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 From Sukkah to Ma'akeh  
 The Halachah of Housing

Jill Jacobs

Damian\*, age eleven, recently moved into a transitional housing center in Manhattan. Though obviously bright and gifted at math, he cannot read. Because of his family's frequent moves, he has never stayed in any one school long enough to learn the basics. By now, Damian is so frustrated and embarrassed by his inability to read that he resists efforts to teach him and shies away from situations that require reading. While he is adjusting well to his new school, it is unclear how long he will remain there before his family moves again. Maryse\*, a resident of a city-owned apartment in Central Harlem, lived without heat or hot water for three months last year. After vandals broke into her building and cut off the heat supply, the city failed to respond to repair requests. While waging her battle against the city, Maryse became depressed and unable to work. Now that her building has finally been repaired, she is working again and has even discovered her voice as a writer.

*\* Names have been changed.*

Maryse and Damian are typical of the dozens of children and adults I have encountered while working with two organizations that advocate for the rights of tenants in Central Harlem. Though not homeless, both Maryse and Damian have spent much of their lives in inadequate or impermanent housing. The instability of their housing situations has created even larger educational, psychological and economic problems.

As a Jewish community, we are well aware of the problem of homelessness. Many synagogues operate or support shelters. We send children and teenagers to deliver food to those on the street. Rarely, however, do we consider the needs of those who are housed, but whose housing is so inadequate or temporary that it is virtually impossible for them to lead a fully functional life.

Housing issues tend to be extraordinarily complicated, and there is little consensus about the best option for low-income housing. Cities have experimented with everything from housing projects to vouchers to mixed-income housing. To complicate the situation further, the lines between permanent and temporary housing are often blurred. Transitional housing centers, such as the one in which Damian lives, provide residents with social services and aim to help them to find permanent apartments; however, because of the lack of affordable housing, particularly in cities such as New York, many families spend years in such centers. The same is true of shelters and housing projects. Additionally, while such housing is supposed to protect inhabitants from the dangers of the street, these residences often prove to be more dangerous than the street. Recent controversial decisions in cities such as Chicago and San Francisco to raze some of their largest and most crime-ridden housing projects have brought public attention to one of the

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paradoxes of public housing. On the one hand, public housing offers emergency shelter for those who might otherwise be homeless. On the other hand, enormous housing projects impose new dangers on their residents.

A close reading of Jewish sources offers some help in untangling these complicated issues. This help must come by way of analogy, because biblical laws of poverty are surprisingly silent on the question of housing. Aside from a brief citation in Isaiah 58:6–7 "This is the fast I desire ... to share your bread with the hungry, and to take the wretched poor into your home; when you see the naked to clothe him, and not to ignore your own kin," the Bible (as well as later rabbinic sources) tends to focus on our responsibility to give money and food to the poor but generally ignores the question of shelter. Yet homelessness as a metaphor is a repeated theme in Jewish sources. We can use the metaphor of the Jews as a homeless people as well as other texts that hint at housing issues, as a guide to creating a Jewish housing policy.

After telling the story of the Exodus from Egypt, the Bible repeatedly enjoins the people of Israel not to impose their own experience on others. The first set of laws that the people receive after the revelation includes the injunction, "You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt" (Exodus 22:20). Later, the text forbids keeping slaves for more than seven years because "you were slaves in the land of Egypt and the Lord your God redeemed you" (Deuteronomy 15:15). The message is clear—we have experienced oppression and suffering and should not impose the same experiences on others. By extension, the Jews' extended homelessness during the exile from Israel should compel us to protect others from homelessness.

Two biblical laws lead us toward a more specific understanding of the nature, purpose, and appropriate construction of housing. For one week a year, we are commanded to live in sukkot, temporary shelters that offer only partial protection from the elements. These sukkot are

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The message is clear - we have experienced oppression and suffering and should not impose the same experiences on others.

