Halakhah in America:

The History of City Eruvin, 1894-1962

by

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Introduction

The *Gemara* describes an encounter in Pumbedita between the Rabbah bar Rav Hanan and Abaye. Rabbah bar Rav Hanan asks Abaye why there was no *eruv* in the alleyway of two great rabbis [Abaye and Abaye's uncle, Rabbah]. In an attempt to vindicate himself and Rabbah, Abaye answers that it was not befitting Rabbah's dignity to go from door to door collecting the requisite matzahs, and that he, Abaye, was so preoccupied with his learning that he had no time to supervise the *eruv*.[1] Mordekhai ben Hillel, the renowned thirteenth century German rabbinic authority, infers from this *Gemara* that under normal circumstances when the rabbi of an area is not similarly preoccupied, he has an obligation to erect an *eruv* for his community.[2]

Eruv, a word that signifies 'mixture', 'combination' or 'fusion' will be used in this dissertation to refer to an *eruv hatzerot*, the joining of the residents of a limited area or space for the sake of establishing a localized neighborhood in which carrying objects is allowed on the Sabbath.[3] The *eruv* has been a focus of concern for rabbis from the Mishnaic period to the modern age. The ability to transform an area in which carrying on the Sabbath had been prohibited into an area in which carrying on the Sabbath is permitted created both challenges and opportunities for the rabbis in each

[1] *Eruvin* 68a
[2] *Mordekhai*, *Eruvin* no. 515.
[3] *Erubin*. Translated by Dr. Israel W. Slotki (London, 1938), xi.

generation. The concept of an *eruv* was introduced in the Mishnaic period in Roman Palestine in order to allow Jews to carry their possessions into the *hazer*, the semi-private courtyards around which several Jewish families lived, on the Sabbath. Since the courtyard was utilized as a shared space for many activities including eating and sleeping, there was a need to create a procedure to allow the residents of the *hazer* to carry their articles in and out of the *hazer* on the Sabbath. As the Jewish community expanded to include multiple adjacent courtyards, the rules of the creation of an *eruv* were adjusted to reflect the changing reality of these new Jewish "neighborhoods." Over time, as the Jews moved to Babylonia and subsequently expanded their communities in European and other Eastern countries to include larger neighborhoods throughout numerous cities, the rabbinic definition of an *eruv* was adapted to these changing realities.

The creation of the rabbinic *eruv* requires the physical enclosing of the desired area as well as a symbolic collection of a food item from every resident of this area. Each of these aspects of the *eruv* created certain challenges for the rabbis as the Jewish communities expanded beyond the traditional courtyards of Roman Palestine. Although the *Mishnah* describes the symbolic enclosing of the courtyard through the utilization of crossbeams and endposts at the entranceway to the courtyard, these structures no longer sufficed as the Jews moved outside of self-enclosed areas and into larger neighborhoods that were not enclosed as were the earlier courtyards. This change of circumstance required the rabbis to utilize natural or existing enclosures

such as city walls and bodies of water to create enclosures around these neighborhoods and later around the cities in which the Jews resided.

In addition, the Talmud explains that the sharing of food in the courtyard serves to unify the residents of the courtyard allowing them to establish an *eruv* community. However, as the Jewish community outgrew the courtyards, they often shared living areas with non-Jews or Jews who did not accept the principle of the *eruv*. Furthermore, once the Jews began to reside in neighborhoods throughout larger cites, the Jews became a minority within the area which was to be enclosed by the *eruv*. The rabbis addressed the creation of an *eruv* community in these new situations and adapted the original process of food sharing to meet the changing realia. Finally, the rabbis were required to confront the problems raised by the fact that this Jewish minority was attempting to create a "halakhic neighborhood" within a larger urban area controlled by a local governmental authority that might not be sympathetic to the concept of the *eruv*.

Yet, in spite of these challenges, *eruvin* were created by Jewish communities throughout the world. In Europe and the Middle East, rabbis met the challenges and the difficulties and spearheaded the creation of these *eruvin* in small Jewish neighborhoods and larger urban settings. As the medieval walls of many European cities were taken down in the nineteenth century, rabbis replaced these *eruv* boundaries with other natural or man-made boundaries. The invention of the telegraph in the mid-nineteenth century with its poles and wires that closely resembled the

original crossbeams and endposts of the courtyards of Roman Palestine presented potential new *eruv* boundaries in the modern city. However, this new option also raised many new halakhic issues that were a matter of heated dispute among the leading rabbis of the time.

As the Jews immigrated in increasing numbers to North America at the end of the nineteenth century, the rabbis were faced with the question of how to transplant the European tradition of community *eruvin* to their new cities. Interestingly, prior to 1970, only four city *eruvin* were created in North America; in St. Louis, The East Side of Manhattan, Toronto and Manhattan. These *eruvin* were established by Eastern European rabbis who based their arguments for the validity of these *eruvin* on the precedents that had been set by the rabbis of earlier generations and the actual *eruvin* that these rabbis had created.

This dissertation will address the evolution of the community *eruv* from the days of the courtyards of Roman Palestine to the modern period. It will explore and analyze the halakhic arguments that enabled the rabbis to adapt a rabbinic concept that originally had limited application into a broad practice that allowed tens of thousands of Jews throughout the centuries to carry on the Sabbath. How did these rabbis, through their adaptation of the original rabbinic sources and their creative ingenuity, apply the traditional sources to the new geographic realia that they found in each?

Although this work will evaluate the evolution of the halakhic history of communal *eruvin,* it will primarily focus on the community *eruvin* that were created in North America prior to 1970. On one hand, these *eruvin* were built based on the precedent of the earlier *eruvin*. Yet, at the same time, there were certain aspects of these *eruvin* that reflected the unique situation of American Orthodox Jewry during its developmental stages in North America. Studying the challenges of adapting the model of the earlier *eruvin* to American realities will enhance the understanding of the American Orthodox rabbinate of this period and its relationship both to the Orthodox laity and the broader Jewish and non-Jewish communities. Since 1970, there has been a proliferation of communal *eruvin* built in American cities and towns. These *eruvin* reflect the further development of Orthodoxy in America and deserve a separate study the parameters of which will be discussed in greater detail in the conclusion of this work.

The relationship of the American *eruvin* to the earlier *eruvin* raises several considerations. First, the American Orthodox rabbis utilized halakhic precedents that were established by the rabbis of earlier generations as they built *eruvin* throughout the world. How did these halakhic precedents apply to the American urban situation? Were there aspects unique to American cities that had not been addressed by earlier rabbinic authorities? How would the American Orthodox rabbis address these new issues? Would they seek counsel from the rabbis of Eastern Europe or would they attempt to resolve these issues on their own? Finally, as *eruvin* began to be created in

America, did rabbis who established the later American *eruvin* rely on the precedent of the earlier American *eruvin* or did they too base their work solely on the model of the earlier European *eruvin*? These questions reflect the place of the American Orthodox rabbinate in its early stages. Did these rabbis feel that they were merely a continuation of an earlier tradition or did they believe that it was their role to forge new *halakhic* ground in North America?

Furthermore, the interplay of *halakhah* and social factors as the underlying reason for the creation of these *eruvin*. The fact that otherwise observant Jews were carrying on the Sabbath even though there was no *eruv* was a concern expressed by the rabbis since the beginning of the Early Modern Period. There is no question that this issue was the impetus for the efforts of these European rabbis to create *eruvin* in their cities and towns. Yet, this concern played a special role in the consideration of the American rabbis. As the American Orthodox rabbis confronted an immigrant Jewish community that was often lax in their observance, the rabbis decided how to deal with this group whose ambitions and religious struggles they did not necessarily share. Although it is impossible to know why only four American *eruvin* were built during the decades in which Orthodox began to grow and expand in America, these four examples of *eruvin* offer important insights into this question. The rabbis who created these *eruvin* in St. Louis, Manhattan and Toronto were deeply concerned with the religious observance of the members of their communities. How did the social considerations impact on their decisions regarding the *eruv*? Did it merely lead them

to examine the practical possibilities of creating *eruvin* in their cities or did their interest in minimizing Sabbath desecration lead any one of these rabbis to offer more lenient halakhic positions in order to legitimize the *eruv*?

The question of the interplay of halakhic decision-making and social realities has been studied regarding many different aspects of Jewish communal activity throughout the centuries. As with previous studies, it is important to evaluate the manner in which the social realia helped to shape the halakhic decision without minimizing the value of the halakhic argumentation on its own terms. Therefore, in this dissertation, the halakhic material will be presented in its original form and the possible social ramifications will be evaluated separately. In this way, the study of the halakhic history will retain its independent validity. Yet, the social realia will not be downplayed or ignored.

Both of these considerations focus on the self-perception of the American Orthodox rabbis in terms of their roles as halakhic decisors and religious leaders in America; this rabbinic self-perception is an issue that is far broader than the topic of *eruvin*. It has ramifications for the general approach of these rabbis to a myriad of issues and underlies the discussion as to whether they chose a more restrictive approach to questions of Jewish practice in America or a more permissive one.[4] It

[4] For several treatments of this topic, see Jeffrey S. Gurock, *Orthodox Jews in America* (Bloomington, IN, 2009), Adam Mintz, "Is Coca-Cola Kosher? Rabbi Tobias Geffen and the History of American Orthodoxy," Rav Chesed: Essays in Honor of Rabbi Dr. Haskel Lookstein, edited by Rafael Medoff (Jersey City, NJ, 2009), II: 75-90. Marc

would seem that the rabbinic debates regarding creating *eruvin* in American cities serve as a prime example of the tendency of these immigrant American rabbis toward leniencies or stringencies in applying halakahic categories to new realities. Yet, the issues of creating an *eruv* were not new ones and did not, for the most part, require these rabbis to invent new halakhic categories or qualifications as they did in adapting traditional *halakhah* to the realities of American life in other areas. The *eruv* was a tradition with which these rabbis were familiar from Europe and a topic whose leniencies and stringencies had been debated since Talmudic times. The question that loomed was whether the rabbis would utilize their knowledge and possibly also their prior experience to build *eruvin* in America. The answer to this question will shed light on both the self-perception of these American immigrant rabbis and their willingness to be creative and innovative in a new and foreign country and culture.

There is, however, one final consideration regarding the social realities of American Orthodoxy as it relates to the creation of *eruvin* in America prior to 1970. Although the rabbis who wrote the treatises on *eruvin* state that their goal is the improvement of Sabbath observance among members of the American Jewish community, there is little evidence that a significant number of members of the American Orthodox community were concerned with the prohibition of carrying on

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Shapiro, "Another Example of Minhag America," *Judaism* 39:2, (Spring, 1990): 148-154 and *Jewish Commitment in a Modern World: Rabbi Hayyim Hirschensohn and His Attitude to Modernity* by David Tamar, reviewed by Marc Shapiro, *Edah Journal* 5:1 (Tammus, 5765), http://www.edah.org/backend/JournalArticle/5_1_Shapiro.pdf (viewed 1/24/11).

the Sabbath or with the circumvention of this prohibition that would be provided by an *eruv*. When I began my work, I had expected to find discussions about the early American *eruvin* in Yiddish newspapers and other popoular American Jewish literature. Yet, largely to my surprise, this material does not exist. The *eruv* was an area of practical *halakhah* that interested a small group of American Orthodox rabbis of Eastern European background. Although these rabbis genuinely desired to improve the religious life of American Jews, there was no known attempt made to transmit the severity of the prohibition of carrying on the Sabbath and the need for the creation of local *eruvin* to the members of the local Orthodox communities. This chasm between these rabbis and the members of the Orthodox community must be considered as the rabbis describe their concern for the religious well-being of their communities.[5]

Regarding the *eruvin* in St. Louis, the East Side of Manhattan as well as the later Manhattan *eruv*, there was strong opposition from at least one local rabbi. In analyzing the opposing views, a distinction must be made between the halakhic argument against the creation of each of these *eruvin* and the concurrent social influences that may have led to a decision on the part of these rabbis to oppose the *eruvin*. Interestingly, almost without exception, the opposing rabbis did not oppose the

[5] Another area of Jewish law in which a chasm existed between the American rabbinate and the Orthodox laity was the laws of ritual purity. However, although the community largely ignored the requirements of *mikveh*, regarding these laws, the Orthodox rabbis made a concerted effort to explain the laws of ritual purity to the members of the community, albeit largely unsuccessfully. See Jenna Weissman Joselit, *New York's Jewish Jews* (Blommington, Indiana, 1990), 115-22.

creation of a communal *eruv* on principle. Rather, they were opposed to the creation of the specific *eruv* for a combination of halakhic and social reasons.

The question might be asked why it is important to study the history of *eruvin* in North America. As a halakhic phenomenon, these early American *eruvin* play no more significant role in the history of *halakhah* than the earlier *eruvin* established in the cities and towns of the Early Modern and Modern Periods. It could be argued that the earlier *eruvin* are more significant in the history of *halakhah* since the rabbis who created and supported these *eruvin* broke new halakhic ground in adopting the changing topography and technology to the laws of *eruvin*. In terms of the social impact of the American *eruvin*, as previously discussed, *eruvin* are but one example of the religious issues that led the American immigrant rabbi to decide whether or not to adapt to the world of the American Orthodox Jew who did not always share the rabbi's concern for the meticulous observance of the *halakhah* or his perception that ritual observance was essential for the survival of the American Orthodox community. It is impossible, as previously mentioned, to estimate how many Jews actually benefitted from the establishment of these *eruvin* and permitted themselves to carry on the Sabbath under rabbinic sanction.

The initial response to this question of why this topic is valuable is to suggest that this dissertation is one chapter in the history of the *halakhah* as it pertains to *eruvin*. As has been described, *eruvin* have served as an important focus of the halakhic system and this dissertation will place the experience of American *eruvin* into

the context of the development of the history of *eruvin*. In this vein, the dissertation will provide only one chapter in a history of *halakhah* that long preceded the American experience. To date, the history of *halakhah* in America has not received a systematic treatment in scholarly circles and, hopefully, this work will spearhead a focus on the history of "American *halakhah*."

In the prologue to his volume *Orthodox Jews in America*, Jeffrey Gurock tells the story of the pious Jew in the Bronx who observed all the details of the Sabbath and even the prohibitions against eating food that was questionably kosher but who would, at the same time, work in his garment business on Saturdays during the busy season. Gurock proceeds to explain the inner struggles of this American Orthodox Jew of the 1950s and compares his situation with the American Orthodox Jews forty years later.[6]

The history of the early American *eruvin* is the story of how certain immigrant Orthodox rabbis went to great lengths to create a scenario in which carrying on the Sabbath would be permissible for Jews such as this man from the Bronx whom the rabbi knew worked, at least occasionally, on the Sabbath. And, it is the story of the majority of American rabbis who did not create *eruvin* in their communities until the population of Orthodox Jews in America demanded it. Why did these rabbis not build *eruvin*? Were they not familiar with the intricacies of the *halakhah*? Did they believe that Jews, such as the man described by Gurock, did not deserve an *eruv* or would not care if one was built? It is difficult to answer these questions. However, the material

[6] Gurock, *Orthodox Jews in America*, 1-20.

that was written by these few rabbis who tackled the *eruv* issue, either by establishing *eruvin* in America or by vigorously opposing these early *eruvin*, highlights some of these issues. Furthermore, it provides insight for the student of American Orthodoxy, on the complexity of the American Orthodox rabbinate and the history of "American *halakhah*". This dissertation will address these issues and paint a picture of American Orthodoxy during the last century through the eyes of the rabbis who utilized a halakhic system that they believed was their responsibility to maintain and to promote in America.

Sources

In the case of the four North American *eruvin* that will be studied, there was extensive halakhic material published both in favor and in opposition to the creation of these *eruvin*. The St. Louis *eruv* controversy led Rabbi Rosenfeld, the creator of that *eruv* and Rabbi Jaffe, the opponent, to pen lengthy treatises presenting arguments in favor and against this *eruv*. Ironically, Rabbi Jaffe published his opposition to the *eruv* prior to Rabbi Rosenfeld's publication of the arguments in favor of the St. Louis *eruv*. Therefore, Rabbi Jaffe was able to publish both an initial critique of the *eruv* and a later response to Rabbi Rosenfeld's defense of the *eruv*. Rabbi Rosenfeld did not respond to Rabbi Jaffe's second critique. These treatises together with their lengthy and personal introductions provide great insight into the halakhic reasoning of each of these rabbis, the social considerations that they addressed and the relationship that they had with one another. In addition to their value as sources of material in the *eruv*

controversy that transpired in the last decade of the nineteenth century, they provide exciting material for the study of the history of American Orthodoxy

Regarding the *eruv* on the East Side of Manhattan, Rabbi Seigel authored a defense of the *eruv* in a treatise that was written for Jews who had requested that he explore the possibility of building an *eruv* on the East Side of Manhattan. Three responsa opposing Rabbi Seiegel's *eruv* were written in reaction to his proposal as well as in opposition to the fact that may Jews were carrying on the Sabbath on the East Side of Manhattan. The dispute about the Manhattan *eruv* was played out over thirteen years, from 1949-1962. It consisted of written responsum, journal articles and personal letters. Some of the material has been published while other unpublished material was found in the Library of Yeshiva University and in the archives of The Jewish Center.

Rabbi Graubart's description of the halakhic basis for the creation of the Toronto *eruv* was included in his collection of responsa entitled *Havalim ba-Neimim*. Later material on the expansion of the Toronto *eruv* can be found in rabbinic journals and in an unpublished manuscript written by Rabbi Abraham Price which he privately distributed to members of his community.

An important source for the study of the halakhic and social aspects of these disputes can be found in the approbations that were appended by each of the rabbis to their works. All of the rabbis who created these early North American *eruvin* included

approbations from Eastern European rabbis that supported their arguments and provided them with credibility. Rabbi Jaffe in St. Louis included several approbations from rabbis in Israel who supported Rabbi Jaffe's arguments that rejected the creation of an *eruv* in St. Louis. In the *eruv* controversy on the East Side of Manhattan, both the content and reliability of the approbation, written by Rabbi Shalom Mordekhai Schwadron of Brezhen, Poland and included by Rabbi Seigel, became a source of dispute among the rabbis. There has been no systematic treatment of any of this material in either scholarly or popular literature to date.[7]

There has been minimal academic scholarship on the classic Talmudic and Rabbinic material. The only treatments to date are those of Charlotte Elisheva Fonrobert who traces the pre-rabbinic and rabbinic history of the *eruv*[8] and Boaz Hutterer's, forthcoming Bar Ilan University dissertation on the history of the rabbinic *eruv*, "Eruv Hazerot Be-Merhav Ha-Eroni: Hishtasheluto Ha-Hilkhatit Mi-Tekufat Ha-Mishnah Ve-Ha-Talmud ve-ad Tehilat Ha-Meah Ha-20" ("The 'Courtyard Eruv' in the Urban Space: Its Development From the Time of the Mishnah and the Talmud to the Twentieth Century") The Medieval and Early Modern material on the development of city *eruvin* is found in the responsa literature and other halakhic works. Until the nineteenth century, there were no volumes written specifically about *eruvin*, though

[7] Rabbi Yosef Gavriel Bechhofer, *The Contemporary Eruv: Eruvin in Modern Metropolitan Areas* (Jerusalem, 1998) contains some historical material about the early American *eruvin*. However, it is written as a guidebook for the creation of modern *eruvin* and should not be considered a historical work.
[8] Charlotte Elisheva Fonrobert, "From Separatism to Urbanism: The Dead Sea Scrolls and the Origins of the Rabbinic Eruv," *Dead Sea Discoveries* 11:1 (2004): 43-71.

several books on the laws of the Sabbath contain chapters about the laws of *eruvin* and how to construct *eruvin* in specific towns. In the late nineteenth century, disputes concerning the creation of *eruvin* in Cracow and Odessa were chronicled in treatises written by local rabbinic authorities. These treatises have been published and have been utilized in the present work. There has been no scholarly analysis of these rabbinic sources.

Outline of Chapters

Chapter 1

The dissertation will begin with a survey of the pre-rabbinic material relating to the prohibition of carrying on the Sabbath. There is one reference in the Dead Sea Scrolls that might relate to *eruvin*; the view of the Sadducees on the topic of *eruvin* has been a matter of dispute among the scholars for the past century. The chapter will trace the development of the *eruv* in Roman Palestine during the Mishnaic period and then in Palestine and Babylonia during the Amoraic period. The institution of the rabbinic *eruv* was further developed in the Talmudic texts to reflect the expanding Jewish communities of the time.

Chapter 2

The halakhic history of the *eruv* will be traced through the Geonic literature and then through the medieval rabbinic commentators and decisors. This chapter will

address the first instances of *eruvin* that encompassed entire cities and the challenges that were created by these *eruvin*. The community *eruv* became an established tradition in many places and led Rabbenu Asher, the early fourteenth century Spanish rabbi, to criticize a local rabbi in Valencia for not constructing an *eruv* in his town. Finally, this chapter will analyze the *Shulhan Arukh* and the early commentators on that work in light of their codification of the laws of *eruvin* as they related to the creation of communal *eruvin*. Specifically, the debate regarding the definition of a *reshut ha-rabbim*, a public domain, around which an *eruv* cannot be constructed will be analyzed.

