talmud but, in general, the *Halachic* authorities of every generation rejected such marriages. They did not want to see marriages annulled by a condition being unfulfilled. Rabbi Amital ruled against this *Halachic* tradition because of his sensitivity to the couple.

A second example: A young boy who grew up in a relatively non-religious home had a dog who was very close to him. The boy began to attend yeshiva and eventually became more observant and discovered that on *Shabbat* he had a problem because animals are considered *muktsa* and he felt that perhaps he was not permitted to pet his dog on *Shabbat* and *Yom Tov*. The boy noticed how forlorn the dog was on those holy days because of this lack of personal contact so he approached Rabbi Riskin and asked him whether in fact he was permitted to pet his dog on *Shabbat*. Rabbi Riskin asked a prominent Rosh Yeshiva and the answer was that, although the Rosh Yeshiva felt bad for the boy and bad for the dog, the *Halacha* is the *Halacha* and animals are *muktsa* on *Shabbat* and *Yom Tov* and, therefore, the boy should not pet his dog. Rabbi Riskin had no choice but to accept the ruling about which he had inquired but he said to the boy that the boy was under no such restriction and he suggested that the boy go to Rav Amital and ask him. Rav Amital ruled that the boy could, in fact, pet the dog on *Shabbat* and *Yom Tov*. Presumably, Rav Amital considered the principle of *Tza'ar ba'alai chaim* (pain for an animal) to override whatever prohibition might be involved in petting a dog

on *Shabbat* (I repeated this *p'sak* to Rabbi Shlomo Chaim HaCohain Aviner while I was in Israel for Sukkot and Rav Aviner told me that Rabbi Shlomo Zalman Auerbach, of blessed memory, a great *posek* in Israel, ruled similarly.

Rav Amital is not alone in rendering *Halachic* decisions based on subjective considerations. I will present three poignant examples of other rabbis ruling subjectively when approached about religious rulings, keeping in mind the human condition and the context from which the questions arose.

First example: A boy from a secular family of Soviet Jews was being prepared for his Bar Mitzvah in Jerusalem. He was going to read the *Haphtara*. Two days before the *Shabbat* of his Bar Mitzvah it was discovered that his teacher had made a very unfortunate mistake. He taught him the *Haphtara* which was read the previous week. The problem was brought to the attention of Rav Shlomo Zalman Auerbach who ruled that the boy should read the *Haphtara* for which he was prepared, one week late. Presumably, Rav Auerbach took into consideration the fact that reading the correct *Haphtara* on any given *Shabbat* is a rabbinic requirement, whereas the Torah principle of *kevod ha-beriot* – consideration for the feelings of a human being – overrode the rabbinic requirement. On the following day, the *Shabbat* of the Bar Mitzvah, Rabbi Auerbach showed up in the Bar Mitzvah boy's *shul*. He was there, presumably, to make sure that nobody raised an objection about the reading of the wrong *Haphtara*.

Second example: An even more poignant situation was brought to Rav Auerbach which demonstrated his sensitivity toward the human condition in deciding Jewish law. Rav Auerbach was known to be extremely strict on the subject of abortion. With the possible exception of rape, he would not rule leniently. A woman came to him in great distress. She had just learned that she was carrying a Tay Sachs fetus. She told Rav Auerbach that she had six children and that she and her family could not possibly handle having a Tay Sachs baby. Rav Auerbach said to her: "Don't ask me that *she'ela* (question)! Go down the block to Rav Eliezer Woldenberg and ask him the question. Rav Auerbach knew well that Rav Woldenberg was known to be much more lenient on the subject of abortion where there was great distress in the family. (I actually heard this story from a teacher in Ramaz who heard it himself as part of a *shiur* delivered by Rabbi Hershel Schachter. He told me that Rav Schachter was crying as he told the story.)

Third example: My maternal grandfather, Isadore Schlang, of blessed memory had prostate surgery in his mid-seventies. At that time, one stayed in the hospital for ten days to two weeks with a catheter and a bag. My grandfather was quite upset that he couldn't put on *tephillin* because he knew that that the donning of *tephillin* requires a *guf naki* (a clean body). He asked me to ask Rav Soloveitchik whether he could put on *tephillin*. I called the Rav and told him the problem. His answer was immediate. It's true, he said, that *tephillin* requires a *guf naki*. However, I met your grandfather. He is a sincerely religious man. For him putting on *tephillin* will speed his recovery. Tell him to cover everything with a sheet and put on *tephillin* and may he have a *refu'ah shleima*.

This was a *p'sak* in the subjective world in which human beings live and a smiling God will surely say: "*Nitzchuni Banai* – my children have prevailed over me."

This was Rav Amital's approach. He was totally committed to *Halacha*, but he was passionate about people. He was Hillel rather than Shammai. He was very loyal to Torah but he had a special sensitivity to people.

He loved to quote a story about the Ba'al Ha-Tanya who was once studying Torah when he heard a baby crying in the next room. He stopped studying, went to comfort the baby and then returned to his Chumash. He noticed that his son was also studying and never moved. He asked him why? The son said, "I was so immersed in Torah that I didn't hear the baby cry. The Rebbe responded, "If you were so immersed in Torah that you didn't hear a baby cry, it's a sign that there is something wrong with your study of Torah.

As Modern Orthodox Jews, we should heed this advice. Let us never be so absorbed in Torah that we do not hear a baby's cry.