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The Rental Controversy In Israel: A Time For Bold, Ethical Halachic Decision-Making

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Special to the Jewish Week

Much has already been written about the letter signed by dozens of communal rabbis in Israel proscribing Jewish residents from renting or selling property to gentiles on halachic grounds. It is clear from the context of the controversy that the motivation behind this provocative step is the concern for the demographic makeup of neighborhoods in the north of Israel, fueled by the fear of a concerted effort to undermine Jewish majorities in those locales. Predictably the letter aroused a great deal of condemnation and charges of “racism”; it also earned the more accurate critique of the conflation of a political agenda and presented as a (if not *the*) halachic view, a malady that has afflicted parts of the religious community in Israel since the debates surrounding territorial compromise in the late 1970s.

Irrespective of the political views one holds on the proper approach towards addressing the potential demographic challenge Israel faces in the north, the purely halachic sources on this topic are multi-faceted and do not lend themselves to the simplistic presentations that have been made by the communal rabbis in their letter. At the same time, some early critics of this letter did not address the sources cited in any direct fashion, utilizing slogans and gut reactions to the letter as their sole critique.

In contrast, my revered teacher, Rabbi Aharon Lichtenstein of Yeshivat Har Etzion and Rabbi Yaacov Ariel, the Chief Rabbi of Ramat Gan, give voice to the fact that the communal rabbis relied exclusively on the position of Maimonides in their ruling. Many other authorities within the tradition, however, have taken a different stand on the question of selling or renting property to gentiles in the land of Israel. By ignoring those voices within the tradition the original letter turns out to be a highly flawed document from a purely halachic perspective.

This reality of conflicting voices and views in the tradition is an important dimension of the discussion that needs to be honestly acknowledged and confronted. This issue is one of a host of contemporary matters (such as women’s communal leadership roles, the agunah crisis, attitudes toward non-Jews, and organ donation) where careful halachic research will yield many diverse views and from within the halachic tradition. And it is here that the real work begins and the real questions of halachic decision making arise.



Do the ethical and moral impulses that we have as morally sensitive human beings, famously termed, *hamusar ha-tivee* (natural morality) by Rav Kook and other rabbinic leaders such as the greatly lamented, Rabbi Yehuda Amital z"l, play a role in tipping the balance one way or the other? And what of the meta-halachic values such as *kevod habriyot*- (respect for human dignity), *ve-asita hayashar ve-hatov* (you shall do that which is good and upright), *derakheha darkhei noam* (it ways are ways of pleasantness) and *halilah la-el meiasot resha* (far be it that God should mandate evil) that are imbedded in the halachic system and that have been invoked by halachists throughout the centuries as critical factors in their decisions?

It is here that this episode should be a watershed for Modern-Orthodox rabbis and communities, to forcefully and boldly assert our perspective. We believe it is crucial that in these sensitive areas of halacha, the meta-halachic principles, as well as the natural ethical intuitions, outlined above be given great weight in making final halachic determinations.

As Rabbi Lichtenstein wonderfully articulated more than 25 years ago in a Hebrew essay:

“The parameters of ethics and its truths have an important role to play in understanding halacha and defining its boundaries. Of course a Jew must be ready to answer the call “I am here” if the command to “offer him up as an offering” is thrust upon him. However, prior to unsheathing the sword, he is permitted, and even obligated to clarify, to the best of his ability if indeed this is what he actually has been commanded...to the extent that there is a need and room for halachic exegesis, and this must be clarified -- a sensitive and insightful conscience is one of the factors that shape the decision making process. Just as Maimonides in his day, consciously, was assisted by a particular metaphysical approach to the world in order to plumb the depths of the meaning of Biblical verses, so too one can make use of an ethical perspective in order to understand the content of halacha and at times, to outline its parameters” (in the volume *Arakhim Bi-Mivhan Milhamah*)

This is the ethos that we so sorely need to inspire our halachic decisors and rabbis in the field and to which we should be educating our young rabbis and lay people as they become more and more learned in the richness of the halachic corpus and its cacophony of voices. If this lesson emerges from this entire incident than we can truly say in the words of the Bible: *mei-az yatzah matok*, from the sharp and bitter has emerged some sweetness.

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