Chapter 3

The creation of *eruvin* in cities in the Early Modern and Modern Periods will be explored in detail in this chapter. The major challenge in the creation of these *eruvin* revolved around the ability to utilize natural boundaries as *eruv* boundaries. The use of waterways as *eruv* boundaries was a matter of rabbinic dispute, and its application to specific city *eruvin* provides the background for later city *eruvin* in Europe and North America. In addition, the relationship between the Jewish communities and the local governmental authorities were a matter of concern as the rabbis sought a method to create an *eruv* community within these larger areas inhabited by both Jews and non-Jews. In the nineteenth century, the invention of the telegraph provided the basis for a rabbinic dispute regarding its utilization as *eruv* boundaries. This difference of opinion has important implications for later *eruvin*.

Finally, specific disputes concerning *eruvin* in several cities at the end of the nineteenth and the beginning of the twentieth century will be studied.

Chapter 4

The first *eruv* in North America was established in St. Louis in 1894 by Rabbi Zekhariah Rosenfeld. The creation of this *eruv* was opposed by Rabbi Shalom Elchanan Jaffe. Their debate incorporates an extensive halakhic dispute about the viability of creating an *eruv* in St. Louis as well as a sharp dispute about the role of the rabbi in America. The halakhic issues that are addressed range from the question whether St. Louis constituted a *reshut ha-rabbim* to the issue of whether the Mississippi River can serve as an *eruv* boundary. These halakhic issues will be addressed in the context of the history of the *halakhah* of *eruvin*. The reliance of each of these rabbis on approbations from rabbinic authorities in Eastern Europe and Israel will be examined.

Chapter 5

The *eruv* on the East Side of Manhattan was established by Rabbi Joshua Seigel in 1905. It was opposed by Rabbis Bernstein, Gordon and Herman. The argument revolved around the viability of the use of the rivers and the Third Avenue El as *eruv* boundaries. In addition, they debated whether Manhattan is considered a *reshut ha-rabbim*. Finally, there was a dispute regarding the approbation that Rabbi Seigel received from Rabbi Schwadron, one of the leading rabbinic decisors in Poland.

Both the content and the credibility of this approbation was questioned by the opposing rabbis. The halakhic material will be examined in light of the previous halakhic discussions of communal *eruvin* with a special focus whether these rabbis relied on the precedent of the St. Louis *eruv*.

Chapter 6

The Toronto *eruv* was created in 1921 by Rabbi Yehudah Leib Graubart. There was no known rabbinic opposition to this eruv. Rabbi Graubart outlined the halakhic justification for this *eruv* in a lengthy responsum that is included in his collection of responsa, *Havalim ba-Neimim*. Rabbi Graubart was the rabbi of the Polish Jewish community in Toronto and his status as the leading halakhic authority in the city may have prevented any rabbinic opposition. As the Jewish community in Toronto moved north, the *eruv* was expanded by Rabbi Abraham Price, a respected rabbi in the community. This expansion was also unopposed by the other rabbis in Toronto. Rabbinic opposition was only expressed in the 1980s at which time Rabbi Price wrote and distributed an unpublished treatise defending the halakhic validity of his *eruv* which he claimed was largely based on Rabbi Graubart's original Toronto *eruv*.

Chapter 7

The story of the creation of the Manhattan *eruv* spans the years 1949-1962. It involved the leading Hasidic and Lithuanian rabbis in New York at the time. The

debate focused on the validity of establishing an *eruv* around a city with a population that far exceeded 600,000 (a number which might have caused it to be considered a *reshut ha-rabbim* where no *eruv* can be built) and the acceptability of utilizing the waterways that surrounded Manhattan as *eruv* boundaries. In an attempt to gain rabbinic consensus for this *eruv*, multiple rabbinic opinions were expressed in letters now located in the archives of the Library of Yeshiva University and in the archives of The Jewish Center. Additional material is found in rabbinic journals published at the time. The rabbis grappled with the same issues that had been addressed regarding communal *eruvin* throughout the centuries. However, the precedent of Rabbi Seigel's *eruv* on the East Side of Manhattan served as a basis for some of the halakhic discussion.

Chapter 8

In the concluding chapter, I will summarize the halakhic evolution of the early American *eruvin* focusing on the role of the American Orthodox rabbis in shaping the establishment of these *eruvin* and the social and religious considerations that were vital to the creation and to the opposition to these *eruvin*. How did the rabbis who built these *eruvin* and those who opposed them reflect the American attitude to *halakhah* during the first sixty years of the twentieth century and how did these rabbis create an environment in which halakhic Judaism was able to thrive and flourish during the last thirty years of the twentieth century. Finally, in an Epilogue, the rabbinic material on the *eruvin* that have been built since 1970 will be analyzed.

CHAPTER 1

Pre-Rabbinic and Rabbinic Sources

The sanctity of the Sabbath is one of the cornerstones of Judaism. Not only does the Torah present Sabbath observance as one of the Ten Commandments, but there are numerous other references to the fact that God demands of the Jewish People that it observe the Sabbath.[9]

The commandment to observe the Sabbath as a day on which the Jewish People – and their children, slaves, servants, even their animals, and the foreigners within their gates - are forbidden to "work," does not, however, describe what constitutes work; nor does the Torah establish any other explicit rules for Sabbath observance, except in three instances: the prohibition against gathering manna on the Sabbath and the penalty that manna gathered on Shabbat will spoil;[10] against lighting a fire on the Sabbath;[11] and against gathering firewood on the Sabbath.[12] The last case is the only one in which the penalty for a specific violation was death, although Exodus 35:2 expressly provides that violation of the Sabbath (no details) calls for the death penalty and is immediately followed by the prohibition on lighting a fire on Shabbat "that you may live" (Exodus 35:3).

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[9] The Biblical references to the Sabbath are as follows: Genesis 2: 2-3, Exodus 16: 22-28, Exodus 20: 8-11, Exodus 23: 12, Exodus 24: 21, Exodus 35: 2-3, Numbers 15: 32-36 and Deuteronomy 5: 12-15.
[10] Exodus 16: 22-28.
[11] Exodus 35: 2-3.
[12] Numbers 15: 32-36.

As we shall shortly see, the definition of "work" appears in great detail- thirty-nine specific prohibited activities - in the *Mishnah, Shabbat* 7:2. That *Mishnah* explicitly forbids *hoza'ah*, carrying on the Sabbath from one domain into another. But before Mishnaic times, it seems that the prohibition against carrying on the Sabbath, if there was one, was honored more in the breach than in observance, and was ignored by significant portions of the population going back at least to the time of the destruction of the First Temple, for we find Jeremiah inveighing against the activities of the population of Jerusalem and its surrounding areas as follows:

> Guard yourselves for your own sake against carrying burdens on the Sabbath day, and bringing them through the gates of Jerusalem. Nor shall you carry out burdens from your houses on the Sabbath day, or do any work, but you shall hallow the Sabbath day, as I commanded your fathers.[13]

It is obvious that Jeremiah was not dealing with a hypothetical situation, but that he was referring to what he actually witnessed. Indeed, Jeremiah records that the people did not listen to him. He then repeated his warning:

> God says: If you listen carefully to Me and do not bring burdens through the gates of this city on the Sabbath day; if you sanctify the Sabbath day and do not work then, then kings and nobles sitting on David's throne, along with their officials, the men of Judah and the inhabitants of Jerusalem will enter the gates of this city riding chariots and horses. This city will be inhabited forever. …But if you do not obey Me by sanctifying the Sabbath day and refraining from carrying burdens when you enter the gates of Jerusalem on the Sabbath day, I will set her gates on fire which will consume the palaces of Jerusalem and it will not be extinguished.[14]

[13] Jeremiah 17:21-22.
[14] Ibid., 17: 24-27.

It is noteworthy that, although Jeremiah had elsewhere listed other sins of the people ("Will you steal, murder, commit adultery, swear falsely, offer incense to Baal, follow other gods whom you do not know …" 7:16), and he inveighs against the idolatry practiced by the Jewish people throughout his career, the obligation to observe the Sabbath and the sin of carrying on the Sabbath are singled out in his prophesy. Nevertheless, the populace did not obey and continued to violate the Sabbath with impunity. Equally significant is the fact that Jeremiah did not call for the death penalty as punishment for these Sabbath violators, despite the express language of Exodus 35:2.

Of course, not only was the Temple destroyed and the Jewish People exiled, but, by the time of Nehemiah, which coincided with the early period of the Second Temple, the prohibition against carrying, *hoza'ah*, was still being ignored by large segments of the populace. Thus, Nehemiah described the scene that he encountered upon entering Jerusalem,

> At that time, I saw men in Judah treading winepresses on the Sabbath, and others bringing heaps of grain and loading them onto asses, also wine, grapes, figs, and all sorts of goods, and bringing them into Jerusalem on the Sabbath. I admonished them there and then for selling provisions … What evil thing are you doing, profaning the Sabbath day! This is just what your ancestors did, and for it God brought all this misfortune on this city.[15]

[15] Nehemiah 12: 15-18. Michael Fishbane analyzes the relationship between the verses in Nehemiah and those in Jeremiah and how each one saw the violation of the Sabbath

Note that, once again, the prophet talks in terms of misfortune for the city of Jerusalem, but not the death penalty for the Sabbath violators. Clearly, although the Torah had provided the death penalty as a consequence of violating the Sabbath, no such penalty for carrying was contemplated at the time of Nehemiah. The *eruv*, which is the rabbinic device to mitigate the restrictions surrounding *hoza'ah* is not referred to in the Biblical sources.

Pre-Rabbinic History

The first recorded ruling punishing a Sabbath violator for carrying on the Sabbath is found in the second century BCE book of Jubilees.[16] Written by a Jewish sectarian author who elaborates on the history of early Judaism from creation to Mt. Sinai attributes the observance of the commandments to the forefathers, Abraham, Isaac and Jacob. Regarding the laws of the Sabbath, the author of the book of Jubilees makes the punishment for Sabbath violation more severe than Torah law. Not satisfied that the punishment for Sabbath violation is death, the author writes, "Whoever does any work thereon shall die eternally."[17] The author continues to

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as the cause of misfortune. See Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford, 1985), 130-34

[16] There is an extensive discussion of the pre-rabbinic material and the rabbinic material in Boaz Hutterer, "Eruv Hazerot Be-Merhav Ha-Eroni: Hishtasheluto Ha-Hilkhatit Mi-Tekufat Ha-Mishnah Ve-Ha-Talmud ve-ad Tehilat Ha-Meah Ha-20" (Dissertation, Bar Ilan University, forthcoming).

[17] Jubilees 2:27. The text of the book of Jubilees is cited from J. C. Vanderkam, The Book of Jubilees (Louvain, Belgium, 1989). For a discussion of Jubilees expansion of the punishment for Sabbath violation, see Louis Finkelstein, ""The Book of Jubilees and the rabbinic Halaka," *The Harvard Theological Review* 16:1 (January, 1923): 45-51.

identify some of the prohibitions of the Sabbath. Among these prohibitions, he writes: "[The man] who lifts that which he carries to bring it outside his tent or his house is to die."[18] Earlier in Jubilees, the prohibition against bringing objects into the house is stated, "Inform and tell the Israelites the law … on which it is not proper to do what they wish, namely … to bring in or remove on it anything which one carries in their gates. The reason for the prohibition is stated in the next verse: "Because it is more holy and more blessed than any of the jubilee of jubilees."[19]

It is not clear what act is being prohibited by the author of Jubilees. Louis Finkelstein claims that Jubilees prohibits picking up an object with the intention of carrying it out of the house. This preliminary act would be sufficient for the transgressor to be liable for death.[20] Chanoch Albeck argues that Jubilees prohibits the carrying from one tent or house to another tent or house. However, it is not clear that the author of this second century BCE work was familiar with these later rabbinic categories.[21]

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[18] Jubilees 50:8.
[19] Ibid, 2:29-30.
[20] Finkelstein, "The Book of Jubilees," 49.
[21] Chanoch Albeck, "Sefer Ha-Yovlot ve-ha-Halakhah," *Madaei Ha-Yahadut*, edited by Gershon Bacon, Ithamar Gruenwald and Marc Hirshman, 45 (2008): 9-10. This article is translated from Chanoch Albeck, "Das Buch der Jubilaen und die Halacha," *Bericht der Hochschule fur die Wissenschaft des Judentums* 47 (1930): 1-60. Charlotte Fonrobert questions whether the author of Jubilees was familiar with these rabbinic categories. See Charlotte Elisheva Fonrobert, "From Separatism to Urbanism: The Dead Sea Scrolls and the Origin of the Rabbinic 'Eruv'", in *Dead Sea Discoveries* 11:1(1994): 49, f.n. 21. For an elaboration on these verses and their possible source in earlier literature, see Lutz Doering, *Schabbat* (Tubingen, 1999), 75-79.

The Dead Sea Scrolls also contain explicit pronouncements prohibiting carrying on the Sabbath. The Damascus Document states,

> No one should carry [anything] from the house to the outside, or from the outside into [the] house. And if he is in the sukkah, let him not carry [anything] out from it or bring [anything] into it.[22]

Lawrence Schiffman has identified this prohibition as a restatement of the verses from Jeremiah.[23] However, unlike the Book of Jubilees, the Dead Sea Scrolls are silent on the subject of the penalty.

To summarize: The issue of carrying on the Sabbath does not seem to have loomed large in pre-rabbinic Palestine and, with the exception of the decree in the book of Jubilees, the assumption seems to have been that, at most, God would punish the city whose citizens carried on the Sabbath, and that the individual sinner seems to have had nothing to fear by way of punishment for his activity. As the prohibition against *hoza'ah* did not play a prominent role in this literature and may have been completely rejected, it is not surprising that the *eruv* is not mentioned.

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[22] Lawrence H. Schiffman, *The Halakhah at Qumran* (Leiden, 1975), 115.
[23] Ibid., 116. Lutz Doering has found two further references to the prohibition against carrying on the Sabbath in two previously unpublished Qumran fragments. See Lutz Doering, New Aspects of Qumran Sabbath Law From Cave 4 Fragments," *Legal Texts and Legal Issues: Proceedings of the Second Meeting of the International Organization of Qumran Studies Cambridge 1995*, edited by Moshe Bernstein, Florentino Garcia Martinez and John Kampen (Leiden, 1997), 256-264.

There is one possible mention of the term *eruv* in the "Sabbath Code" of the Damascus Document. The Sabbath Code reads, "*al yitarev ish me-rezono be-Shabbat*." Charlotte Fonrobert has argued that the word *yitarev* should be translated "merging" and might reflect a Qumran based idea that required the merging of the property of a newcomer to the community with the property of the rest of the community. According to her reading of the Sabbath Code, this process could not take place on the Sabbath. (As we shall see, the concept of merging of property plays a significant role in the development of the idea of an *eruv*.)[24] Schiffman translates this phrase as follows, "No one shall enter a partnership by his own volition on the Sabbath."[25] According to Schiffman, the grammatical form of the verb *yitarev* could not refer to "the making of an *eruv*". Instead, he explains that this phrase must be understood in a completely different context, namely, which prevented the declaration of any private property to be available for public use on the Sabbath.[26]

Regardless of the translation of this phrase, the relationship between the rabbinic *eruv* and these earlier sources requires clarification. Schiffman argues, "It would be folly to conclude by casuistic means that the *erubin* were in existence in this period. Only with the later development in Pharisaism and the expansion of the traditions of the fathers would such legal fictions have come into wide use. The

[24] Fonrobert, "Separatism," 51-71.
[25] Schiffman, *Halakhah*, 109.
[26] For a list of twelve possible interpretations of this phrase, see Doering, *Schabbat*, 169-70.

Qumran sect is apparently earlier than these devices."[27] Lutz Doering attempted to qualify the chronological relationship between the Qumran practices and the rabbinic *eruv*. He claims that, "In religious history the limits of one's own possession play an early and important role; in adherence to these limits, the Qumran texts continue scriptural thinking."[28] According to Doering, the Qumranite notion that the public took control of the property of the individual reflected an earlier halakhic tradition. This tradition, he says, did not allow for the creation of the *eruv*, which required a clear demarcation between public property and private property. The rabbis, who rejected the Qumranite notion of this earlier tradition, were the first group who were able to introduce the principle of the *eruv*. Fonrobert expanded on Doering's argument and said that the *eruv*, instituted by the rabbis, reflected a direct attempt by the rabbis to reject the separatist views of the Qumranites and create a rabbinic concept of neighborhood which recognizes the role of the individual as well as that of the community.[29]

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[27] Schiffman, *Halakhah*, 133.
[28] Ibid., 262.
[29] Fonrobert, "Separatism," 71. Although the topic of this work is the prohibition against *hoza'ah* and the legal accommodation of *eruv hazerot*, the Second Temple sources also discuss the prohibition of travel on the Sabbath found in Exodus 16:29. The *Covenant of Damascus* refers to the tradition that travel is permitted up to 2,000 *amot*. *See Covenant of Damascus* 10:21 which says 1,000 cubits and 11:5-6 which refers to 2,000 cubits. The excavations in Gezer revealed boundary stones which stood 2,000 cubits from the city walls and probably date to the Herodian Period. This tradition is also mentioned in the New Testament (Acts 1:12) which reports that the Mount of Olives is "near Jerusalem, a Sabbath's day journey away." None of these sources mentions the rabbinic institution of *eruv tehumin* which allows for the

The approach of the Sadducees to the prohibition against *hoza'ah* and the institution of the *eruv* is a subject of disagreement among scholars. Abraham Geiger argued that the Sadducees accepted the prohibition against *hoza'ah*, and rejected the legal loophole of the *eruv*. He explained that, in order to avoid the strictures placed by the Sadducees, the Pharisees instituted the *eruv* so as to allow the priests to carry food and other objects to the communal meals which often took place on the Sabbath.[30] Bernard Revel disagreed with Geiger's view of the Sadducees and claimed that the Sadducees rejected the prohibition against carrying on the Sabbath and, therefore, they had no need for the *eruv*. He based his argument on the text of the *Mishnah* in Tractate *Eruvin* which identifies the Sadducees as "those who do not accept the principle of the *eruv*." Revel understood this phrase to mean that the Sadducees denied the need for an *eruv* because they rejected the prohibition against carrying on the Sabbath.[31] Yaakov

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extension of permissible Sabbath travel. See Schiffman, *The Halakhah at Qumran*, 91-8.

[30] Abraham Geiger, *Ha-Mikra Ve-Targumav* (Jerusalem, 1949), 82 and Abraham Geiger, "Al Devar Aizeh Mahloket Asher bein Ha-Tzedukim Ve-ha-nilvim Aleihem U-vein Ha-Perushim Ve-ha-hefresh Bein He-halakhah Ha-Kedumah Le-Meuheret," *He-Halutz* 5 (5622): 15-16.

[31] See Bernard Revel, *The Karaite Halakhah and its Relation to Sadducean, Samaritan and Philonian Halakhah* (Philadelphia, 1913), 39-40. Louis Finkelstein, Chanoch Albeck and Lawrence Schiffman agreed with Revel's claim that the Sadducees rejected the prohibition against *hoza'ah*. See Louis Finkelstein, *The Pharisees* (Philadelphia, 1962), 719 Chanoch Albeck, *Shishah Sidrei Mishnah: Seder Moed* (Tel Aviv, 1968), 435 and Schiffman, *Halakhah*, 114. Albeck brought as a proof to this argument the fact that the *Mishnah* refers to the Sadducee as "taking his wares out to the *mavoi*, alleyway, thereby nullifying the eruv." Albeck claims that the Sadducee took his vessels out of the house on the Sabbath since he did not accept the prohibition against *hoza'ah*. The *Yerushalmi Eruvin* chapter 1 *halakhah* 1 also says, "A Sadducee is suspected for *hoza'ah*."

Sussmann repudiated Revel's argument and claimed, as did Geiger, that the Sadducees accepted the prohibition against *hoza'ah* while at the same time rejecting the institution of the *eruv*. He based his argument on the fact that the Sadducees were generally more stringent than the Pharisees and did not accept the Pharasaic attempt to circumvent the prohibition against *hoza'ah*.[32] Eyal Regev claims that since the prohibition against carrying on the Sabbath is referenced in Jubilees and the Qumran texts, it was accepted by all sects of Judaism at the time and there is no reason to assume that the Sadducees rejected this prohibition. Rather, the *Mishnah* is referring to their rejection of the rabbinic innovation of *eruv*.[33]

The Talmud

It is remarkable that, from a tradition that largely minimized the importance of *hoza'ahh*, and was, for the most part, unaware of the possibility of avoiding the strictures of that prohibition by means of the *eruv*, the *Mishnah* establishes, extensive rules and regulations covering both institutions. However, evidently not content to let

[32] Yaakov Sussmann, "Heker Toldot Ha-Halakhah U-Megilot Midbar Yehudah: Hirhurim Talmudiyim Rishonim Le-Or Megilat Mikzeh Ma'aseh Ha-Torah," *Tarbiz* 59:1-2 (October 1989-March 1990): 65-66.

[33] Eyal Regev, *Ha-Tzedukim Ve-Hilkhatam* (Jerusalem, 2005), 59-66. Regev argues that the proof from *Horayot* 4a and the Yerushalmi is not convincing since it is an amoraic statement made long after the disappearance of the Sadducees. Therefore, Regev claims, it must be seen as a theoretical argument and not one that reflects the historical reality. (See Regev, 61, f. n. 7). The Karaites reflected two opposing views concerning the *eruv* and the prohibition of *hoza'ah*. Yehudah Ha-Dassi rejects the role of the *eruv* and prohibits carrying from one house to another house within the same *hazer*. (See Yehudah Ha-Dassi, *Eshkol ha-Kofer* (Israel, 1971), 74:3) Eliyahu Bashyazi does not recognize the prohibition of *hoza'ah* from one house to another within the same *hazer* or from one *hazer* to another *hazer*. (Eliyahi Bashyazi, *Aderet Eliyahu* (Odessa, 1870), Shabbat ch. 14.)

the *mishnayot* stand by themselves, the rabbis in the Talmud sought to provide historicity for these institutions.