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sufficiently strong to house us for the week, but fragile enough to remind us of the forty years of homelessness the Jews experienced between the Exodus from Egypt and the entrance into the land of Israel. In regard to permanent housing, the Bible requires that the roof of every house have a *ma'akeh*, a guardrail that prevents falls. Through these two sets of laws, we can begin to understand the nature of housing and to formulate a response to debates about low-income housing.

The sukkah derives its significance from the contrast between it and the permanent house to which one is accustomed. Without the existence of a permanent house, the designation of the sukkah as "permanent" for seven days would have little meaning. The sukkah, by definition, does not offer its residents full protection from the outside world. According to the mishnah, "For the seven days of Sukkot, a person makes his sukkah into a permanent residence and his house into a temporary residence. When it rains, at what point is one permitted to go inside? From the time that the food will be spoiled [by the rain] (Sukkah 2:9)." Living in the sukkah should not be a hardship; therefore, residents of the sukkah must have another place to go when conditions in the sukkah become unbearable. The sukkah must meet basic needs during the specific period for which it is ordained, but should not be construed as a permanent residence. Those living in the sukkah must always have a safer place to which they can return. In the same way, a shelter or transitional housing facility must meet basic needs for a short period of time, but should not be considered a long-term solution to the housing crisis. We need to acknowledge that, like a sukkah, these short-term solutions cannot offer all of the protections of a permanent house. Therefore, even while we offer emergency controls against homelessness, we cannot consider our work complete until we guarantee permanent housing solutions.

The commandment in Deuteronomy 22:8 to build a roof guard rail, or ma'akeh, emphasizes the supreme importance of human life. One whose house does not have a ma'akeh risks being held responsible for the death of one who falls from the roof. The ma'akeh thus teaches that we are responsible even for the indirect consequences of our actions. One cannot build a house and then abdicate responsibility for what happens there. The builder's primary concern should be the people who will inhabit or visit the house and the builder thus must take any precautions necessary to guarantee the safety of these people. The commandment of the ma'akeh also teaches that the purpose of a permanent house, unlike a sukkah, is not simply to provide shelter; the house must offer full protection to all who enter it. This protection must continue even long after the original builder has left; therefore, a landlord cannot ethically abandon a building and consider him/herself free of responsibility for the tenants who remain there. Those who construct housing projects that fail to protect the safety of the residents must assume responsibility when gangs and drug dealers take over. When cities rebuild and "gentrify" poor neighborhoods, city government has a responsibility to ensure that current residents do not lose their homes. Middle and upper-income tenants moving into these areas have a responsibility only to move into previously vacant apartments and not to displace existing tenants.

To the discussion of acceptable housing the twelfth-century scholar Moses Maimonides adds an important corollary: "One who rents a house to another is obligated to construct doors and to fix broken windows, to reinforce the ceiling, to fix broken beams, and to make a bolt and a lock and similar things which are produced by artisans and which are essential to dwelling in houses. The tenant is obligated to put up a ma'akeh and a mezuzah" (Mishneh Torah 6:3). This definition of a permanent, habitable residence stands in stark contrast to the rabbinic descriptions of the sukkah, which is exposed to the elements and whose roof cannot be solid. The landlord has specific obligations to make the residence habitable. Even if the tenant is desperate enough to accept a home that does not have sturdy walls or a secure lock, the landlord is responsible for providing these things. A landlord must operate according to an ethical standard, not according to what the market will bear.

What is surprising about Maimonides' statement is that he shifts the responsibility to build a ma'akeh from the builder to the tenant. Presumably, he would maintain the biblical mandate for a builder to erect a ma'akeh but, in the case of a pre-existing building, he assigns this responsibility to the tenant. If so, we can read his statement this way: the builder should provide solid walls, strong windows, effective locks, and a ma'akeh, but when the builder fails to do this, or when a building has fallen into disrepair, the landlord and the tenant divide these responsibilities. While the landlord must make the building habitable, the tenant also must take responsibility for his or her own safety and spiritual well-being. The landlord's role comes first, as it would be impossible to attach a ma'akeh or a mezuzah to a building without a steady roof or a door. The landlord's actions make it possible for the tenant to empower him or herself to assume responsibility for the continuing safety of the building.