Although the *Mishnayot* in *Shabbat* and *Eruvin* contain a vast number of detailed laws concerning both *hoza'ahh* and *eruv*, it was in *Horayot 4a* that the rabbis derived a Biblical source for hoza'ahh: The *Mishnah* (*Horayot* 1:3) states that if the court offers an erroneous ruling for which the punishment is *karet* (premature death) and a majority of the community follows this erroneous ruling, the court must bring a special sacrifice called a *par he'elem davar shel tzibbur* (a bull offering for the sake of the community that has erred). The *Mishnah* lists cases in which the court would be liable to bring this sacrifice. One of the examples given by the *Mishnah* is, "They say that there is a prohibition against forbidden labor on the Sabbath from the Torah but one who carries from a private domain to a public domain is not liable. [In such a case the court is liable to bring the communal bull offering.] The *gemara* explains the rule by which the *Mishnah* decided which errors mandated this special sacrifice: "The court is not liable unless they rule concerning a matter for which the Sadducees do not agree." The Sadducees rejected the rabbinic oral tradition but accepted the written tradition.[34] Therefore, according to the *gemara*, the court is only liable if they erred in a matter that is not explicit in the Torah. Given this framework, the *gemara* questions the example from the laws of the Sabbath, "And, why [in this case is the court liable]? The prohibition against carrying is written explicitly, 'Do not carry out a burden from

[34] For the background of the Sadducee debate with the rabbis and their forerunners, the Pharisees, see Regev, *Ha-Tzedukim*, 11-14.

your houses on the Sabbath day?" The *gemara* offers two suggestions in which it argues that there are aspects of carrying on the Sabbath that are part of the written tradition and, therefore, the court would be liable for the communal bull offering. According to this tradition, the source of the prohibition against *hoza'ah* is from the book of Jeremiah, which the *gemara* considers to be part of the undisputable written tradition to which even the Sadducees would agree.[35]

There is an alternate tradition that derives the prohibition against *hoza'ah* from the verse in Exodus 16:29: "Let everyone remain where he is, let no man leave his place on the seventh day.[36] Regardless whether the Talmud utilizes the verse in Jeremiah or Exodus, the rabbis clearly felt the need to identify a Biblical precedent for the prohibition against *hoza'ah*. At the same time, although there is no verse that discusses the *eruv*, the rabbis attempted to establish its historical validity. The rabbis

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[35] *Horayot* 4a.

[36]See Tosafot, *Eruvin* 17b, s.v. *lav*. See *Dikdukei Soferim*, edited by Raphael Nathan Nota Rabinovicz (Jerusalem, 1973), *Horayot* 4a. This tradition is also quoted in *Masoret ha-Shas*, Horayot 4a. The tradition of associating the verse in Exodus with the prohibition against *hoza'ah* can also be found in Tosafot, *Shabbat* 2a, s.v. *yetziot* and Maimonides, Mishneh Torah, *Hilkhot Shegagot*, 14:2. Tosafot, *Eruvin* 17b, s.v. ` explains that the literal explanation of the verse is as follows, "One may not go out with his utensils to collect the manna." The verse in Jeremiah is also utilized in Tractate *Beitzah* 12a as a source for the prohibition against *hoza'ah*. The rabbis suggested an additional Biblical source for the prohibition against *hoza'ah* from the following verse concerning donations to the building of the Tabernacle: "Moses thereupon had this proclamation made throughout the camp: 'Let no man or woman make further effort toward gifts for the sanctuary!' So the people stopped bringing." (Exodus 36:6). The rabbis in Tractate *Shabbat* 96b suggest that, since Moses was standing in the Levite camp which was a public domain, and commanded the people not to bring donations from their private domains, this is the source of the prohibition against *hoza'ah*. This is clearly a rabbinic interpretation of the verse. See *She'iltot de Rav Ahai Gaon*, edited by Samuel K. Mirsky (Jerusalem, 1960-1977), I:105.

identified the institution of the *eruv* to a *takkanah* - ordinance - attributed to King Solomon. The *amora*, Samuel, said: "When Solomon ordained the ordinances of *eruvin* and the ritual washing of hands, a voice went forth from heaven and proclaimed, 'My son, if your heart is wise, My heart too shall rejoice.'[Proverbs 23:15]"[37]

The attribution of the origin of this *takkanah* to King Solomon has been questioned by modern scholars. Ephraim Urbach argued that assigning *takkanot* to King Solomon and other Biblical figures is merely a rabbinic method of identifying the ancient nature of the *takkanah*. According to Urbach, the rabbis chose the historical period that could most easily be associated with each *takkanah*. Since the age of King Solomon was the first time that the people of Israel were not at war with their enemies and could focus on the intricacies of building a community, this was the

[37] *Eruvin* 21b. Rav Hai, the eleventh century Gaon of Pumbedita, was asked about this attribution, "How could Solomon have created the ordinance of *eruvin*? Did not Israel have the custom before Solomon?" He replied that during the years in which the Jews were involved in wars, they did not have the opportunity to make the necessary measurements to create these *eruvin*. (See *Otzar ha-Geonim*, edited by B.M. Levin [Jerusalem, 1930], *Shabbat*, 8). The thirteenth century rabbinic scholar, Rabbi Moses of Coucy, provided further "historical" context for this institution and explained that Solomon instituted the *eruv* to allow for carrying from the home to the outside on the Sabbath. At the time of Jeremiah, the people violated the institution of King Solomon and carried even though they had not constructed an *eruv*. Therefore, Jeremiah was forced to rebuke the people for their actions. (Moses ben Jacob of Coucy, *Sefer Mitzvot Gadol* [Jerusalem, 1970], *mitzvah aleph mi-divrei soferim*).

logical moment to which to attribute the introduction of the *eruv*.[38] Both Charlotte Fonrobert and Shmuel and Ze'ev Safrai suggest that, since the *takkanah* of *eruv* constitutes a post-destruction institution of the Pharisees, the Talmudic attribution to King Solomon is to be understood as merely attempting to lend historical weight to the *takkanah*.[39] Independent of the origins of *hoza'ahh* and *eruv*, the Talmud presents, in great detail, the rules and regulations governing the prohibition against *hoza'ahh* and the institution of the *eruv*.

Definition of Domains

Although the pre-rabbinic sources did not explicitly distinguish between carrying from a public domain into a private domain and carrying out of a house into a courtyard, the rabbinic sources focus on the distinction between different domains in their analysis of the prohibition against *hoza'ah* on the one hand and the rules permitting carrying within an *eruv* on the other hand.[40]

The *Mishnah* lists *hoza'ah* as one of the thirty-nine categories of "work" prohibited on the Sabbath (*Shabbat* 7:2) Yet, it does not elaborate on the details of the prohibition. This elaboration is done by the rabbis in a *baraita* in *Shabbat* (6a):

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[38] Ephraim E. Urbach, *The Halakhah: Its Sources and Development* (Jerusalem, 1986), 16-18.
[39] Fonrobert, "Separatism," 43 and Shmuel Safrai and Ze'ev Safrai, *Mishnat Eretz Yisrael: Massekhet Eruvin* (Jerusalem, 2009), 5-6.
[40] See Yitzhak D. Gilat, *R. Eliezer Ben Hyrcanus: A Scholar Outcast* (Ramat Gan, Israel, 1984), 218 and Regev, Ha-*Tzedukim*, 61-62.

There are four domains in respect to the Sabbath; a private domain (*reshut ha-yahid*), a public domain (*reshut ha-rabbim*), a *karmelit*[41] and a place of exemption (*makom petur*). And what is a private domain? A trench ten [handbreadths] deep and four wide, and likewise the top of a wall ten [handbreadths] high and four broad, - that is a private domain. And what is a public domain? A major road (*seratya*), a great public square (*pelatya*) and open alleys (*mevo'ot ha-mefulashim*), --- that is a public domain. One may not carry out from this private domain to the public one, nor carry in from this public domain to this private one; and if one does carry out or in, unwittingly, he is liable to a sin offering; if deliberately, he is punished by *karet* or stoned. But the sea, an open field, a stone block in front of the stores, or a *karmelit*, ranks neither as a public nor as a private domain: one must not carry [objects] about within it and if he does, he is not liable; and one must not carry out [an object] into the public domain or from the public domain into it, nor carry [an object] from it into the private domain or from the private domain into it; yet if he does carry out or in, he is not liable. As to courtyards with many owners (*hazer shel rabbim*) and closed alleys (*mevo'ot she'ainan mefulashim*), if an *eruv* is made, they are permitted [to carry within them]; if an *eruv* is not made, they are forbidden [to carry within them].[42]

[41] This term will be explained subsequently.

[42] *Shabbat* 6a. A similar tradition is found in *Tosefta, Shabbat*, chapter 1, nos. 1-5. (All references to Tosefta will be taken from Saul Liberman, *Tosefta* [New York, 1962]. This edition utilizes the Vienna manuscript of Tosefta.) The *Tosefta* begins, "There are four domains," yet, it only identified the public and private domains. The *baraita* also introduced four domains and did not identify the *makom patur*. Both of these formulations point to the fact that the public and private domains are the two domains based on which the other domains are identified. For a discussion of the relationship between the *baraita* and the *Tosefta* that preceded it chronologically, see Saul Lieberman, *Tosefta Ki-Feshutah* (New York, 1962), *Shabbat,* 1-4 and Safrai, *Eruvin*, 2-5. See also *Yerushalmi, Shabbat* chapter 1, *halakhah* 1 for a variant of the *baraita* and Tosefta.

According to the *baraita*, the requirement for an *eruv* is directly related to the prohibition against *hoza'ah*. Regarding a *hazer shel rabbim* and *mevo'ot she'ainan mefulashim*, the *baraita* explains that if these properties are surrounded by an *eruv*, carrying is permissible. However, if there is no *eruv*, carrying is prohibited.

In addition, the *baraita* prohibits the transference of an object from a *reshut ha-yahid* to a *reshut ha-rabbim* or *vice versa*. The *gemara* in *Shabbat 96b* derives the source of this prohibition as follows: "Where is carrying out [from *reshut ha-yahid* to a *reshut harabbim* or vice versa] written? Said Rabbi Yohanan, The Torah states 'And Moses instructed, and a proclamation went out throughout the camp [to stop the donations to the Tabernacle]' [Exodus 36:6]. Now, where was Moses standing? In the camp of the Levites, which was a public domain and he said to the Israelites, do not carry from your private domain to this public domain." However, the *baraita* does not address carrying within a *reshut ha-rabbim*. The continuation of the *gemara* in *Shabbat* 96b asks, "From where is it known that one who carries four *amot* in the public domain is liable? All instances of carrying four *amot* in a public domain are prohibited by tradition." The *baraita* does state regarding carrying in a *karmelit*, "Therefore, [by rabbinic decree] one may not pick something up [in a *karmelit*] carry it four *amot* and then place it down. However, if one did pick it up, carry it four *amot* and place it down, he is exempt [from the Biblical prohibition.]". The *baraita* does not address the possibility of an *eruv* in a *reshut ha-rabbim* or a *karmelit*. It is permissible to carry within a *reshut ha-yahid* and a *makom patur*.

This *baraita* provides the guidelines for both the prohibition against *hoza'ah* and the ability to build an *eruv*. In order to understand these specific details, it is necessary to examine the descriptions of each of the four domains.

1. **Reshut ha-Yahid** – The *baraita* explains that a *reshut ha-yahid* is any space that is four by four *tefahim*, handbreadths, with partitions that are ten *tefahim* high. The *baraita* gives the examples of a trench and the top of a partition that is ten *tefahim* high and four *tefahim* wide. Each one of these areas exists independently for all surrounding areas. The *baraita* does not present the typical *reshut ha-yahid* which would be a house or courtyard surrounded by walls.

2. **Reshut ha-Rabbim** - The *baraita* continues, "And what is a public domain? A major road (*seratya*), a great public square (*pelatya*) and open alleys (*mevo'ot ha-mefulashim*), - that is a public domain." Daniel Sperber suggests that the *seratya* referred to the *strata*, the wide streets that led into the market places of Roman cities whereas the *pelatya* was the *platea*, the broad open space that contained the markets. These areas were public domains because people, carts and fully-laden camels passed through the markets and had to use the *strata* for ingress and egress.[43] Although the *baraita* does not identify the precise dimensions of these areas that are considered *reshut ha-rabbim*, the Babylonian Talmud in *Shabbat* 99a attempts to identify the width of a *reshut ha-rabbim*. The Talmud concludes that the width of the road on which the Jews in the desert transported the boards for the Tabernacle was sixteen

[43] Daniel Sperber, *The City in Roman Palestine* (New York, 1998), 9.

amot wide. Therefore, the rabbis say that a public domain is an area that is at least sixteen *amot* wide.[44] However, the Talmudic texts do not provide any further criteria regarding the dimensions of a *reshut ha-rabbim*.

The open alleyways (*mevo'ot mefulashim*) are to be contrasted with the closed alleyway (*mevo'ot she'ainan mefulashim*) around which an *eruv* can be constructed. Sperber explains that leading off from the open *pelatya* were alleys that were often filled with shops and booths. These *mevo'ot mefulashim* often had a concentration of specialized craftsmen, organized in a guild framework.[45] Since these *mevo'ot* were an extension of the market, it is not surprising that the *baraita* considers them to be part of the public domain even though they were often narrow and small.

2. **Karmelit** – The *baraita* offers two explanations of a *karmelit*. First, it identifies several unrelated spaces that have the status of a *karmelit*: the sea, an open field and the *stoa*, a covered walkway on which the merchants sold their wares but was not easily accessible to travel as it was situated between the colonnades at the outskirts of the marketplace (*istavanit*).[46] These spaces are open to the public but are not actually

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[44] There is another source that identified a public domain as sixteen *amot* wide. *Mishna Bava Batra* 6:7 says: "A public domain is sixteen *amot* wide." For the relationship between this *Mishnah* and the rabbinic statement in *Shabbat* 99a, see Rav Nissim Gaon, *Shabbat* 99a. Sperber argues that this width does not match the width of major roads in Roman times. However, he explains that rabbis and the Greeks had different methods of measuring which may account for the discrepancy in the widths of the major roads. (See Sperber, 103-4).

[45] Sperber, 11.

[46] Ibid., 11-12

accessible for travel. They are not walled.[47] The *baraita* then identifies a *karmelit* as being "neither a *reshut ha-rabbim* nor *a reshut ha-yahid*". [48] It would appear that a *karmelit* includes specific spaces as well as spaces that fit this in-between category of being "neither a *reshut ha-rabbim* nor *a reshut ha-yahid*". The *Yerushalmi* elaborates on the definition of a *karmelit* and offers several opinions regarding the nature of this domain: "Rabbi Yassa said in the name of Rabbi Yohanan: It is like the shop of Bar Yustini…Rabbi Zeirah said…Narrow streets (*simtaot*) between the columns are considered a *karmelit*, Hiyah Berei de-Rav said: Anything that prevents movement in a public domain is considered a *karmelit*. The Rabbi of Caesarea said: Even if it prevents passage due to thorns or glass."[49] The shop of Bar Yustini is not described further in the *Yerushalmi*. The first definition that can be understood is "*simtaot* between the columns." Sperber explains that the word *simta* derives from the Latin word *semita*, meaning a narrow road.[50] These *simtaot* were relatively inaccessible narrow roads that branched off from the market square from between the market

[47] See *Tosefta Ki-Feshutah, Shabbat*, 3.
[48] Its "in-between" status is reflected in the possible derivations of the word. The Yerushalmi (*Shabbat* chapter 1 *halakhah* 1) argues that *karmelit* is composed of the two words *rakh*-soft and *male*-full, to reflect the in-between status of grain that is still moist and soft but ripe to be harvested. Rambam in his *Commentary to the Mishnah* (Jerusalem, 1963), *Shabbat* 1:1, argued that *karmelit* is derived from *ke-armelit*, like a widow, who is in-between as she is neither married nor a virgin.
[49] Yerushalmi *Shabbat*, chapter 1 *halakhah* 1. For Safrai's discussion of a *karmelit*, see Safrai, *Eruvin*, 294.
[50] Sperber, 104. Saul Lieberman questioned this etymology. See *Tosefta Ki-Feshuta* (New York, 1962), II: 854, f.n. 99.

portico's columns.[51] This is similar to the Bavli's description of an *istavanit*, a *stoa* that was not easily accessible to travel as it was situated between the colonnades at the outskirts of the marketplace.[52] The final two opinions in the *Yerushalmi* merely debate the level of disruption to access and travel that is necessary to consider the area a *karmelit* and reflect the fact that the *Yerushalmi*, like the *Bavli*, identifies the *karmelit* both as a specific space and as a category of in-between space.[53]

4. **Makom Patur** - The term *makom patur* does not appear in the *Mishnah* or the *Tosefta*. It is defined by the *gemara* in *Shabbat* as an area that lacks the qualifications of a public domain and a private domain but it is also has a width of less than four handbreadths and therefore is not considered a *karmelit*.[54]

5. **Hazer Shel Rabbim** - Yizhar Hirschfeld, in his study of Palestinian houses during the Roman period, developed a picture of the *hazer* and the activities that took place in this courtyard. [55] He explained, based on archaeological discoveries, that there were

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[51] Sperber, 104. See Saul Lieberman, *Ha-Yerushalmi Ki-Feshuto* (Jerusalem, 1934), I:16 for a possible variant reading of this statement in the Yerushalmi.
[52] Sperber, 11-12.
[53] There are different examples of areas that are categorized as a *karmelit* in the *Tosefta* (*Shabbat* 1:4). For a discussion of the specifics of each of these areas, see Lieberman, *Tosefta Ki-Feshuta*, *Shabbat*, 3-4. The term *karmelit* is used to describe all of these types of areas, see Mishnah *Eruvin* 9:1.
[54] *Shabbat* 7b.
[55] For a discussion of the courtyard in the Talmudic period and its uses and significance, see Yizhar Hirschfeld, *The Palestinian Dwelling in the Roman Byzantine Period* (Jerusaelm, 1995), Cynthia M. Baker, *Rebuilding the House of Israel: Architectures of Gender in Jewish Antiquity* (Stanford, CA., 2002), especially 113-44, Samuel Krauss, *Kadmoniyot Ha-Talmud* (Berlin, 1923), I: 391-402 and Dorit Segal, *He-Hazer U-Metakneha Bi-Tekufat Ha-Mishhah Ve-ha-Talmud* (MA Thesis, Bar Ilan

three types of houses built during this period; a "simple house" that consisted of a one-room structure; a "complex house" that added additional rooms; and a "courtyard house," a house enclosed by a courtyard on all four sides. According to Hirschfeld, in all of the houses, the courtyard was situated in the common area in front of the homes and served a variety of purposes for all those who lived around it. In a "courtyard house" the courtyard was utilized by the members of only one household. However, in the other two scenarios, the courtyard was used by all the families that had houses adjoining this courtyard.[56] Eating and drinking, washing and food preparation, cooking and baking, raising and slaughtering of fowl, production and storage of goods for household use and sometimes even the sale of market goods, visiting among neighbors and sometimes sleeping all took place in the courtyard.[57] The common ownership of the courtyard was an important element in the creation of these small

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University) viewed at http://www.daat.ac.il/daat/israel/segal/b-2.htm (Viewed on 5/31/10) and Zvi Peleg, *He-Hazer Ve-Shimusheha Bi-Tekufat Ha-Mishnah Ve-ha-Talmud* viewed at http://cms.education.gov.il/nr/rdonlyres/98c0808b-1a7f-4a6e-80a7-9dc92f4d3b58/12586/%D7%94%D7%97%D7%A6%D7%A8.pdf (viewed on 5/31/10).

[56] See *Hirschfeld*, Dwellings, 21-107. Baker argued that is impossible to know for certain whether the residents in the houses in a courtyard were members of the same extended family and, therefore, there may have been some blurring of lines between the need for privacy in the *hazer* and the sharing that took place between neighbors. See Baker, 35-42 and 114-22. The fact that the small *hazer* was shared by different families may be reflected in the *baraita's* term, *hazer shel rabbim*.

[57] See, for example, Mishnah *Bava Batra* 3:5 for a list of items that were generally found in the courtyard with a discussion of the archaeological discoveries and their relevance to the Talmudic descriptions in Hirschfeld, *Dwellings*, 272-88.

communities and, generally, a wall would be built around the courtyard to separate it from other *hazerot* that may have adjoined it.[58]

6. **Mavoi She-Aino Mefulash** - A closed alleyway is distinguished from the open alleyway that was defined earlier in the *baraita* as a public domain. In Roman times, there were two types of small, narrow roads or alleyways in a village or city; one road was open to a public domain at both ends of the road. The other type of road opened at one end into a public domain but was closed at the other end, similar to the modern-day cul-de-sac. Hirschfeld explained that in several archaeological excavations, long winding alleyways led from the market to the various courtyards. He claimed that this early example of urban planning helped to facilitate movement in often crowded urban conditions. In both cases, the road or alleyway was bordered by walls that served to separate the adjoining *hazerot* from the more public *mavoi.*[59]

What is an Eruv?

Although the *Mishnah* and *baraita* clearly outline the parameters of the prohibition against *hoza'ah*, the tannaic sources do not define the *eruv* with the same clarity. Rather, the definition of the *eruv*, the manner in which it operates and the details of its creation, are addressed in a wide spectrum of rabbinic sources. The *baraita* describes the role of an *eruv* only in the cases of a *hazer shel rabbim* and in *mevo'ot she'ainan mefulashim*. Regarding these two properties, the *baraita* says, "If

[58] See Mishnah *Ma'aserot* 3:5 and the discussion in Hirschfeld, *Dwellings*, 272-3.
[59] Hirschfeld, *Dwellings*, 273.

an *eruv* is made, it is permissible [to carry within them]; if an *eruv* is not made it is forbidden [to carry within them]."

What is the status of an *eruv* in the other domains mentioned in the *baraita*? Furthermore, why does the *baraita* mention only a *hazer shel rabbim* and ignore the case of a *hazer shel yahid* --- a private house and private courtyard? The answers to these questions, while not explicit in the *gemara*, hold the key to understanding the foundations of the institution of *eruv* and its use to mitigate the prohibition against *hoza'ah*.

1. **Hazer shel Yahid** - The fact that the *baraita* does not mention the creation of an *eruv* around a private house is not surprising given the fact that the *baraita* did not utilize the example of a private house when defining a *reshut ha-yahid*. An enclosed hazer *shel yahid* is a private domain in which carrying is permitted and no *eruv* is required. This is taken for granted by the *gemara*.
2. **Reshut Ha-Rabbim** - The *gemara* quotes a *baraita* that asks: "How can one create an *eruv* around a *reshut ha-rabbim*?"[60] The *gemara* concludes that the *baraita* was discussing whether an *eruv* can be created around a *mavoi ha-mefulash*. However, the *gemara* cocludes, an *eruv* could never be created

[60] Bavli *Eruvin* 6a has the textual version, "How can one create an *eruv* around the street of a public domain?" Halivni explains that the additional word "street" was added so that the original *baraita* could be reconciled with the ultimate answer of the *gemara*. See David Halivni, *Mekorot U-Mesorot* (Jerusalem, 1982), II: 9-11.

around a large public space such as a *seratya* or *pelatya*.[61] According to this *gemara*, there is a distinction within the category of *reshut ha-rabbim*: a *mavoi ha-mefulash*, even though it has the status of a *reshut ha-rabbim*, can be surrounded by an *eruv*, in which case carrying would be permitted on the Sabbath. However, an *eruv* cannot be made around a *seratya* or *pelatya*.

The *gemara*, however, raises the issue of creating an *eruv* around a city. The *gemara* says: "As Rabbah bar Bar Hannah said in the name of Rabbi Yohanan, 'The city of Jerusalem, were its doors (gates) not closed at night, one would be liable there for carrying in a *reshut ha-rabbim*.'"[62] According to this *gemara*, if its doors are closed at night, Jerusalem, a *reshut ha-rabbim*, would no longer have the status of a *reshut ha-rabbim* and carrying would be permissible on the Sabbath. Therefore, carrying can be permitted in a large space such as Jerusalem as long as it is surrounded by walls and its doors are closed at night.

3. **Karmelit** – The *gemara* does not address the issue of building an *eruv* around a *karmelit*. However, it would seem that the category of *hazer shel rabbim* and *mevo'ot she'ainan mefulashim* have the same in-between status as a *karmelit*. They are not a *reshut ha-yahid* because numerous people live in houses

[61] *Eruvin* 6a-6b. See Mishnah *Eruvin*, 1:2 and Safrai, *Eruvin*, 27-31. See also Avraham Goldberg, *Perush la-Mishnah: Massekhet Eruvin* (Jerusalem, 1986). Safrai utilizes the tect of the Kaufman mss. and the Naples edition of the Mishnah. Goldberg includes textual emendations from earlier manscripts.
[62] *Eruvin* 6b.

adjoining these spaces. Yet, they are not a *reshut ha-rabbim*, because they are not spaces of public access. The ability to create *eruvin* in in-between spaces such as a *hazer*, *mavoi* and *karmelit* is the subject of most of the medieval rabbinic discussion regarding the institution of *eruvin*.

Construction of the Eruv

The first element that must be addressed in order to create an *eruv* around the different domains is the enclosing of the property so that it more closely resembles a *reshut ha-yahid* in which carrying on the Sabbath is permitted. The Talmud introduces different methods of enclosing different spaces in order to create an enclosed area in which carrying would be permitted.

1. **Mavoi She'Aino Mefulash** - The *Mishnah* records the method in which a *mavoi she-aino mefulash* can be enclosed to allow for the creation of an *eruv* in that space. Regarding the typical closed alleyway, a partition would only be required on the side of the *mavoi* that opens into the *reshut ha-rabbim*. The side of the *mavoi* that opens into the *hazerot* does not need any form of partition since each *hazer* is considered an enclosed space. Regarding the proper form of closure, the *Mishnah* writes: "Concerning the preparation of an alleyway [for the purposes of establishing an *eruv*] – the school of Shammai says: a side-post (*lehi*) and a cross-beam (*korah*) [are required]. The school of Hillel says: a side-post or a cross-beam [are required]."[63] The

[63] Mishnah *Eruvin*, 1:2. Safrai suggested that the dispute between the school of Shammai and the school of Hillel may have been based on an earlier source that read

gemara quotes a disagreement concerning the purpose of this *lehi* and *korah*, "Consequently, we see that [Rav Judah] says that a *lehi* serves as a partition while a *korah* serves as a reminder…But, Rava says that both of these serve as reminders."[64] This statement by the *gemara* identifies a tension as to whether the purpose of these *eruv* partitions is to actually enclose the space or merely to remind people that cannot carry outside of the *eruv*.

2. **Hazer** - Although the *Mishnah* addresses the manner in which the opening of a *mavoi* is closed to create an *eruv* partition, it does not discuss the closing of the entrance of the *hazer* to create the *eruv*. The *gemara* quotes a *baraita* concerning this issue: "[Carrying in] a *hazer* becomes permitted by placing one board [at the side of the entrance]. Rabbi said: By placing two boards [one on either side of the entrance]." The *gemara* continues and states that if only one board is used, it must be four *tefahim* wide. However, if boards are used on both sides of the entranceway, any width board is acceptable.[65] This *baraita* appears to require a more substantial *eruv* partition for a *hazer* than for a *mavoi* where any width side post is acceptable. This can be explained as follows: First, the only time that a *hazer* requires any partition is when the *hazer* opens into a *reshut ha-rabbim* or another *hazer* or *mavoi* in which an *eruv* has not been created. If the *hazer* opens into a *mavoi* or another *hazer* where an *eruv* has been

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"*lehi ve-korah*" and they argue whether the *vav* denotes "and" or "or". See Safrai, *Eruvin*, 27.

[64] *Eruvin* 12b. See also the discussion on *Eruvin* 8b and Rashi *Eruvin* 8b s.v. *u-ve-alakson* who argued that the reason for the reminder is that people should remember that it is permissible to carry only in a *mavoi* and not in a *reshut ha-rabbim*.

[65] *Eruvin* 12a.

created, it does not need any partition at all. However, in a situation in which an eruv is required in a *hazer*, a more substantial partition is required due to the fact that since people were so comfortable carrying within their semi-private *hazer*, they required a more visible reminder not to carry outside the *hazer*. In a *mavoi*, on the other hand, which usually has an entrance to a *reshut ha-rabbim*, people are more cognizant of the difference between their *mavoi* and the *reshut ha-rabbim*.

3. **Mavoi Ha-Mefulash** - The *gemara* introduces several other forms of partitions that are more substantial than the *lehi* and the *korah*. Regarding the issue of how to enclose a *mavoi ha-mefulash*, the *baraita* presents two views. The first view is that one is required to build a *tzurat ha-petah*, a symbolic door opening created by placing a crossbeam between two end poles, on one end and a *lehi* and *korah* on the other end. Hannaniah, however, argues that according to the school of Shammai, one must close off each end with a door that must be locked when leaving the area, whereas according to the school of Hillel one needs to erect a door on one end and a *lehi* and *korah* on the other end.[66] Although the *baraita* on *Shabbat* 6a identifies a *mavoi ha-mefulash* as a *reshut ha-rabbim*, the *gemara* contains a dispute whether this property requires a wall with door partition as is required in a *reshut ha-rabbim* or whether a combination of a *tzurat ha-petah* and a *lehi* and *korah* are adequate *eruv* partitions.

[66] *Eruvin* 6a-6b. See *Mishnah Eruvin*, 1:2 and Safrai, *Eruvin*, 27-31.

The identification of specific partitions for each space does not eliminate the possibility that other types of partitions can be utilized for all spaces. A *tzurat ha-petah* is created by inserting two side posts at either end of the entrance with a crossbeam between or over them. This type of structure is more substantial than a *lehi* and *korah* but not as substantial as a door. The first *Mishnah* in *Eruvin* addresses the use of a *tzurat ha-petah* in a *mavoi*. It states:

> A [cross-beam spanning the] entrance of the *mavoi* at a height of more than twenty cubits should be lowered [for the purpose of establishing an *eruv* in the neighborhood]. Rabbi Judah says, "This is unnecessary." And if it is wider than ten cubits, it should be reduced [in width]; but if it has the shape of a doorway (*tzurat ha-petah*) there is no need to reduce it even though it is wider than ten cubits.[67]

Why does the existence of a *tzurat ha-petah* negate the need to reduce the width of the doorway of the *mavoi*? Safrai argues that the *tzurat ha-petah* in this *Mishnah* refers to the stone structure of a doorway at the entrance to the *mavoi*. If the *mavoi* has a real entranceway, it does not have to be concerned with the appearance of the partition and the doorway does not have to be reduced. Safrai brings archaeological evidence from the ruins of Ein Gedi in which the entranceway to the *mavoi* was a stone structure. Safrai explained that the *eruv* process developed such that the actual stone doorway of a *tzurat ha-petah* was transformed into a symbolic doorway consisting of two side posts and a crossbeam connecting them.[68]

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[67] *Mishnah Eruvin*, 1:1

[68] See Safrai, *Eruvin*, 20-26. For further archaeological evidence for the existence of stone gateways at the entrance to *mevo'ot*, see Shimon Dar, Yigal Teper and Ze'ev

The transition in the status of the *tzurat ha-petah* can be seen in the following talmudic discussion. The *gemara* states,

> Rav Hisda said: If one made a *tzurat ha-petah min ha-tzad* so that the crossbeam extends from the side of the posts, he has accomplished nothing. And, Rav Hisda also said: The *tzurat ha-petah* must be strong enough to support a door, even if only a door made of straw. Resh Lakish cited in the name of Rav Yannai: A *tzurat ha-petah* must have hinges [so that it looks like a door].[69]

It is evident from this amoraic discussion that although the *tzurat ha-petah* has become merely a symbolic "doorway", it is critical that it maintain certain aspects of a regular doorway in order to be considered a valid *eruv* partition.

The *gemara* explains that there were other natural boundaries that might serve as *eruv* partitions. Regarding the use of a river or lake as an *eruv* partition, the *gemara* on *Eruvin* 8a relates the following story: "There was an incident concerning a certain *mavoi* whose one side terminated at the sea … and the matter came before Rabbi but he would not permit or prohibit this partition. He did not prohibit it because partitions existed. But, he did not permit it because the sea might bring up sediment [thus depriving the partitions of the necessary height and incline.]". The *gemara* concludes,

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Safrai, *On Reiham: Ayara Mi-Tekufat ha-Mishnah* (Tel Aviv, 1986), 26-34. *Midrash ha-Gadol* (Jerusalem, 1972), *Devarim*, 6:9 lists the gateways that require a *mezuzah*, including the gateways of a *hazer*. It does not mention the gateway of a *mavoi*. See the similar *baraita* in *Yoma* 11a. Rambam, *Hilkhot Mezuzah* 6:8 does mention gateways of *mevo'ot* as requiring a mezuzah. While the source of the Rambam's view is unknown, the need for a mezuzah on the gateway of a *mavoi* would point to the fact that there existed a real structure with a real gateway. See *Baraita Massekhet Mezuzah* (Bnei Brak, n.d.), 46-7 for a possible source for the Rambam from the *Tractate Mezuzah*.

[69] *Eruvin* 11b

"Meremar separated the *mavoi* of the town of Sura from the sea with nets because he was afraid that the sea would bring up sediment." It is evident from this story that the sea is an acceptable *eruv* partition as long as it creates the proper height and inclines. The only problem is whether the sediment nullifies the sea as an *eruv* boundary since it would diminish the height of the sea wall and potentially impact the necessary incline required for an *eruv* enclosure.

The *gemara* in *Eruvin* 22a-b considers other natural boundaries as *eruv* partitions and defines the necessary incline to create acceptable *eruv* boundaries. "The Land of Israel is not considered a *reshut ha-rabbim* … What is the reason? If you say that the reason is because it is surrounded by rocky heights on one side and the drop of the Gader on the other side, Babylonia, too, is surrounded by the Euphrates on one side and the Tigris on the other side. Furthermore, the entire world is surrounded by the ocean." The *gemara* concludes that as long as these natural boundaries are ten *tefahim* high within a distance of four *amot*, they can serve as *eruv* boundaries.

The *Mishnah* in *Eruvin* 22a, however, introduces a disagreement between Rabbi Judah and the Sages concerning the ability of public traffic to nullify the *eruv* partition, "Rabbi Judah says, if the path of the *reshut ha-rabbim* cuts between the posts [surrounding a well], one must divert the path to the side. The Sages say it is not necessary."[70] The *gemara* discusses whether public traffic will nullify a natural *eruv*

[70] Mishnah *Eruvin* 2:1 addresses the issue of a public well that was utilized by groups of farmers who would camp around the well and would draw water even on the

partition, "If a mound rises to a height of ten *tefahim* within a distance of four *amot* and the public travel over it, is one who carries liable or not?" The *gemara* explains that this is dependant on the disagreement between Rabbi Judah and the Sages; according to the Sages, public traffic never disrupts an *eruv* and in this case the enclosed area would not be considered a *reshut ha-rabbim*. According to Rabbi Judah, the traffic would nullify the *eruv*.

The question of the utilization of natural *eruv* partitions will be a critical issue in the development of community *eruvin* throughout the centuries. The foundations for the discussions that will accompany these eruvn are established in the talmudic literature.

Charlotte Fonrobert argued that the introduction of these symbolic and actual *eruv* partitions served to create an early model of Jewish neighborhoods with the *eruv* partitions separating the Jewish space from the neighboring areas. The creation of these *eruv* communities served to strengthen the Jewish community around the ritual observance of the Sabbath.[71]

Sabbath. The *Mishnah* describes the manners in which an *eruv* can be created around these wells. See Safrai, *Eruvin*, 56-57.

[71] Charlotte Elisheva Fonrobert, "Neighborhood as Ritual Space: The Case of the Rabbinic Eruv," *Archiv fur Religionsgeschichte* 10 (2008): 252-57.

Food-Sharing and Participation in the Eruv

Although the building of partitions serves to enclose these in-between properties, the rabbis insisted that the community that was going to be unified through this *eruv* engage in a symbolic act of sharing food. In this manner, the "*eruv* community" would be bound together by structural boundaries and by a shared communal meal. The Talmud takes great effort to define who may be included in this "*eruv* community" and what type of symbolic act is required to bring this group together.

The *Mishnah* distinguishes between the manner in which joint ownership is created in a *mavoi* and in a *hazer*. This joint ownership needed for a *mavoi* is described as follows:

> How is *shittuf* (unification) in the alleyway (*mavoi*) effected? One [of the residents] places there a jar of food and declares, 'This belongs to all the residents of the alleyway,' and he may confer possession upon them through his grown-up son or daughter, through his Hebrew manservant or through his wife; but he may not confer possession either through his son or daughter, if they are minors, or through his Caananite non-Jewish bondman or bondwoman, because their hand is as his hand.[72]

In order to effect this *shittuf*, all the people living in that *mavoi* must be co-owners of a common food object. This is accomplished through the transfer of the vessel of food

[72] Mishnah *Eruvin*, 7:6.

from one resident to all the other residents. Whereas generally the recipient of the object must receive the object him/herself, in this situation the *Mishnah* applies the rule of *zakhin le-adam shelo be-fanav*, namely, that it is permissible to effect a transaction for the benefit of someone even if it is not in his presence and without his consent, and that one person may receive the food on behalf of all the residents. Therefore, the transfer is achieved by means of one resident handing the food to another resident who takes possession of the food on behalf of all the residents of the *mavoi*.[73]

The *Mishnah* does not explicitly address the issue of creating joint ownership in the *hazer*. However, this is discussed in the *Tosefta*. The *Tosefta* says: "You may make a *shittuf* in a *mavoi* and if they did not make an *eruv*, one can make an *eruv*. One may make an *eruv* in a *hazer* but one may not make a *shittuf* in a *hazer*"[74] According to this opinion in the *Tosefta* there is a fundamental difference between the creation of joint ownership in a *mavoi* and a *hazer*. In a *mavoi*, the residents may utilize the process of *shittuf* in which one resident transfers the food on behalf of all the other residents. Alternatively, in a *mavoi*, the residents may utilize the process of *eruv* in

[73] This is stated explicitly in Mishnah *Eruvin*, 7:11. Tosefta *Eruvin*, 6:8 quotes the view of Rabbi Meir who did not apply the principle of *zakhin le-adam* regarding *shittuf* because people ordinarily do not want others to share in their property.
[74] Tosefta *Eruvin* 6:6. The Sages permit a *shittuf* procedure even in a *hazer*.

which each resident donates a food item to the collective group. However, in a *hazer* one may only utilize the process of *eruv* and may not use the *shittuf* process.[75]

The distinction between an *eruv hazerot* and a *shittuf mavo'ot* can also be seen in the type of food required to effectuate the relationship. The Mishnah states:

> With all kinds of food may one achieve an *eruv* [of a courtyard] or *shittuf* [of an alleyway] except with water or salt; thus according to Rabbi Eliezer. Rabbi Joshua disagrees: A loaf of bread is a valid *eruv*. Even if it baked from one *se'ah* [of flour], but is not whole, one may not effect an *eruv* with it. If it is a loaf the size of an *issar,* a small coin, but is whole, one can effect an *eruv* with it.[76]

Whereas according to the first opinion in the Mishnah, all food items except salt or water can be utilized in either a *hazer* or a *mavoi*, Rabbi Joshua's opinion requires clarification. Although he emphasizes the need for bread, it seems that the quality of the bread is more important than the quantity, and a small whole loaf would be acceptable whereas a larger broken piece would not be. This suggests that the creation of joint ownership within this *eruv* community requires a formal act that only has

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[75] See Lieberman, *Tosefta Ki-Feshutah Eruvin*, 420-21, who argued that this Tosefta is repeated in the Bavli, *Eruvin* 71b which states: "One can make an *eruv* in a *hazer* with bread. However, one may not make an *eruv* with wine in a *hazer*. One may make a *shittuf* in a *mavoi* with wine and if one would like he may make the *shittuf* with bread." Lieberman claimed that the words "wine" and "bread" are synonymous with *eruv* and *shittuf*. Albeck argued that the dispute concerning whether *shittuf* is valid in a *hazer* is also the debate between the opinions in Mishnah *Eruvin*, 7:11 concerning whether one is allowed to create joint food ownership in a *hazer* without the explicit consent of each of the residents. See Albeck, *Moed*, 439-40.

[76] Mishnah *Eruvin*, 7:10

validity if performed with a complete loaf of bread. The *gemara* explains that according to Rabbi Joshua bread is only required for an *eruv hazerot* while a *shittuf mevo'ot* may be made with any food except water or salt.[77]

Safrai explains that the distinction between the manner in which the joint ownership is effectuated in a *mavoi* and a *hazer* was based on the evolution of the practice of the *eruv*. Initially, the *eruv* was limited to a family or group of families living in a *hazer*. For such people, sharing by each family in the *hazer* was literally required. As the *eruv* expanded to include all the residents of a *mavoi*, the sharing of food became more symbolic as the people in different *hazerot* would not literally share each other's food. Therefore, the process evolved into a *shittuf* in which one resident could symbolically create a joint ownership on the vessel of food on behalf of all the inhabitants of the *mavoi*. Furthermore, whereas the actual sharing of food in a *hazer* had to be done with a full loaf of bread, in a *mavoi* where the sharing of food is merely symbolic, any food and any quantity, other than water or salt, was sufficient, according to Rabbi Joshua.[78]

This evolution from *eruvei hazerot* to *shittufei mevuot* also reflects an expanded sense of community as expressed in the laws of *eruv*. Rabbi Eliezer argued

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[77] *Eruvin* 81a. See also the discussion in *Eruvin* 71b and the comments of Albeck, *Moed*, 439.