Such relations between landlord and tenant take place within a larger social context. Rashi, the eleventh-century commentator, questions the juxtaposition in Deuteronomy 22 of a series of seemingly unrelated laws. The commandment to shoo away a mother bird before taking her eggs immediately precedes the law of the ma'akeh; the law immediately following the ma'akeh prohibits the mixing of different seeds on a single plot of land. Rashi suggests that this series of laws illustrates the principle that one mitzvah leads to another—one who follows the law regarding the mother bird will merit building a new house; one who constructs a ma'akeh will be granted land on which to plant.

In accordance with Rashi, we can read this series of laws as an instruction manual for establishing a society that respects the dignity of every individual. This society must begin with a commitment to respecting the dignity of even the most overlooked creature. The next step toward creating a permanent society—defined as a society sufficiently secure in its stability that it literally sets down roots—is the establishment of permanent houses. It is not acceptable for permanent residents of a place to live in sukkot. Stable housing must precede other indicators of permanence such as farms or long-term job commitments. Therefore, we must begin from the assumption that every person deserves decent housing, regardless of income, background, or ability to work. Only when every member of society has an adequate and permanent place to live can we begin to deal with productivity issues. Just as it would be impossible to expect people to establish farms before they have places to live, it is impossible to expect people to commit to jobs or job training programs before we meet their basic needs. As Maryse learned, it is difficult to concentrate on work and otherwise to live a productive life when one's housing is in jeopardy. This year, New Yorkers rightly protested Mayor Rudy Giuliani's plan to evict shelter residents who do not find jobs within thirty days; it is ludicrous to think that those without permanent shelter can commit to permanent jobs.

The examples of the sukkah and the ma'akeh teach us a number of Jewish principles about housing. First, true housing is, by nature, permanent. Second, the purpose of a house is to protect those within it. Third, the relationship between landlord and tenant should be one of partners. Finally, stable and protective housing is a necessary condition for the establishment of a just and permanent society.

These principles have particular bearing on a number of contemporary housing issues. When shelters are necessary, they should protect the safety of those who stay in them. This means that those who operate shelters have the responsibility not only for erecting a building, but also for guarding those who sleep there from theft and violence. Furthermore, our goal should always be to place people in permanent housing rather than allow shelters to become de facto permanent residences. Projects, however, are not appropriate permanent residences because they lack a metaphorical ma'akeh; just as an open roof invites falls, projects put their inhabitants in harm's way by demeaning them spiritually. Projects also are insufficient housing because so few of them have involved future tenants in the planning process, and thus have violated Maimonides' requirement for a tenant/landlord partnership.

Perhaps the housing option that best reflects Maimonides' dual emphasis on the responsibilities of the landlord and the tenant is one in which tenants manage their own buildings. Programs such as New York's Tenant Interim Lease Program (TIL) and St. Louis' Cochran Gardens allow tenants to act as their own landlords. In New York, TIL, which turns buildings into co-ops, has been a particularly effective option for residents of city-owned buildings at risk of being sold to for-profit landlords. When a for-profit landlord buys a cluster of buildings, s/he generally raises the rent as much as permitted and often moves tenants from one building to another or into smaller apartments within the same building. Managing their own buildings offers tenants the chance to control their rents and to guarantee stability for themselves. However, managing a building is difficult work. Therefore, we should also look for viable and empowering options for tenants not interested in full management responsibility.

As Jews, we need to commit ourselves to creating a society that provides dignified, affordable and permanent housing to all of its members. This means devoting communal and personal resources to policy issues, setting communal standards for the responsibilities of Jewish landlords, and formulating ethical principles for determining where to live. The memory of our own homelessness, as well as the examples of the sukkah and the

ma'akeh, should compel us to understand the fundamental nature of decent housing and to devote ourselves to creating a society that guarantees permanent housing to all.

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