[78] See Safrai, *Eruvin* 10. A similar analysis is offered by Albeck, *Moed*, 437-38. According to the opinion of the Sages in the *Tosefta*, once the joint ownership was transformed into a symbolic act, the symbolic transfer of ownership was extended to the *hazer*.

that a local storekeeper or baker could be appointed to organize the arrangement of the joint ownership of the food in the *mavoi*.[79] Furthermore, the Mishnah records the view that once a shared ownership of food is arranged in a *mavoi*, it is no longer necessary to create this relationship in the *hazerot* that are included in this *mavoi*.[80] Even Rabbi Meir, who still requires a literal food sharing arrangement in the *hazerot* within a *mavoi*, requires it merely "so the children will not forget about *eruvin*."[81] The acceptability of the *eruv* process in the hands of a designated representative of the *mavoi* and the fact that the *eruvei hazerot* became unnecessary where a *shittufei mevo'ot* was performed points to the expansion of the community, at least *vis a vis eruvin*, from the individual *hazer* to the more communal *mavoi* and was a reflection of the early stages of urbanization in Palestine. In the communal setting, the representative of the residents of the *mavoi* had the authority to represent these other residents. This development of the "*eruv* community" was not limited to the *mavoi*. The *Mishnah* explains that the food objects must be kept in one of the residences of the *hazer* or *mavoi* and that places such as porches and barns where people don't live are not valid storage spaces for the *eruv*.[82] Shmuel extends this idea and argues that the house in the *hazer* or the *mavoi* where the food is stored does not have to contribute to the *eruv*. Each resident must contribute to the communal *eruv* and the

[79] Mishnah *Eruvin*, 7:11.
[80] Mishnah *Eruvin*, 6:8.
[81] Mishnah *Eruvin*, 7:10. For further clarification of Rabbi Meir's opinion, see Albeck, *Moed*, 438-39 and Safrai, *Eruvin*, 235-36.
[82] Mishnah *Eruvin*, 8:4.

contribution of the resident in whose house the *eruv* is stored is achieved through lending his house for this purpose.[83]

The creation of the *eruv* community requires the participation of all members of this community in the sharing of the food object. The *Mishnah* and the *Tosefta* address the issue of what happens if one resident does not participate in the *eruv*. Does he nullify the *eruv* only for himself or for the entire *eruv* community? Both of these sources provide numerous examples of cases that discuss this issue. Our discussion will focus on the situations that highlight the creation of the *eruv* community and thus set the stage for the later development of the communal *eruv*. The Mishnah teaches:

> If someone lives in a courtyard with a non-Jew, or with someone who does not accept the principle of the *eruv*, then that one [i.e., the non-Jew or the person who does not accept the principle of the *eruv*] imposes a prohibition [of transferring any object from his house into the courtyard on the Sabbath] on the Jew. But, Rabbi Eliezer ben Yaakov says: Indeed, he [i.e, the non-Jew, or the person who does not accept the principle of the *eruv*] does not impose a prohibition [of carrying into the courtyard on the Jew], unless there are two Jews living in separate residences [in the courtyard].[84]

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[83] *Eruvin* 49a and the discussion in Charlotte Elisheva Fonrobert, "The Political Symbolism of the Eruv," *Jewish Social Studies, New Series* 11:3 (Spring-Summer 2005): 19-21 and Fonrobert, "Neighborhood." 248-51.

[84] Mishna *Eruvin*, 6:1. Yaakov Nachum Epstein claims that "someone who does not accept the principle of *eruv*" was a later addition to the text of the Mishnah. In *Eruvin* 68b, the *baraita* does not include the category of "someone who does not accept the principle of *eruv*." He says that the printed text of the Mishnah from *Mishnah* Eruvin 3:2 where "someone who does not accept the principle of *eruv*" is included in the list of people who can not acquire the food product for the *eruv* on behalf of the other residents of the *mavoi*. This phrase is not found in the Hamburg ms. of the Mishnah nor in Rabbenu Hannanel, Eruvin 61b, Eliezer ben Natan, *Sefer Ra'avan*, Massekhet

The Mishnah's ruling is based on the concept that two Jews who live together in a courtyard must create an *eruv* community in order to circumvent the prohibition against *hoza'ah*. The presence of a non-Jew or someone "who does not accept the principle of the *eruv*" prevents the Jews from carrying in that courtyard. Rabbi Eliezer ben Yaakov argues that since an *eruv* is only required if two Jews live in the same courtyard, if one Jew lives with the non-Jew or with a person "who does not accept the principle of the *eruv*" the mere presence of either of them does not prevent the one Jew from carrying in that courtyard since an *eruv* is not required. However, if two Jews live in the courtyard, since they are required to create an *eruv*, the presence of the non-Jew or the one "who does not accept the principle of the *eruv*" will invalidate their *eruv*. Rabbi Meir believes that the presence of such people prohibits even a single Jew from carrying.

The *Mishnah* rules that if a Jew does not participate in the *eruv*, there is a remedy for this situation. The *Mishnah* writes:

> If one member of a courtyard forgot to join the *eruv*, neither he nor the other residents may carry into or out of his house. However, the other houses are permitted for all the residents including him. If the residents ceded their rights to him [who forgot to join the *eruv*], he is permitted to carry [between his house and the courtyard] but the other residents are restricted. If there are two residents [who forgot to join the *eruv*],

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Eruvin or *Or Zarua*, II: 168. See Yaakov Nachum ha-Levi Epstein, *Mavoh le-Nussah ha-Mishnah* (Jerusalem, 1948), II: 608-9.

> they restrict each other because two people may cede rights but they may not receive rights.
>
> From when can one relinquish his domain? The school of Shammai says from before the Sabbath commences and the school of Hillel says, even after the Sabbath has begun. If someone relinquished his property and carries, whether inadvertently or intentionally, he once again prohibits the inhabitants from carrying in that courtyard, says Rabbi Meir. Rabbi Judah says, he only prohibits the other residents of the courtyard if he carries intentionally but not if he carries unintentionally.[85]

According to these *mishnayot*, if one forgot to join the *eruv*, he may relinquish his property to the other members of the *hazer* thereby relinquishing his place as a resident of that *hazer* for the duration of that Sabbath, allowing them to carry throughout the *hazer*. The *Tosefta* takes this idea one step further and adds, "It is laudatory for any person to relinquish his domain [in such a case]; however, if he is an 'important person' it is his right [but not his responsibility] to relinquish his domain."[86] Lieberman explained that if this person relinquishes his property, not only are the other residents allowed to carry in the courtyard but he, too, may carry since without property, he is considered as a guest who is permitted to carry.[87]

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[85] *Mishnah Eruvin*, 6:3-4.
[86] *Tosefta Eruvin* 5:11. This *Tosefta* does not appear in the Erfurt manuscript. (See Moshe Shemuel Zuckermandel, *Tosefta* [Jerusalem, 2004]) Lieberman claims that this omission is a scribal error in that manuscript as it appears in all other versions of the *Tosefta* (see Lieberman, *Tosefta Ki-Feshutah*, *Eruvin* 397-98.)
[87] Lieberman, *Tosefta Ki-Feshutah*, *Eruvin* 397-98.

The *Tosefta* adds one additional condition: "A Jew who desecrates the Sabbath in public cannot relinquish his domain. However, a Jew who does not desecrate the Sabbath in public can relinquish his domain."[88] This ruling highlights the fact that relinquishing a domain is part of the process of creating an *eruv* community. Therefore, someone who violates the Sabbath in public cannot participate in the creation of this *eruv* community. The Bavli elaborates on the definition of this Sabbath violator who cannot participate in the *eruv* community. The *gemara* says: A certain person who went out on the Sabbath with a bag of spices. When he saw Rabbi Judah Nesiah he covered it."[89] The *gemara* concludes that this person can relinquish his domain since he evidenced embarrassment upon seeing Rabbi Judah Nesiah. Although he publicly violated the Sabbath, his subsequent action allowed him to remain within the *eruv* community.

Leasing of Property

The *Mishnah* also addresses the more difficult question of whether the residents of the *hazer* or *mavoi* are permitted to carry if a non-Jew or "someone who does not accept the principle of the *eruv*" lives in the courtyard. The specific issue of a non-Jew in the *hazer* will be dealt with later, but first, "someone who does not accept the principle of the *eruv*" must be identified. The *Mishnah* utilizes this same

[88] Tosefta *Eruvin*, 5:18. The *Tosefta* reads "does not have to relinquish his domain." Lieberman argues that the correct version is "may not relinquish his property." See Liberman, *Tosefta Ki-Feshutah, Eruvin,* 402.
[89] *Eruvin* 69a and see the analysis by Fonrobert, "Separatism," 63-65.

description in regard to an *eruv tehumin*, permitting Sabbath travel in excess of 2,000 cubits, in which the *Mishnah* states that "if someone transfers the *eruv* [food] in the hands of a person 'who does not accept the principle of the *eruv*,' the *eruv* is not valid."[90] Rav Hisda identifies this person as a *Cutai*, a Samaritan.[91] Although the origins of the Samaritans can be dated to the conquest of the Northern Tribes in 722 BCE, the split between the Samaritans and the traditional Jewish community began during the Maccabean times when John Hyrcanus destroyed the Samaritan Temple on Mt. Gerizim in the second century BCE.[92] Yet, the Samaritans remained connected to rabbinic Judaism, at least in the area of the laws of the Sabbath. The third century Christian scholar, Origen, provides the following report. In his *De Principiis*, a systematic exposition of Christianity, he offers several paragraphs to refute the rabbinic interpretation of Jewish law. Origen writes:

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[90] *Mishnah Eruvin* 3:2.

[91] Josephus (*Antiquities* Book 9, 288) writes, "But now the Cutheans, who removed into Samaria (for that is the name they have been called by to this time, because they were brought out of the country called Cuthah, which is a country of Persia, and there is a river of the same name in it.)." Epstein points out that Rav Hisda identifies unknown groups as Cutai in other places in the Talmud. See *Pesachim* 51a and *Sanhedrin* 21b. (Epstein, *Mavoh le-Nussah ha-Mishnah,* II: 608-9) See Safrai, *Eruvin*, 96-7 for a survey of the use of the term *Cutai* and its identification with the Samaritans.

[92] The classic history of the Samaritans is James Alan Montgomery, *The Samaritans: The Earliest Jewish Sect Their History, Theology and Literature* (New York, 1968). For more recent literature on the parting of the ways between the Samaritans and the traditional Jews, see Lawrence H. Schiffman, "The Samaritans in Tannaitic Halakhah," *Jewish Quarterly Review* 75:4 (April, 1985): 323-50 and *Sefer ha-Shomronim*, edited by Ephraim Stern and Hanan Eshel (Jerusalem, 2002).

> Moreover, to the one who carefully reads the verse "Each of you shall sit in your houses; let none of you go out from his place on the seventh day (Exodus 16:29), the celebrated Sabbath is impossible to be observed literally, since no living creature is able to sit for a whole day and not move from sitting. Therefore, those of the circumcision … talk nonsense, arguing perversely, bringing forward cold traditions, as for instance when they say, in reference to that Sabbath, that each one's place is two thousand cubits.[93]

Then, he adds: "Others, however, among whom is Dositheos the Samaritan,[94] condemning such an argument of such sort, believe that in the position in which one was caught on the Sabbath day one is to remain until the evening."[95]

Dositheos' reaction to the Biblical requirement to remain in one's place for the duration of the Sabbath is a matter of interpretation among the scholars. Rufinus, the Latin translator of *De Principiis* paraphrases Dositheos as follows: "Dositheos the Samaritan posits something still more ridiculous, namely, that in whatever posture of place or position a person is found on the Sabbath day, he should remain thus until evening." According to Rufinus, Dositheos accepts the Biblical prohibition. Shaye Cohen offers an alternative interpretation in which Origen quotes Dositheos who is also critical of the Biblical prohibition and the rabbinic interpretation that allows

[93] Origen, De Principiis, 4.3.2. Translation for the passages from Origen from Shaye J. D. Cohen, "Sabbath Law and Mishna Shabbat in Origen De Principiis," *Jewish Studies Quarterly* 17:2 (2010): 163-4.
[94] For the identification of Dositheos the Samaritan, see Stanley Jerome Isser, *The Dositheans: A Samaritan Sect in Late Antiquity* (Leiden, 1976), 115-6.
[95] Cohen, "Sabbath Law," 173.

Sabbath travel for 2,000 *amot* and introduces the principle of *eruv tehumin* to extend permissible travel yet further. According to Prof. Cohen, Rav Hisda's identification of the Samaritans as not "accepting the principle of *eruv*" reflects a historical reality, at least in regard to *eruv tehumin.*[96]

The Mishnaic discussion concerning the *mavoi* in which the rabbis and Sadducees lived together raises several important questions about the structure of the Jewish community during the decades preceding the destruction of the temple in 70 CE. The *Mishnah* identifies the period under discussion as the period of Rabbi Simeon ben Gamliel, who succeeded his father Rabban Gamliel I as the *Nasi* of the Sanhedrin in 50 CE and served in that position until shortly before the destruction of the Temple.[97] During that period, the Sadducees, who controlled the high priesthood, opposed the Pharisees, who controlled the religious court of the Sanhedrin. Although the Essenes and the Qumranites rejected the Temple and the Priesthood, the Sadducees retained the positions of control in the Temple. The Pharisees, on the other hand, accepted the Temple but insisted that the practices in the Temple be followed based on their legal decisions. This created great tension between the Sadducees and

[96] See Cohen, "Sabbath Law," 174-5. Also see the analysis of this passage in Herold Weiss, "The Sabbath Among the Samaritans," *Journal for the Study of Judaism* 27:2 (December, 1994): 256-73.
[97] See Hugo Mantel, *Studies in the History of the Sanhedrin* (Cambridge, MA, 1961), 3.

Pharisees.[98] However, at the time of the Great Revolt in 66 CE, members of the Pharisees and Sadducees joined forces to protect Jerusalem. [99]

The fact that the *mavoi* was shared by the Pharisee leader and the Sadducee points to the fact that, although they may have been ideologically divided, the living conditions in Jerusalem allowed, or required them to live together. Regev argues that, even though we have little archaeological excavations revealing the living patterns of the Sadducees in Jerusalem, as members of the priestly class, they would have probably lived in the area reserved for the nobility. Josephus includes the following story regarding the beginning of the Revolt of 66 CE in which he identifies the priestly class as living in the Upper City among the nobility: "Insomuch that the king's soldiers were overpowered by their multitude and boldness; and so they gave way, and were driven out of the Upper City by force. The others then set fire to the house of Ananias the high priest and to the palaces of Agrippa and Bernice."[100] Inasmuch as Rabbi Simeon was the *nasi* of the Sanhedrin, he, too, must have lived among the nobility. Although they were leaders of rival sects, the living conditions in Jerusalem

[98] For the history of the disputes between the Sadducees and the Pharisees, see, for example, Gunther Baumbach, "The Sadducees in Josephus," in *Josephus, The Bible and History* (Detroit, 1989), 173-95, Mantel, 54-101 and Shaye J. D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis and the End of Jewish Sectarianism," *Hebrew Union College Annual* 54 (1984): 27-53.
[99] Martin Goodman, *The Ruling Class of Judaea: The Origins of the Jewish Revolt Against Rome A. D. 66-70* (Cambridge, MA, 1987): 152-57.
[100] Josephus, *The Wars of the Jews*, Book 2, chapter 17, 426.

located them in the same *mavoi* and required them to cooperate together as neighbors while at the same time protecting themselves from the practices of the other one.[101]

The remaining relationship that must be evaluated is the case mentioned in *Mishnah Eruvin* 6:1, "A Jew who lives in a courtyard with a non-Jew." The *Mishnah* states that the mere presence of the non-Jew in the courtyard invalidates the *eruv* for all the residents. The *Mishnah* does not offer a remedy for this situation. The *Yerushalmi* asks "Why can't the non-Jew relinquish his share in the *hazer*? He will change his mind [reclaiming his stake in the *mavoi*, thereby, invalidating the *eruv*]."[102] Yet, the *Tosefta* says "And, concerning a non-Jew, [the *eruv* is invalid] until he [the Jew] leases (*ad sha'ah she-yaskir*) his [the non-Jew's] portion."[103] The *Bavli* and the *Yerushalmi* disagree about the net result of this attempted leasing of this property from the non-Jew. According to the *Yerushalmi*, the presence of the non-Jew no longer automatically invalidates the *eruv* as long as the Jew leases his share from him.[104] According to the *Bavli*, although this lease works in theory, the Bavli argues that the non-Jew will presumably not be willing to lease his interest to the Jew for the sake of

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[101] See Regev, *Ha-Tzedukim,* 404-07 and *Avot de Rabbi Natan,* A*, 5* which says that the Sadducees "used silver vessels all their lives." For a background of the disputes between the Saducees and Pharisees, see also Lawrence H. Schiffman, "Pharisees and Saducees in Pesher Nahum," *Minhah le-Nahum: Biblical and Other Studies Presented to Nahum M. Sarna in Honour of his 70th Birthday*," edited by Marc Brettler and Michael Fishbane (Sheffield, England, 1993), 272-90.
[102] Yerushalmi, *Eruvin*, chapter 6, *halakhah* 3.
[103] Tosefta, *Eruvin* 5:18.
[104] Yerushalmi, *Eruvin*, chapter 6 *halakhah* 3.

the *eruv* since he "suspects the Jews of some form of sorcery."[105] According to both views, the non-Jew cannot become part of the *eruv* community. However, according to the *Yerushalmi*, the non-Jew, if out of proper neighborly conduct or indifference, would be willing to lease his interest, the *eruv* would be valid. The *Bavli*, while in principle agreeing that the non-Jew can lease his interest thereby validating the *eruv*, claims that the distrust that the non-Jew feels for his Jewish neighbor will ultimately lead him to reconsider the lease transaction. Although the Bavli's interpretation posits a likelihood of distrust between the Jewish and non-Jewish residents of the *mavoi* that is not reflected in the *Yerushalmi*, it is not clear whether this reflects a historical reality or merely an assumption on the part of the rabbis that the non-Jews of the period did not trust their Jewish neighbors.[106]

In the midst of the discussion about the nature of the leasing of the property of the non-Jew in the *hazer*, the *Bavli* quotes a disagreement between Rav Hisda and Rav Sheshet whether a formal lease is required between the Jew and the non-Jew or a token lease is sufficient. The *Bavli* furthers analyzes the meaning of a formal and token lease. Initially, the *Bavli* suggest that a formal lease requires transference of at least a *perutah*, a coin of minimal value, while a token lease would suffice would suffice with a lease of even less than a *perutah*. However, the *Bavli* argues that both

[105] Bavli *Eruvin* 62a.
[106] See the analysis of the disagreement between the Bavli and the Yerushalmi in Fonrobert, "Separatism," 64-67.

opinions would agree that a lease of less than a *perutah* would suffice in a deal between a Jew and a non-Jew. Therefore, the *Bavli* concludes that a formal lease is one that allows the lessee to fill the *hazer* with benches and chairs while a token lease would not give the lessee this right.[107]

This disagreement about the nature of the lease of the property of the non-Jew in the *hazer* for the sake of the *eruv hazerot* points to the fact that the term *sekhirut*, lease, is not being used in terms of property rights. Rather, the rabbis have introduced this category of *sekhirat reshut* in order to achieve the creation of an *eruv* community that will not include non-Jews. For this reason, the term lease will be used throughout this work with the understanding that it refers to this specific lease regarding *eruvin* and does not impact on the property rights of the Jew or non-Jew in the *hazer*.

The *Mishnah* (Eruvin 6:2), interestingly, follows the law of the Gentile and the one "who does not accept the principle of the *eruv*" with the following story:

> Rabban Gamliel said: [There is] a story about a certain Sadducee who used to live with us in an alleyway in Jerusalem. Father [Rabban Simeon] said to us: Hurry and bring out all your vessels to the alleyway, lest he brings out [his] and [thus] imposes on you a prohibition [of carrying your things into the alleyway on the Sabbath].
>
> Rabbi Judah said it in a different version: Hurry and perform all your needs in the alley lest he bring out [his vessels] and [thus] impose a restriction on you.[108]

[107] Bavli *Eruvin* 62a.
[108] *Mishnah Eruvin*, 6:2.

The *gemara* connects this story with the previous *Mishnah* and the definition of "the one who does not accept the principle of the *eruv*." The *gemara* says: "Who mentioned a Sadducee? A clause is missing and this is the correct reading: A Sadducee has the same status as a Gentile, but Rabban Gamliel ruled: A Sadducee does not have the status of a Gentile."[109] The *gemara* elaborates on the opinion of Rabban Gamliel explaining that, according to Rabban Gamliel, since the Sadducee does not have the status of a Gentile; as a Jew, he may relinquish his property in the *mavoi*. Rabban Simeon agrees that the Sadducee does not have the status of a Sadducee and may relinquish his property in the *mavoi*. However, Rabban Simeon is concerned that this Sadducee may change his mind and decide to reestablish his claim as a resident of the *mavoi* by taking his vessels into the *mavoi* and, thus, invalidating the *mavoi* for all the residents.

Safrai argues that the Talmudic reading of the *Mishnah* is not the original meaning of the Mishnaic text. According to Safrai, Rabban Simeon believes that the Sadducee had the status of a Gentile and, therefore, invalidates the *eruv* since he does not have the right to relinquish his stake in the *mavoi*. However Rabban Simeon claims that the Sadducee can only invalidate the *eruv* if he is able to stake his claim as a resident of the *mavoi*. Therefore, by preventing the Sadducee from placing his vessels in the *mavoi*, he can be prevented from invalidating the *eruv*. According to this

[109] *Eruvin* 68b. See the explanation of this *gemara* in Albeck, 435.

explanation, there are two categories of people who invalidate the *eruv*. The Gentile or the "one who does accept the principle of *eruv*" invalidates the *eruv* in a *mavoi* in which he lives. A Sadducee, however, only invalidates the *eruv* in a situation where he lays claim to his stake in the *mavoi*. Rabban Simeon suggests a manner in which the invalidation of the *eruv* by the Sadducee can be circumvented.[110]

Whether the *Mishnah* refers to an actual case of Jews and non-Jews living in the same *mavoi* is unclear, because the *Mishnah* does not accompany this law with a historical account as it did with the case of the Sadducee. However, Jews and non-Jews did have the opportunity to live together in certain cities in Judea during the Roman period. A. M. H. Jones, a British historian of the later Roman period, described the urbanization of cities in Roman Palestine. He explained that in pre-Herodian Palestine there was only one city, Samaria, which was populated by Macedonian settlers in the fourth century BCE. Over the course of the next two hundred years, cities and towns were built throughout the land. Some of these cities were entirely pagan, some completely Jewish. For example, three of the earliest Herodian cities were Sepphoris, Tiberias and Sebaste, the capital of Samaria. Sebaste was primarily a pagan town while Tiberias and Sepphoris were overwhelmingly Jewish. However,

[110] Safrai, *Eruvin*, 188-91.See all Regev, *Ha-Tzedukim*, 59-66 and Eyal Regev, "Emdat ha-Tzedukim ve-ha-Issi'im be-Yahas le-Eruv Hazerot be-Shabbat le-or Safrut Hazal," *Me-Of U-Ma'aseh* 6 (2000): 183-202. The use of this *Mishnah* to determine the position of the Sadducees *vis a vis* the prohibition against *hoza'ah* and their acceptance of the *eruv* was discussed earlier.

Jones argues, based on evidence from Josephus, that even these towns were not exclusively pagan or Jewish and Jews and pagans lived together in these towns during the first centuries CE.[111] Although it is impossible to determine whether Jews and non-Jews lived together in the same alleyway, in a developing Roman city of the first centuries of the Common Era, it is likely that towns grew from small courtyards and alleyways into more significant areas and ultimately into cities. Jews and non-Jews may have found themselves, willingly or unwillingly, living together and negotiating the intricacies of sharing the common space of the *hazer* and *mavoi*.

Rules of Decision-Making

Although the *gemara* rarely provides guidelines to determine which opinion to follow in a talmudic debate, in the laws of *eruvin*, the *gemara* does provide an important guideline. Regarding a dispute among the *tannaim*, the *gemara* says as follows: "Rabbi Joshua ben Levi states: the *halakhah* follows the one who rules more leniently regarding issues of *eruvin*."[112] The *Yerushalmi* tells the following story: "There was an incidence of a woman who donated a portion of food for the *eruv* on behalf of her

[111] A. M. H. Jones, "The Urbanization of Palestine," *The Journal of Roman Studies* 21 (1931): 78-85. Seth Schwartz studied the cities and villages in Roman Palestine in the subsequent centuries. He explains that while most of the cities were either Jewish or pagan, the pagan cities of Tiberias and Sepphoris retained Jewish populations. However, as late as the fourth century CE, there were some villages that maintained a mixed population of pagans, Jews and Christians, even though all the villages eventually became either pagan, Jewish or Christian. See Seth Schwartz, *Imperialism and Jewish Society, 200 BCE to 640 CE* (Princeton, 2004), 202-207.
[112] *Eruvin* 46a. See also *Yerushalmi*, *Eruvin*, chapter 1 *halakhah* 1.

mother-in-law without the knowledge of the mother-in-law. The matter came before Rabbi Ishmael and he wanted to disallow this food donation [and require the explicit consent of the mother-in-law]. Rabbi Hiyah said: I heard from your father [Rabbi Yosi] that wherever you can be lenient regarding *eruvin*, you should be lenient."[113]

An *Eruv* Around a City or Town in the Mishnaic Period

The *Mishnah* states in several places that there was a prohibition against *hoza'ah* in Jerusalem, yet there is no mention of the creation of an *eruv* in the entire city.[114] The *Mishnah* and the subsequent *gemara* discuss the status of Jerusalem *vis a vis* the prohibition against *hoza'ah*. The Mishnah says: "[The Sages said to Rabbi Meir:] It happened in the butchers' market in Jerusalem that they would lock their stores [while standing in the street] and leave the key on the window sill above the door." The Sages infer from this incident that it is permissible to stand in a *reshut ha-rabbim* and move objects into a *reshut ha-yahid.* Rabbi Meir argues that this is prohibited. The *gemara* comments on this *Mishnah*:

> How is one to understand the opinion of the Sages? For Rabbi Meir is discussing a *reshut ha-rabbim* and the Sages are discussing a *karmelit* [Jerusalem]. As Rabbah bar Bar Hannah said in the name of Rabbi Yohanan, 'The city of Jerusalem, were its doors not closed at night, one would be liable there for carrying in a *reshut ha-rabbim*. [However, since the doors are closed at night, it is only a *karmelit* and not

[113] *Yerushalmi, Eruvin*, chapter 7, *halakhah* 10.
[114] See *Mishnah Pesahim* 6:1 that says that it was prohibited to carry the Pascal lamb in Jerusalem on the Sabbath and *Mishnah Eruvin* 6:2 which describes the creation of an *eruv* in a courtyard in Jerusalem assuming that there was no *eruv* in the entire city.

> comparable to Rabbi Meir's case.] Rav Pappa said: [Rabbi Yohanan was describing Jerusalem] before breaches were made in the wall and [the *Mishnah* is discussing Jerusalem] after breaches were made in the walls [and therefore it is considered a *reshut ha-rabbim*.][115]

Although the *gemara* does not entertain the possibility that an *eruv* or *shittuf* were made in Jerusalem, it can be inferred that if the doors were closed at night and a *shittuf* were made, that carrying would be allowed in Jerusalem as it is allowed in all in-between spaces such as a *karmelit*.

While the *Mishnah* is filled with discussions concerning the creation of *eruvin* around courtyards and closed alleyways, there is only one mention in the *Mishnah* of an *eruv* that was built around a city. The *Mishnah* records:

> If a town that belonged to an individual was converted into one belonging to many people, one *eruv* may be provided for all the town; but if a town belonged to many and was converted into one belonging to an individual, no single *eruv* may be provided for all the town unless a section of it of the size of the town of Hadashah in Judea, which contains fifty residents, is excluded,

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[115] *Eruvin* 101a. Tosafot, *Rosh Hashanah* 23b s.v. *lo* argued that the breaches in the walls of Jerusalem refer to the destruction of Jerusalem's walls at the hands of the Greek/Syrians prior to the Hasmonean conquest in 164 BCE. See Mishnah *Middot* 2:3.

Safrai argued that the identification of Jerusalem as a *karmelit* is an amoraic invention and that in this story, which he considered to be an authentic description of Jerusalem in the last years before the destruction, Jerusalem was considered a *reshut ha-rabbim*. See Safrai, *Eruvin*, 335-6.

> according to Rabbi Judah. Rabbi Simeon ruled: Three courtyards each of which contains two houses [must be excluded].[116]

Safrai explained that this *Mishnah* refers to a Roman villa, in which a wealthy landowner owned a piece of land on which his workers and servants lived. This is "the town of the individual" in the *Mishnah*. The "town belonging to many people" refers to a situation in which the inhabitants of the villa became independent owners of their own homes and no longer were tenants of the landowner. According to Safrai, the *Mishnah* teaches that, since an *eruv* is permitted in a villa, once the villa is transformed into a "town of many" the *eruv* is still permitted. However, if the "town of many" is converted into a villa, an *eruv* is not permitted since it was not permitted in the original town. Nevertheless, if a portion of the town is left out of the *eruv*, it is permissible as a reminder that generally *eruvin* are not permitted in towns.[117]

Although the *Mishnah* does not mention the building of a wall in the creation of a "town of many people," it raises the question whether cities were walled during this period.[118] The *Mishnah* in *Bava Batra* states that the city council may force

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[116] *Mishnah*, *Eruvin*, 5:6 and the corresponding *gemara*, *Eruvin* 59a-59b.
[117] See Safrai, *Eruvin*, 167-172. The traditional medieval Talmudic commentators explained this *Mishnah* as referring to a *reshut ha-rabbim* as defined regarding the laws of *eruvin*. See Rashi, *Eruvin* 59a s.v. *ir shel yahid* and Tosafot s.v. *ir shel yahid*. This reflects a reinterpretation of the *Mishnah* in order to conform to the traditional definition of a *reshut ha-rabbim*.
[118] Yizhar Hirschfeld and Renana Ilan argued that the transformation from a town of an individual to a town of many people reflected the historical reality that, at the end of the Second Temple period, individual villas began to disappear and towns began to be formed. See Yizhar Hirschfeld, "Shinuyim bi-Defusei ha-Hityashvut shel ha-

residents of a city to share in the cost of building the city walls. Rabban Simeon ben Gamliel comments that not all cities require a wall.[119] The *gemara* explains Rabban Simeon's opinion as follows: "Not all cities require a wall, only one which is close to the border requires one, while one which is not close to the border does not require one."[120] According to the anonymous first opinion in the *Mishnah*, even cities situated in the interior require a wall because they, too, are occasionally subject to attacks.[121] Safrai claimed that since the *Mishnah* did not mention the issue of creating a physical boundary around the city, the cities must have been enclosed with some form of walls. Although it is possible that the discussion in the *Mishnah* is merely a theoretical one, the fact that this is the only discussion in the *Mishnah* regarding an *eruv* around a city and that the method of enclosing the city is not mentioned suggests that *eruvin* around towns in the Talmudic period were rare.[122]

Ukhlusia ha-Yehudit ha-Kfarit Lifnei ha-Meridot ba-Romaim ve-Aharaihem," *Cathedra* 80 (June 1996): 11-13, f.n. 25 and Renana Ilan, "Tahalikh Hitkansut Ha-Kefarim Le-Ayarot Be-Sof Yemei Bayit Sheni," *Cathedra* 119 (January, 2006): 47-48. This does not adequately explain the reverse situation in which a town of many people is transformed into a town of an individual. Ze'ev Safrai argued that in the Byzantine period, farmers would give their land to a single wealthy individualwho would provide all their needs and pay them a salary. See Ze'ev Safrai, "Mivnei ha-Sadeh ha-Kedumim: Ha-Kfar Be-Erez Yisrael Bi-Tekufat ha-Romit," *Cathedra* 89 (October, 1998): 18-25.

[119] *Mishnah Bava Batra*, 1:5.

[120] *Bava Batra* 7b.

[121] Sperber included a chapter on "City Walls" describing the various Talmudic discussions concerning city walls and a description of the walls surrounding Tiberias and Caesarea. See Sperber, 117-127.

[122] Safrai, *Eruvin*, 169.

Although the details of the towns identified in the *Mishnah* are not sufficiently delineated, the underlying theme of the *Mishnah* points to the importance of ownership in determining whether an *eruv* can be created around a specific area. It would seem that the *Mishnah* does not define the dimensions of the city or whether or not it was walled, simply because it is secondary to the concern of who owns the area. If it is owned by an individual, or, even if it was once owned by an individual, an *eruv* can be created. The ownership of the property by one individual was so significant in determinating whether an *eruv* could be created that even if that single individual no longer owned the town, an *eruv* could still be created. On the other hand, if a town was originally owned by many people, even if it reverted to the ownership of one individual, its original status prevented an *eruv* from being created unless some symbolic space was left out of the *eruv*.

Eruvin in Babylonian Cities and Towns in the Talmudic Period

Although the Mishnaic sources describe only one instance of an *eruv* in an entire city in Israel, there are several references in the *gemara* to *eruvin* in cities in Babylonia. The *gemara* records: "Rabbah bar Avuhah made *eruvei hazerot* for the entire city of Mehoza, neighborhood by neighborhood, because of the ditches [that held food for the oxen]."[123] Rashi explains that Mehoza did not have a wall surrounding it. The city was enclosed by means of the partitions that were erected to

[123] *Eruvin*, 26a and 60a.

protect the ditches of animal fodder from damage. However, since there was a requirement that the *eruv* partitions be built for the sake of enclosing homes, these partitions did not suffice. Therefore, Rabbah created *eruvin* for each neighborhood in Mehoza by building appropriate *eruv* boundaries.[124] Mehoza, the Jewish suburban community across the Tigris River from Ctesiphon, the winter capital of the Parthians, was among the most highly acculturated and cosmopolitan Jewish communities in Babylonia. Rabbah insured that carrying would be permitted throughout the city by erected *eruv* partitions in each neighborhood.

The *gemara* also discusses an *eruv* in the city of Pumbedita, which was situated on the Euphrates River about 100 km west of Mehoza. Commenting on the *Mishnah* that says that an *ir shel rabbim* that became an *ir shel yahid* can only be enclosed by an *eruv* if there is a small portion of the city that remains outside the *eruv*, the *gemara* remarks: "There was a storehouse of straw owned by Mar bar Pophidata from Pumbedita and he designated it [as the excluded section within the *eruv* in Pumbedita.]"[125] While not stated explicitly, the *gemara* takes for granted that there was an *eruv* in the entire city and that the exclusion of the storehouse from the *eruv*

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[124] Rashi, Eruvin 26a s.v. *arsiyata* and s.v. *mi-shum*. See Yaakov Elman, "Middle Persian Culture and Babylonian Sages: Accommodation and Resistance in the Shaping of Rabbinic Legal Tradition," *The Cambridge Companion to the Talmud and Rabbinic Literature*, edited by Charlotte Elisheva Fonrobert and Martin S. Jaffee (New York, 2007), 165-97.

[125] The Mishnah is on *Eruvin* 59a. Rashi, s.v. *ve-shel* explained that a city that remains an *ir shel rabbim* can also be made into an *eruv* and the Mishnah is merely presenting the more unusual case of an *ir shel rabbim* that is transformed into an *ir shel yahid*. The *gemara* can be found in *Eruvin* 60a.

allowed the *eruv* to be effective. There is no discussion about whether or not Pumbedita was walled or how the food-sharing was accomplished.

There are, however, two stories in the *gemara* that suggest that there was no *eruv* in the entire city of Pumbedita. The *gemara* in *Eruvin* describes the following event:

> Rabbah bar Rav Hannan asked Abaye: How is it that in an alley in which two great men like our rabbis [that is, Abaye and his uncle Rabbah] reside has neither a *shittuf* nor an *eruv*?
>
> "What can we do," said Abaye. "For the master [Rabbah] [to collect the contribution of the residents] would not be seemly, I am busy with my studies and, the other residents do not care. And, if I were to transfer possession of a loaf in a basket to them, since if they demand it of me I could not afford to give it to them [since I am poor], the *shittuf* will be nullified.[126]

Several important aspects of city *eruvin* can be derived from this anecdote. First, although the place is not mentioned, Rabbah was the head of the Pumbedita academy at the end of the third century and beginning of the fourth century CE and Abaye was his nephew and an *amora* in Pumbedita. Therefore, since the story describes the place of residence of Rabbah and Abaye, it must be describing Pumbedita. Second, Abaye claims that at least the people living in his *mavoi* did not care whether or not there was an *eruv* around that *mavoi*. Yaakov Elman has studied the cities of Pumbedita and Mahoza and concluded that this indifference to rabbinic

[126] *Eruvin* 68a

enactments was prevalent in Pumbedita and was a fact of life that was accepted, however grudgingly, by the rabbis in the town.[127] Finally, it is evident that that there was no *eruv* in the entire city, thus requiring an *eruv* to be created in this *mavoi*. Although this story may have taken place at a time when Pumbedita did not have a city *eruv*, it is also possible that the city *eruv* described in the *gemara* never encompassed the entire city.

The *gemara* contains another story about Pumbedita in which the members of a *mavoi* did want to establish an *eruv*. The *gemara* in *Eruvin* relates:

> There was a certain alley in which Lahman ben Ristak lived. "Will you lease us your domain [for the Sabbath, thus relinquishing your rights to it]," said the other residents to him but he would not lease it to them.
>
> So they went to Abaye and reported the matter to him.
>
> He advised them, "Renounce your respective domains in favor of one resident so that he would be in the position of one individual living in the same place as the non-Jew, and, in a case where one individual lives in the same place with a non-Jew, the non-Jew imposes no restrictions on the one Jew…
>
> Rav Hunba reported this ruling to Rava and [Rava] said to him, "If so, you have abolished the law of *eruv* in that alley." …

[127] See Yaakov Elman, "The Socioeconomics of Babylonian Heresy," *Jewish Law Association Studies XVII: Studies in Mediaeval Halakhah in Honor of Stephen M. Passamaneck*, edited by Alyssa Gray and Bernard Jackson, (2007): 94-96 and Yaakov Elman, "Maaseh Bi-Shtei Ayarot: Mehoza U-Pumbedita Ke-Meyatzgot Shtei Tarbuyot Hilkhatiyot," *Torah Li-Shmah: Mehkarim Be-Madaei ha-Yahadut Li-Khvod Professor Shama Yehudah Friedman* , edited by David Golinkin, Moshe Benovitz, Mordechai Akiva Friedman, Menahem Schmelzer and Daniel Sperber (Jerusalem, 2007), 3-38.

> "But rather," said Rava, "let one of them approach [the non-Jew] and borrow a place from him on which he shall put down something, so that [by becoming a tenant in the non-Jew's courtyard] he [the Jew] assumes the status of his hired laborer (*sekhiro u-lekito*) [and this is sufficient ownership to allow all the residents of the *mavoi* to carry in that alley].[128]

Rashi explains the rational for Rava's strategy: "Let him cultivate good relations with the non-Jew until he becomes his friend, and the non-Jew will lend him a place in his courtyard to rest himself for a time, for since now the Jew resides in the courtyard of the non-Jew, this Jew becomes like the hired hand of the non-Jew."[129] Rava was a contemporary of Abaye and studied with him in the academy in Pumbedita. However, when Rabbah bar Nahmani died, the position as head of the Pumbedita academy was given to Abaye and Rava moved to Mehoza where he established an academy. Elman argued that the view of Rava reflects the more cosmopolitan view of Mehoza that relationships can be achieved with non-Jews while Abaye reflects the more provincial attitude of Pumbedita.[130]

Although absolute conclusions cannot be drawn from these anecdotes, they reflect activity surrounding the creation of *eruvin* in Pumbedita which depended on the interpersonal relationship of the Jews of the *mavoi* and the ability to interact with the non-Jews living in the *mavoi*.

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[128] *Eruvin*, 63b-64a translated by Elman, 97.
[129] *Rashi Eruvin* 64a s.v. *likrav*.
[130] Elman, 97-8.

Conclusion

The history of the prohibition against *hoza'ah* and the institution of *eruv* began with little Biblical or pre-Rabbinic foundation. Yet, the rabbis, in an attempt to outline the rules of Sabbath observance and to create a community that would be able to circumvent the prohibition against *hoza'ah* developed the concept of the *eruv* in order to allow Jews to carry from one property to another property on the Sabbath. In the mind of the rabbis, the ability to carry on the Sabbath was limited to carrying within a private domain. For this reason, the rabbinic material attempts to create symbolic private domains in order to allow for the residents of those domains to carry on the Sabbath.

The transformation of semi-private domains into private domains for the sake of circumventing the prohibition of *hoza'ah* involves two considerations; first, the creation of physical boundaries around the semi-private domain so it can be considered a private domain and, second, the establishment of a community within that enclosed property limited to Jews committed to the principle of *eruv*. During the rabbinic period in Palestine, the requirement for the creation of an enclosed property in which all the Jews believed in the principle of *eruv* reflected the normal Jewish neighborhood which was centered around a *hazer* which required only the sealing off of the entranceway in order to create the necessary enclosed area. However, as the Jewish neighborhood expanded and a need arose to enclose several *hazerot* which all opened into a *mavoi*, the *eruv* became a more symbolic enclosure with symbolic walls

enclosing the *mavoi* and separating it from the public *reshut ha-rabbim*. In addition, the possibility that these *hazerot* included non-Jewish residents or Jewish residents who did not accept the principle of the *eruv* required for a symbolic arrangement which would, in essence, allow these people to remain in the *hazer* but remove them from the status of residents regarding the creation of the *eruv*. This requirement necessitated the creation of a rabbinic construct which allowed for the leasing of the property of the non-Jewish residents or the relinquishing of the property of the Jewish residents who rejected the *eruv*. Each of these arrangements allowed, at least in the eyes of the rabbis, for the exclusion of those who did not fit into the *eruv* community while, at the same time, recognizing that they were residents of the *hazer*.

As the Jewish communities expanded from small *hazerot* to larger neighborhoods and then to entire cities, the principles established in the Talmud had to be applied to these new urban realities. Although each new neighborhood and city required its unique application of these rules, the principles established in the Talmudic material served as the guidelines for the creation of these *eruvin*. The subsequent chapters will explore the application these Talmudic rules to the new realities that faced the Jewish communities throughout the generations.

CHAPTER 2

Post-Talmudic Sources

The Geonic period began in Babylonia somewhere in the second half of the sixth century CE yet little is known of the events that transpired prior to the Moslem conquests in the middle of the seventh century CE. By the time of rise of the Abbasid Dynasty in 1750, the reign of Islam extended from Spain and North Africa in the west to the Indian subcontinent in the east. International trade and banking flourished and the Jews played a leading role in both these areas. During this period, the capital of the empire was transferred from Syria to Babylonia where the Abbasids made their capital in Baghdad. The Babylonian Jewish leaders were positioned to influence Jews worldwide.[131]

During this Geonic period, the official leadership of Babylonian Jewry was organized around the institutions of the Exilarchate and the Geonic academies in Sura and Pumbedita. Although the Exilarch was primarily a temporal leader and the Geonim intellectual and religious leaders, the difference between these types of leadership was not so clear cut. The Exilarch sometimes tried to create his own academic institution whereas the Gaon might have interceded with the Muslim authorities. The situation for the Jews in these Islamic countries was quite

[131] For a background of the Geonic period and the intellectual and cultural life during this period, see Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven, 1998) and the literature cited therein.

comfortable with Judaism and Christianity according the status of legal religions and the authorities granted recognition to the Jewish communal leaders. There was a great deal of cultural openness during this period and Arabic quickly became the spoken language of much of the Jewish community. Shared language led to wide-ranging cultural influences in many areas. Perhaps the most important of these areas were those of rational theology and scriptural exegesis that were to shape the course of Jewish and Christian religious and intellectual activity for several centuries.[132]

Intellectually, Simhah Assaf has argued that the Geonim accomplished two things that had a lasting impact on the Jewish world of learning. First, although the Talmud and the Aramaic language in which it was written were well-known in the academies in Babylonia, the Geonim were successful, through their numerous commentaries, in making the Talmud accessible to the wider Jewish population. Second, they transformed the Talmud, which had been edited in the sixth century as an encyclopedia of Judaism, into the authoritative code of the Jewish people. Both of these aspects of the Geonic contribution were especially valuable in the area of *eruvin*, the laws surrounding which were complex and often obscure and had practical application that required clarification.[133] This chapter will highlight the manner in which the Geonim developed the laws of *eruvin* and applied them to specific cases during this period.

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[132] Brody, xix-xxi.
[133] These two aspects of the Geonic contribution are best articulated in Simhah Assaf, *Tekufat Ha-Geonim Ve-Sifrutah: Hartzaot Ve-Shiurim* (Jerusalem, 1955), 137-153.

Definition of a *Reshut ha-Rabbim*

The *baraita* described a *reshut ha-rabbim* and its relevance to the prohibition of *hoza'a* as follows: "A major road (*seratya*), a great public square (*pelatya*) and open alleys (*mevo'ot ha-mufulashim*), - that is absolute public ground. One may not carry out from this private to the public ground, nor carry in from this public to this private ground; and if one does carry out or in, unwittingly, he is liable to a sin offering; if deliberately, he is punished by *karet* or stoned." The only other attempt to define the dimensions of the *reshut ha-rabbim* can be found in *Shabbat* 99a where the rabbis explain that since the road on which the Jews transported the boards for the tabernacle in the desert was sixteen *amot* wide, so a *reshut ha-rabbim* is sixteen *amot* wide. The *Halakhot Gedolot*, written by Rabbi Simeon Qayyara in the last quarter of the ninth century,[134] identifies a *reshut ha-rabbim* as follows: "The definition of a *reshut ha-rabbim* is a place which 600,000 men traverse every day just like the Israel encampment in the desert."[135] This definition is not found in any earlier literature.

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[134] For a discussion of the debate concerning the attribution of *Halakhot Gedolot* to Rabbi Simeon Qayyara and the dating of the work, which is also debated among the scholars, see Neil Danzig, *Mavo Le-Sefer Halakhot Pesukot im Tashlum Halakhot Pesukut* (New York, 1999), 175-186. Danzig points out that Rabbi Simeon is never referred to as a gaon (179, f. n. 21).

[135] This line is only found in the Berlin manuscript of the *Halakhot Gedolot*, edited by Esriel Hildesheimer (Berlin, 1888), 131. For a discussion of the different versions of the *Halakhot Gedolot*, see *Halakhot Gedolot*, edited by Ezriel Hildesheimer (Jerusalem, 1972), I: 15-27. The 1972 edition, which is based on the Milan manuscript, was edited by the grandson of Rabbi Esriel Hildesheimer. Rabbi Ezriel Hildesheimer identified the Berlin manuscript as the Spanish version since it was utilized by the Spanish talmudic scholars. See *Halakhot Gedolot* (1972), I: 22 for a discussion on the different views on this issue. For an analysis why this definition of a

Israel Ta-Shma expressed some doubt about the authenticity of this statement for two reasons: first, it appears in only one manuscript of the *Halakhot Gedolot*, the Berlin manuscript, and, second, it does not seem to follow from the preceding law in the *Halakhot Gedolot* which states: "So it is said in the name of Rav Judah, the head of the academy from Nehar Pekod: Bozra is a *reshut ha-rabbim* during the day.[136] However, at night since it is filled with broken pottery, it is considered a *karmelit*." In this statement, Rav Judah is defining the difference between a *reshut ha-rabbim* and a *karmelit* based on how easy or difficult it is to travel on the roads. There is no attempt to define the different domains based on the number of people in each domain. Therefore, Ta-Shma argues that it is surprising that the next line identifies a *reshut ha-rabbim* based on the number of residents or travelers in that domain.[137] However, in support of the attribution of this definition of a *reshut ha-rabbim* to Rav Judah, an unpublished manuscript of *Halakhot Gedolot*, Vatican MS (Biblioteca Apostolica ebr.

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reshut ha-rabbim does not appear in any of the other versions of the *Halakhot Gedolot*, see Israel Ta-Shma, *Halakhah, Minhag U-Metziut Be-Ashkenaz 1100-1350* (Jerusalem, 1996), 143.

[136] *Halakhot Gedolot* (Jerusalem, 1972), I: 265. There are two versions of this phrase in the *Halakhot Gedolot*, in the Berlin ms. It reads "*MiBozra*" while in the Milan ms. It reads "*DeBozra*". According to the Berlin ms. *Bozra* is part of the name of the place from where he came. According to the Milan ms. It is possible that *Bozra* is the name of the place which is being defined as a *reshut ha-rabbim* during the day and a *karmelit* at night. For the importance of *Bozra* in the identification of the authorship of the *Halakhot Pesukot*, see Danzig, 113-15. See Danzig. 125, n. 59 and Hildesheimer (Jerusalem, 1972), I:265 f.n. 28 for further clarification of this phrase.

[137] See Ta-Shma, 143.

304), also contains this definition of a *reshut ha-rabbim* attributed to Rav Judah of Nehar Pekod.[138]

In addition, this definition of a *reshut ha-rabbim* is found in other Geonic sources. *Sefer Ha-Itim*, written by the late eleventh and early twelfth century Spanish Talmudist, Rabbi Judah ben Barzillai, says: "In the *teshuvah* of the Gaon … What is a *reshut ha-rabbim*? An area that has 600,000 people that has neither walls nor gates."[139] The author of the *Sefer Ha-Itim* continues regarding the making of an *eruv*: "A state or a city that does not have 600,000 people or that has 600,000 but its gates are locked at night does not become a *reshut ha-rabbim*."[140] The same definition is found in the name of Rav Sar Shalom Gaon, who was the head of the academy in Sura from 847/51-57[141] and predated the author of the *Halakhot Gedolot*.[142]

There is one additional Geonic source for this definition of a *reshut ha-rabbim*. In a *teshuvah* attributed to Rav Amram Gaon, the head of a splinter academy in Sura

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[138] See http://eruvonline.blogspot.com/2009/06/reprinting-of-berlin-edition-of-behag.html for a facsimile of this manuscript. (viewed 6/9/10).
[139] Judah ben Barzillai, *Sefer Ha-Itim* (Cracow, 1903), 306. *Sefer Ha-Itim* also quotes the tradition of Rav Judah of Nehar Pekod. (See *Sefer Ha-Itim*, 310). The author of *Sefer Ha-Itim* refers to 600,000 people (*bnei adam*) while the author of the *Halakhot Gedolot* refers to 600,000 men (*gavrei*). The type of people that comprise the 600,000 will become a matter of dispute in modern *eruvin*.
[140] Ibid., 113.
[141] The dates that each Gaon served can be found in Brody, 344-5.
[142] *Teshuvot Rav Sar Shalom Gaon*, edited by Refael Shmuel Ha-Kohen Weinberg (Jerusalem, 1975), no. 34 and accompanying footnotes. The same language, attributed to Rav Sar Shalom, is also found in *Hemdah Genuzah* (Jerusalem, 1967), no. 70 and, without an attribution, in the collection of Geonic response, *Sefer Shaarei Teshuvah*, edited by Yeruham Fishel ben Zvi Hirsch Ha-Levi, no. 209.

from 857-875, it says: "If someone's *tzitzit* tear while walking on the Sabbath, if the place is a *reshut ha-rabbim*, a place with 600,000 people, one can carry the *tzitzit* until the conclusion of the Sabbath."[143] This responsum is quoted in a lengthier detail in the collection by Louis Ginzberg entitled *Geonica*. However, the definition of a *reshut ha-rabbim* is missing from the longer version. Ginzberg argued that the version in *Geonica* was the source for the shorter version and, therefore, the definition of a *reshut ha-rabbim* must have been a later addition to the text.[144] Regardless whether the attribution to Rav Amram Gaon is valid, the opinion that a *reshut ha-rabbim* is a place with more than 600,000 people is a view that is found among a number of the Geonim.[145]

The views of the other Geonim on the need for 600,000 people is not known. Rabbi Yom Tov Ishbili, the Spanish Talmudist from the end of the thirteenth and beginning of the fourteenth centuries, and author of the *Ritba*, writes: "Most of the Geonim agree with Rabbenu Tam that [a *reshut ha-rabbim*] does not require 600,000 people."[146] The editor of the *Ritba* suggested that since the Geonim whose opinions

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[143] *Halakhot Pesukot min Ha-Geonim*, edited by Yoel Ha-Kohen Miller (New York, 1959), no. 70.
[144] Louis Ginzberg, *Geonica* (New York, 1909), vol. 2. The text of the *teshuvah* appears on p. 336. Ginzberg's analysis can be found on p. 312. See Ta-Shma, 143-44 for a discussion of the different versions of Rav Amram Gaon's *teshuvah*.
[145] The identification of a Talmudic source for this opinion has been elusive. See Ta-Shma, 144-48 and Rabbi Menachem Kasher, *Torah Shelemah* (New York, 1953), 15:155-79.
[146] Rabbi Yom Tov Ishbili, *Hiddushei ha-Ritba Massekhet Eruvin*, Edited by Moshe Goldstein (Jerusalem, 1974), 547.

are recorded on this matter argue that a *reshut ha-rabbim* requires 600,000 people, the *Ritba* must be referring to Rabbi Moses ben Nahman when he identified "most of the Geonim."[147] Finally, it is critical to take into consideration the physical structure of the Babylonian cities at that time. Rav Paltoi, head of the Pumbedita academy from 842-58 writes: "Today we have no *reshut ha-rabbim* in our midst."[148] Although we do not know Rav Paltoi's view regarding the need for 600,000 to create a *reshut ha-rabbim*, it seems clear from his remark that no cities and towns in Babylonia definitely had 600,000 people nor, it seems, did they have streets that were sixteen *amot* or more wide. Therefore, the opinions of the Geonim cited above, lead to the conclusion that there was no *reshut ha-rabbim* in Babylonia at the time.

Construction of the Eruv

The Geonic material concerning the construction of the *eruv* partitions tends to merely repeat the Talmudic discussion regarding a *hazer* and *mavoi* and the different types of partitions that are required based on the size of the entranceways. This reflects the fact that the Babylonian cities and neighborhoods in the period of the Geonim

[147] Ibid., f.n. 286. Ta-Shma argued that the Geonim from Sura claimed that a *reshut ha-rabbim* required 600,000 while those from Pumbedita did not require 600,000. (See Ta-Shma, 144). However, it is difficult to draw this inference given the silence of the Pumbedita Geonim on this matter.
[148] *Halakhot Pesukot min Ha-Geonim*, no. 144.

were built in a similar fashion to those of the Talmudic period. Therefore, the Geonim needed only a restatement of the Talmudic principles.[149]

There is, however, a statement by the author of the *Halakhot Gedolot* that provides a formulation of the necessary *eruv* partitions that was not stated explicitly in the Talmudic sources. Rabbi Simeon Qayyara writes: "If the city is surrounded by a wall or is enclosed by rivers or it is surrounded by a hill or other natural partition which inclines at least ten *tefahim*, this is an acceptable *eruv* partition and all that is required is an *eruv hazerot* [of food-sharing]."[150] Although each of these *eruv* partitions is discussed in the Talmud, the formulation in the *Halakhot Gedolot* represents the first time that man-made and natural *eruv* partitions are listed together. The author of the *Halakhot Gedolot* thus established a standard for determining acceptable *eruv* boundaries that would be utilized throughout the centuries.

Food Sharing and Participation in the Eruv

The Geonim also addressed the sharing of food necessary for creating the *eruv* and simplified the process. According to the *Mishnah*, in order to carry in a *mavoi* one resident of one of the *hazerot* adjoining the *mavoi* identifies a vessel of food and

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[149] See, for example, the collection of material in *Otzar Ha-Geonim*, III: 1-6.
[150] See *Halakhot Gedolot* (Jerusalem, 1972), 260. The text is also found in the *Tashlum Halakhot Pesukot* printed at the end of Danzig, *Mavo*, 555-6. Danzig argued that this material that is found in both the *Halakhot Pesukot* and the *Halakhot Gedolot* originated in the *Halakhot Pesukot* of Rav Yehudai Gaon in the mid-eighth century and was later incorporated into the *Halakhot Gedolot*. See Danzig, 214-16.

symbolically shares this food with the other members of the *mavoi* through a formal act of *kinyan*-transfer-performed with another resident of the *mavoi*. The food is not consumed but deposited in the home of one of the residents. In a *hazer*, each resident of the *hazer* must contribute some food that is also not consumed but left in the home of the one of the residents of the *hazer*. This process was performed each week in order to create the *eruv*. The Geonim introduced a simplified version of this process that is recorded in the *Halakhot Ketzuvot*, a work written in Italy in the middle of the ninth century and known to the subsequent Geonim in Babylonia:[151]

> And this is the law concerning the making of an *eruv*. If one wants to make an *eruv* for the whole year on the day before Pesach, the sage should take from each and every household a handful of flour, then knead and bake it into a cake or two, making them very crisp, so that they will not rot and can be stored away. For as long as the cakes are stored somewhere, the *eruv* is considered to be in force, and carrying on the Sabbath is permissible. If, however, the cakes are eaten, or if they rot, or perish, or, are burned, it is forbidden to carry unless another *eruv* is prepared on Friday.[152]

Although the process described refers to *eruv hazerot* in which case food is taken from each resident, this process of collecting food or flour from each resident is also valid in a *mavoi*. Alternatively, in a *mavoi*, the sage can make a crisp bread on behalf of the

[151] Although many of the medieval sources attribute the *Halakhot Ketzuvot* to Rav Yehudai Gaon, this attribution is in error. See the discussion in *Halakhot Ketzuvot*, edited by Margoliot, 11-20 and Danzig, 261-69.

[152] *Halakhot Ketzuvot*, edited by Mordekhai Margoliot (Jerusalem, 1942), 63-4. The translation is found in Charlotte Elsiheva Fonrobert, "The Political Symbolism of the Eruv," *Jewish Social Studies* 11:3 (Spring-Summer 2005): 14.

other residents from his own flour as long as he symbolically shares it with everyone through the formality of a *kinyan* with another resident of the *mavoi*.

This process was instituted to simplify the weekly *eruv*. Once the food sharing has been completed and it was announced to the residents of the *hazer* or *mavoi* that it would be effective for a lengthy period of time (usually one year), no additional weekly action would be necessary to make the *eruv* valid. This procedure was practiced throughout Babylonia during this period. In a Geniza fragment, Rav Pinhas is quoted as instituting the collection of flour from each resident on the last day of Pesach to bake a *matzah* that would serve as the *eruv hazerot* for the entire year. Ginzberg identified Rav Pinhas as a contemporary of the Gaon Hanania, who led the Pumbedita academy from 764/767-771.[153] In addition, a responsum attributed to Rav Sar Shalom Gaon in the middle of the ninth century says that that the residents of the *hazer* or *mavoi* used to make the *eruv* on *hol ha-moed* Pesach rather than on the day before Pesach.[154]

The tradition of collecting flour from each resident, rather than an entire loaf, was not accepted by all the Geonim. The *Halkhot Gedolot* records that in his time the custom in Babylonia was that each resident of a *hazer* donated an entire loaf.[155] This

[153] See *Geonica* II: 121 for the text of the fragment and II: 113 for Ginzberg's analysis.
[154] *Sefer Shaarei Teshuvah*, no. 208. Margoliot argued that the custom to make the *eruv* on *erev* Pesach was the Italian custom which is found initially in the *Halakhot Ketzuvot* while the tradition to make the *eruv* on *hol hamoed* Pesach or the last day of Pesach was the Babylonian custom. See *Halakhot Ketzuvot*, edited by Margoliot, 17.
[155] *Halakhot Gedolot*, ed. Hildesheimer (1972), I:262.

statement by the author of the *Halakhot Gedolot* seems to follow the opinion of Rabbi Joshua in the *Mishnah* who required the collection of an entire loaf from each resident for an *eruv* or a *shittuf*.[156] This issue is addressed in a responsum attributed to Rav Sherira Gaon, the head of the Pumbedita academy from 968-1004, which describes a case where students came from Christian Europe to Babylonia to study in the academy and made an *eruv* in the inn in which they were staying through the collection of flour from each student that was baked into a complete loaf. Rav Sherira claimed that even Rabbi Joshua would accept this practice, since he did not require a loaf from each person. Rather, he required only that the *eruv* be made over a whole loaf and not just a piece of bread.[157] Rav Sherira's view is important as it justified a practice of the period that was deemed necessary for the simplification of the *eruv* process.

Although the Talmudic sources describe the creation of many *eruvin*, there is no comment encouraging the creation of *eruvin*. Rav Natronai Gaon writes in a responsum to the sages of Lucena (Alisana) in southern Spain regarding their question to him regarding how to create an *eruv* around the wells in order to draw water on the Sabbath:

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[156] *Mishnah Eruvin*, 7:10.

[157] *Teshuvot Geonei Mizrah U-Ma'arav*, edited by Yoel Ha-Kohen Miller (Berlin, 1888), no. 34. There is very little evidence concerning the practice of students from Christian Europe traveling to study in Babylonian academies. It is impossible to determine from where these students came. See Brody, 132-34, who did not mention this responsum in his collection of material on the relationship between the Babylonian academies and Christian Europe.

> I have a serious question on this matter [of making an *eruv*]. Great sages such as yourselves, men of Torah, meticulous in areas of Jewish law, do you need to create an *eruv* around the wells? Thank God there are no non-Jews in Alisana who would prevent the creation of the *eruv*. Why do you not make an *eruv hazerot* [around the entire city]?[158]

The author of the *Halakhot Gedolot* writes: "A city is required to make an *eruv*, whether with ropes or with a *tzurat ha-petah*."[159] Although it is impossible to calculate the number of *eruvin* created in Babylonia and other countries with which the Geonim had contact during this period, these two sources represent references to *eruvin* created in entire cities, not just in neighborhoods. This reflects an important expansion in the development of *eruvin* and might explain the Geonic encouragement

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[158] *Teshuvot Geonei Mizrah U-Maarav*, no. 26 and *Sefer Ha-Itim*, 148. Lucena, or Alisana as it was called by the Jews, was a center of Jewish life and scholarship in the ninth through eleventh centuries. There is historical evidence that a majority of the population was Jewish. Yet, the claim of Rav Natronai Gaon that "there are no non-Jews in Alisana" is matter of dispute. See the notes of A. Harkabi to Tzvi Graetz, *Sefer Divrei Yemei Yisrael* (Warsaw, 1984), IV: 25 (note section at end of volume) who cites both Arab and Jewish writers who argue that Lucena was totally Jewish during this period. This was clearly the view of Rav Natronai Gaon, in as much as the residence of even one non-Jew would have required the leasing of the city from him. See a related responsum of Rav Natronai Gaon concerning *eruvei tehumin* in Lucena in which he writes, "Since Alisana is a place of Jews with many Jewish residents, may God add to them one thousand times, and there is not even one non-Jew there." (See *Kevutzat Hakahamim*, edited by W. Warnheim (Jerusalem, 1970), 110-11 also found in *Otzar Ha-Geonim*, edited by B.M. Levin (Jerusalem, 1931), III: 24-5. For the history of Lucena, see Joseph Rivlin, *Shetarei Kehillot Alisana Min Ha-Meah Ha-Ahat Esreh* (Ramat Gan, 1995), 27-30.

[159] This version appears in the Berlin mss. (*Halakhot Gedolot* (Hildesheimer, 1888), 127). This version also appears in the edition edited by Avrohom Shimon Troyb, *Halakhot Gedolot* (Warsaw, 1974), 54. In the Milan mss., (*Halakhot Gedolot*, edited by Hildesheimer (Jerusaelm, 1972), 260) however, it reads: "If a city needs to make an *eruv*, they should make it with ropes or a *tzurat ha-petah*." This version retains the voluntary nature of the city *eruv*. The version from the Berlin mss. Is quoted by Isaac ben Moshe of Vienna, *Or Zarua* (Jerusalem, 2009), II: no. 164.

of the community to create these *eruvin* in as much as they were no longer just local issues for the residents of the *hazer* or *mavoi* to resolve.

The move from neighborhood *eruvin* to city *eruvin* also reflects the development of cities in Moslem countries following the Moslem conquests in the seventh and eighth centuries. Non-Moslems including Jews, Christians and Zoroastrians lived in these cities together with Moslems and participated in the cosmopolitan life of these cities and many of the Jews left the life of farming for crafts that were more appropriate for city life.[160] Although there is some evidence of Jewish neighborhoods in several Moslem cities, Norman Stillman argues that, for the most part, Jews lived together with non-Jews.[161] As the number of Jews in cities quickly increased, the need for city *eruvin* increased. While the actual building of these *eruvin* may have lagged behind the rabbinic advice, the statements of Rav Natronai Gaon and the author of the *Halakhot Gedolot* reflect the changing reality in Moslem countries.

[160] For the history of Islamic cities during the Moslem conquest, see S.M. Stern "The Constitution of the Islamic City," in *The Islamic City: A Colloquium*, edited by A.H. Hourani and S.M. Stern (Philadelphia, 1970), 25 and Noam Stillman, "Ha-Yehudim Be-Historiyah Ha-Ironot shel Ha-Islam Bi-Yemei Ha-Benayim, in *Masait Mosheh: Mekhkarim Be-Tarbut Yisrael Ve-Arav Mugashim Le-Mosheh Gil*, edited by Ezra Fleisher, Mordekhai Akiva Friedman and Yoel Kramer (Jerusalem, 1998), 246-255.
[161] There was a Jewish neighborhood in Baghdad and possibly also in Jerusalem. However, these were the exceptions rather than the rule. See Stillman, 252-4.

Lease of Property

Although Rav Natronai Gaon addressed the situation of Lucena, a city "without any non-Jews", the issue of creating an *eruv* where there were non-Jewish residents raised serious problems for the Geonim. As previously shown and as reflected in the Talmudic stories, the cities in Babylonia had both Jewish and non-Jewish residents. However, until the period of the Geonim, the *eruvin* were created around courtyards and alleyways. Therefore, the relationship with the non-Jew, whose residence invalidated the *eruv*, was confined to very few Jewish families. In the period of the Geonim, on the other hand, where *eruvin* were being created in cities, the issue of a non-Jewish resident created an additional problem as that non-Jewish resident was not necessarily known or accessible to the Jewish community. The *Shaarei Teshuvah* contains the following responsum: "Concerning that which you asked regarding a city that is completely Jewish yet one non-Jew lives in its midst. They collected the *eruv* from each Jewish resident with the exception of that non-Jew. [The answer is] that this non-Jew invalidates the *eruv* in the entire city, even on the streets of the city…until you lease the property of the non-Jew."[162] This is the first instance where the residence of a non-Jew invalidates the *eruv* of the entire city. Interestingly, while the responsum mentions the solution of leasing the property from the non-Jew, there is no evidence that this lease took place nor is there a description of the possible manner of

[162] See *Shaarei Teshuvah*, no. 210 and *Sefer Ha-Itim*, 144.

lease. The author of the *Halakhot Gedolot* also described a "place of non-Jews" in which case he advises that the Jews lease the property from each non-Jewish resident. If, however, the non-Jew refuses to lease his space, the author the *Halakhot Gedolot* advises that the Jews follow the recommendation of Rava in Pumbedita, wherein a Jewish resident places his vessels in the home of one of the non-Jews, thereby becoming his tenant, at which point the other Jews can include the non-Jew in the *eruv* through his Jewish tenant.[163]

The description of the city *eruv* in the works of the Geonim and the issues regarding its construction and the procedure needed to create the "eruv community" find greater elaboration in the works of the *rishonim,* the medieval commentators, throughout Europe.

Medieval Commentators

Definition of a Reshut ha-Rabbim

While the *gemara* offers the definition of a *reshut ha-rabbim* as a road that is at least sixteen *amot* wide-the width of the road in the desert used to transport the boards for the Tabernacle-the Geonim introduced an additional criterion, namely; that a *reshut ha-rabbim* is an area that has a population of at least 600,000 people passing through it every day. The *Halakhot Gedolot* claims that a *reshut ha-rabbim* is defined

[163] *Halakhot Gedolot* (Jerusalem, 1972), 261.

based on the size of the Jewish camp in the desert. Rashi in his commentary on the *gemara* defined a *reshut ha-rabbim* as follows:

> It means that it is sixteen *amot* wide and is a city that has 600,000 [people] and is not enclosed by a wall; for the *reshut ha-rabbim* requires roads that are open from one gate of the city to the other similar to the encampment of the Jews in the desert.[164]

According to Rashi there are three criteria for an area to be considered a *reshut ha-rabbim*: first, it must contain a road that is at least sixteen *amot* wide, second, it must have a population of at least 600,000 people and, finally, its streets must run from one gate of the city to the opposite gate.

Rabbi Moshe ben Nahman (*Ramban*) questions Rashi's definition. He writes: "I do not know the source of Rashi's definition for it is not mentioned anywhere in the Talmud. However, it is found in the *Halakhot Gedolot* and therefore it is based on great sages." Nevertheless, *Ramban* disagrees with Rashi's explanation because the *baraita* on *Shabbat* 6a does not include the need for 600,000 people in its definition of a *reshut ha-rabbim*. In addition, *Ramban* quotes the observation of Rabbenu Tam that, since according to Rashi, the size of a *reshut ha-rabbim* is derived from the size of the camp of the Israelites in the desert, should the number of women and children also be

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[164] Rashi *Eruvin* 6a, s.v. *Reshut Ha-Rabbim*. Rashi repeats the need for 600.000 to create a *reshut ha-rabbim* in his definition of the difference between an *ir shel yahid* and an *ir shel rabbim*. See Rashi *Eruvin* 69a, s.v. *ir shel yahid*. His opinion can also be found in Rashi *Eruvin* 6b, s.v. *Yerushalayim*; Rashi *Eruvin* 26a, s.v. *Arsayta*; and Rashi *Eruvin* 47a, s.v. *shalosh hazerot*.

included in the calculation of 600,000?[165] In any event, *Ramban* rejects the 600,000 criterion and holds that a *reshut ha-rabbim* is simply a space that is at least sixteen *amot* wide and has neither a wall nor roof.[166] Rambam codifies the definition of a *reshut ha-rabbim* as follows: "What is a *reshut ha-rabbim*…as long as its road is sixteen *amot* wide and it does not have a roof."[167]

Rabbi Eliezer ben Yoel Ha-Levi, the early thirteenth century Tosafist, applied the category of a *reshut ha-rabbim* to cities in medieval Germany. First, he followed the opinion of Rashi that a *reshut ha-rabbim* requires 600,000 people in addition to having sixteen *amot* wide streets that were open from one gate to the opposite gate.[168] Regarding these requirements, the author of the *Raavyah* wrote: "We, in our times, do not have a *reshut ha-rabbim* that is open from one gate to the other gate or that is sixteen *amot* wide. Therefore, our cities have the status of a *hazer*."[169] He also wrote

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[165] Rabbenu Tam's opinion can also be found in *Tosafot Ha-Rosh Ha-Shalem* (Jerusalem, 1971), *Eruvin* 59a s.v. *ir shel yahid*. It is not clear that Rabbenu Tam disagrees with Rashi's definition of a *reshut ha-rabbim*. He merely raises a question.
[166] Rabbi Moshe ben Nahman, *Hiddushei Ha-Ramban*, edited by Moshe Hirschler (Jerusalem, 1973), Eruvin 59a. Ritba agreed with Ramban. See Ritba, *Eruvin* 59a, s.v. *Matnitin ir shel rabbim*. For a possible answer to Ramban's question on Rashi's explanation, see Kasher, *Torah Sheleimah*, XV: 165-66.
[167] Rabbi Moshe ben Maimon, *Mishneh Torah*, *Hilkhot Shabbat* 14:1.
[168] Rabbi Eliezer ben Yoel Ha-Levi, *Sefer Raavyah*, edited by Avigdor Aptowitzer (Brooklyn 1983), I: 393-4 and I: 443.
[169] Ibid., I: 307. Aptowitzer wrote in f.n. 12 that since the author of the *Raavyah* did not mention 600,000 people as a criterion for a *reshut ha-rabbim* at this point, he believed that a *reshut ha-rabbim* did not require 600,000. This is incorrect, as proven by the previous sources. The author of the *Raavyah* did not bother to mention 600,000 at this point since there were no *reshuyot ha-rabbim* even without that qualification.

that "you will not find such a city [a *reshut ha-rabbim*] in our entire country."[170] Finally, the author of the *Raavyah* added one more consideration. When discussing Rashi's opinion, he writes: "Our cities that are walled and do not have roads running straight from one gate to the other gate have the status of a *karmelit*."[171]

The author of the *Raavyah* has transformed the halakhic disagreement concerning the definition of a *reshut ha-rabbim* into a practical discussion about the viability of creating *eruvin* in medieval German cities. First, his explanation points to the fact that from a practical standpoint there was no difference between Rashi's opinion and the other *rishonim* because no German city had even one street that was sixteen *amot* wide and open from gate to gate to gate. Therefore, all *rishonim* would agree that none of these cities constituted a *reshut ha-rabbim*. Furthermore, he noted that these German cities were walled. Therefore, the only actions that were required to create the *eruv* were the sharing of food and possibly leasing of space from any non-Jewish residents.

This statement that all German cities were walled seems to have been a generalization on the part of the author of the *Raavyah*. In his commentary on the laws of *eruvin* he describes the city of Worms as follows:

> In Worms there were alleys and many people, other than the residents, entered and left these alleyways (*rabbim bokim bahem*). It was

[170] Ibid., I: 447.
[171] Ibid., I: 443.

> impossible to close off these alleys, for they were utilized by all the city dwellers. Would it be possible to consider the alley closed regarding the *eruv* by placing an end-post on one end and a *tzurat ha-petah* on the other end? [He answered] In the days of my father people carried in these alleys in Mainz. However, my teacher Rabbi Ephraim complained but no one listened to him. Therefore, I am writing to let you know that the original leniency is still in place.[172]

It seems safe to conclude that if the entire city of Mainz had been walled, there would have been no need to create neighborhood *eruvin*.

The *Ramban*, on the other hand, describes a different reality in medieval cities. In the midst of his description of a *reshut ha-rabbim*, he writes, "There are cities in the world that have the status of a *reshut ha-rabbim*."[173] While the historical evidence regarding the structure of the streets and neighborhoods in medieval European cities is limited, the author of the *Raavyah* and the *Ramban* reflect the fact that each city was constructed in a different manner which effected their status vis a vis the creation of *eruvin* in those cities.

Construction of the Eruv

In the medieval period, the *rishonim* addressed the construction of the *eruv* partitions in light of the realities of the physical layout of the cities and towns. The *gemara* in *Eruvin* contains a debate regarding the definition of a *mavoi*; Rav says that a *mavoi* adjoins two *hazerot* each with two houses, Shmuel says that all that is

[172] *Raavyah*, I: 399-400.
[173] *Ramban*, *Shabbat* 57a.

necessary to create a *mavoi* is one *hazer* with one house.[174] The author of the *Raavyah* comments on this *gemara*: "This is true in those days when the *hazerot* were in front of the house and one entered the *reshut ha-rabbim* through the *hazer*. However, where the houses open directly into the *mavoi* and the *hazerot* are behind the houses, it is sufficient to have houses opening into the *mavoi* in order to create the *mavoi* [and it is not necessary that each house has a *hazer*]."[175] According to the author of the *Raavyah*, the introduction of "backyards" changed the laws of *eruvin* and served to redefine a *mavoi*.

Rabbi Israel Isserlein, author of the early fifteenth century German collection of responsa *Terumat Ha-Deshen*, also addresses the changes in urban planning in medieval Germany. Concerning the *Mishnah's* ruling that a *mavoi* can be closed off with a *lehi* and/or *korah* as long as the entranceway is less than ten *amot* high, he writes:

> It is difficult for me to justify the custom in most places that they require a *tzurat ha-petah* to create the partition in a *mavoi* and do not suffice with a *lehi* and *korah* even if the entranceway is less than ten *amot*. However, this appears to be correct since most cities are now walled in a situation of 'settled and then walled' so that the entire city has the status of a *hazer shel rabbim* which is not surrounded [in which case a *tzurat ha-petah* is required].[176]

[174] *Eruvin* 73b-74a.
[175] Raavyah, I:400.
[176] Rabbi Israel Isserlein, *Sefer Terumat Ha-Deshen* (Bnei Brak, 1971), no. 74.

According to the author of *Terumat Ha-Deshen*, a walled city has the status of a *hazer shel rabbim,* which is defined by the Talmudic sources as surrounded by walls on all four sides. Since a *hazer* requires a more substantial *eruv* partition than a *mavoi*, in the case of a walled city, there is a requirement for a *tzurat ha-petah* in order to completely enclose the city.[177]

Rabbi Isaac ben Sheshet, the Spanish and North African Talmudist of the second half of the fourteenth century, also defined the status of a city in a manner that did not meet the specifications of the *Mishnah*. He was asked about establishing an *eruv* in a city which was walled, did not have a road of sixteen *amot* but had one entranceway to the city without a gate. There was a disagreement among the scholars in the city whether the city was considered a *karmelit* and, therefore, could be partitioned with a *lehi* and *korah*, or a *reshut ha-rabbim,* in which case it would require a *tzurat ha-petah* to enclose the one opening in the entranceway. Rabbi Isaac ben Sheshet responded that, even though in certain cases in the *gemara* a *karmelit* is equated with a *reshut ha-rabbim*, unless the *gemara* explicitly makes the connection, any area that does not satisfy the criteria of a *reshut ha-rabbim* has the status of a *karmelit* and does not require a *tzurat ha-petah*.[178] The author of the *Terumat ha-Deshen* and Rabbi Isaac ben Sheshet are both addressing the structure of their medieval neighborhoods, yet, they reach different conclusions; Rabbi Isserlein claims

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[178] Rabbi Isaac ben Sheshet, *She'elot U-Teshuvot Ha-Rav Yitzhak Bar Sheshet*, edited by David Metzger, (Jerusalem, 1993), no. 405.

that all areas require a *tzurat ha-petah* since they have the status of a *hazer shel rabbim*, whereas Rabbi Isaac ben Sheshet concludes that the city is a *karmelit* and allows for the creation of a partition through the use of a *lehi* and *korah*, at least in the situation he describes. Both of these descriptions of medieval cities appear almost two centuries earlier in the *Raavyah*. In one place, the author of the *Raavyah* writes: "Today we have no *reshut ha-rabbim* and it [the city] is to be considered a *hazer*"[179] while in another place he writes, "Our cities that are walled but do not have streets that run from one end to the other are considered a *karmelit*."[180]

The *rishonim* also address the use of natural *eruv* partitions. Regarding the *gemara's* concern regarding utilizing the sea wall as an *eruv* partition "lest it builds up sediment"[181], there is a disagreement among the *rishonim* concerning this law based on a textual variant in the *gemara*. Rashi agrees with the printed text of the *gemara* and quotes the *gemara* as follows, "Maremar separated the *mavoi* of Sura from the sea with nets as he explained, 'lest the sea bring up sediment.'"[182] Rabbenu Hananel, however, has the following version of the text, "Maremar created nets in Sura and he was not concerned that the sea would build up sediment."[183] Ibn Adret, in his commentary on the *gemara*, points out that Maremar's actions only make sense if one

[179] *Raavyah*, I: 307.
[180] *Raavyah*, I:443.
[181] *Eruvin* 8a.
[182] Rashi Eruvin 8a, s.v. *amar shema*.
[183] Rabbenu Hannanel, *Eruvin* 8a.

assumes that he was concerned with the build up of sediment.[184] However Rambam follows the version of Rabbenu Hananel and writes, "There is no concern that the sea will build up sediment."[185]

Regarding the disagreement between Rabbi Judah and the Sages whether public traffic invalidates the *eruv*, *Rambam* writes explicitly that "Even if the public passes through the *eruv* partitions, the partitions are still valid."[186] The author of the *Raavyah* represents the German tradition and also follows the view of the Sages that public traffic does not invalidate the *eruv* partitions.[187] *Tosafot* ask the following question: According to the Sages, the entire Land of Israel is not considered a *reshut ha-rabbim* since it is surrounded by natural boundaries. *Tosafot*, assuming that this is not true, explains that natural walls do not have the same status as man-made walls. Therefore, if the *eruv* partitions consist of man-made walls, even the Sages would agree that public traffic would invalidate the *eruv* partitions.[188]

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[184] *Hiddushei Ha-Rashba Massekhet Eruvin*, edited by Yaakov Dovid Ilan (Jerusalem, 1989), *Eruvin* 8a, s.v. *hakhi garsinan*.
[185] *Mishneh Torah, Hilkhot Shabbat* 17: 5. See *Maggid Mishneh, Hilkhot Shabbat* 17:5, s.v. *mavoi*.
[186] *Mishneh Torah, Hilkhot Shabbat* 17: 33 and see *Maggid Mishneh*.
[187] *Raavyah, Hilkhot Eruvin*, I: 270.
[188] *Tosafot*, *Eruvin* 22b, s.v. *dilma*. See *Arukh Ha-Shulhan, O.H*. 263:48-50 for an analysis of this opinion of *Tosafot*.

Food-Sharing and Participation in the Eruv

Regarding the necessary sharing of food in order to create the *eruv* or the *shittuf*, Rabbenu Simhah, a student of Rashi and author of the twelfth century *Mahzor Vitry* confirmed the view of the Geonim that the local rabbi may collect flour from each resident in the *hazer* or *mavoi* on *erev* Pesach and bake a matzah that will serve as the *eruv* or *shittuf* for the entire year. Alternatively, in a *mavoi*, Rabbenu Simhah writes that the rabbi can use his own flour as long as he notifies the other members of the *mavoi* and transfers the flour to them via one of the residents of the *mavoi*.[189] *Ra'avad*, in his glosses on the *Mishneh Torah*, says that this practice of collecting flour once a year was also the custom in Provence in the thirteenth century. *Ra'avad* does not mention that this practice took place on *erev* Pesach.[190] Rabbi Shlomo ibn Adret was asked whether the *eruv* can be used for two or three years as long as the bread exists, even if it is stale. He responds that the same bread can be used as an *eruv* as long as the bread is edible.[191] The fact that this custom appears in the *rishonim* points to the fact that the simplicity of the *eruv* process, whether in individual

[189] Rabbenu Simhah, *Mahzor Vitry*, edited by Aryeh Goldschmidt (Jerusalem, 2009), *Hilkhot Eruvin*, no. 2. If the matzah is lost or consumed prior to the next *erev* Pesach, the *Sefer Ha-Pardes* (9c) and the *Sefer Ha-Orah* (no. 138) argue that one must make a new *eruv* every Friday until the following Pesach. See Mordekhai Margoliot's introduction to *Halakhot Ketzuvot* for a discussion whether this view precludes the option of making another *eruv* for the duration of the year. (*Halakhot Ketzuvot*, Introduction, 45.

[190] *Ra'avad*, Mishneh Torah, *Hilkhot Eruvin* 1:16.

[191] *Sefer She'elot U-Teshuvot ha-Rashba* (Jerusalem, 1976), vol. 5, no. 7.

communities or in a city, was an essential aspect of that process as the Jews moved to European countries.

Rabbenu Simhah also attempts to define a *hazer*. He argues that if a *hazer* contains a hundred houses all of which belong to one person, no *eruv* is required. However, if the residents of the *hazer* are individual owners of their houses, an *eruv* would be required. It is not clear if this law describes an actual *hazer*; nevertheless, it may reflect the nature of Jewish neighborhoods during this period.[192]

Lease of Property

The *Mishnah* and subsequent *gemara* address the question of whether a non-Jew or a Jew "who does not agree with the *eruv*" invalidates the *eruv*. A non-Jew invalidates the *eruv* but the Jews can lease his property in the *hazer* or *mavoi* thereby permitted the *eruv* to function. The *Mishnah* writes that a Jew who accepts the principle of *eruv* but does not participate in the *eruv* may renounce his portion in the *hazer* or *mavoi* thus facilitating the *eruv*. However, a Sabbath violator has the status of a non-Jew and cannot renounce his space.[193] What is the status of this Jew who does not violate the rest of the laws of the Sabbath but "does not agree with the *eruv*"? Rabbi Meir of Rothenberg argues that such a Jew has the status of a non-Jew and, therefore, he cannot renounce his share in the *hazer* or *mavoi*; but the other Jews can

[192] *Mahzor Vitry*, no. 283.
[193] *Mishnah Eruvin* 6: 1-3 and *Eruvin* 69a-b.

lease his property. Rabbenu Asher disagrees and writes that this Jew "who does not agree with the *eruv*" does not have the status of a non-Jew. Therefore, he can renounce his status in the *mavoi* or the *hazer*. However, if he chooses not to renounce his space, the rest of the Jews in the *hazer* or *mavoi* can lease his property from him in as much as any Jew who does not participate in the *eruv* has the choice of renouncing his property interest or leasing his space to the other Jewish residents.[194] Rambam argues that this Jew "who does not agree with the *eruv*" is not considered a non-Jew. Therefore, he may renounce his share in the *hazer*. However, since he is a Jew, the rest of the Jews cannot lease his property from him.[195]

There is a dispute among the *rishonim* regarding the guidelines of leasing the property from the non-Jew in the *hazer* or *mavoi*. The first issue that is addressed is the definition of the type of property that requires lease from the non-Jew. Rabbi Shlomo ibn Adret writes that in a situation where a Jew leased his house to a non-Jew, the Jews in the *hazer* do not need to lease the house from the non-Jew since, when the property owner leased his house to the non-Jew, he did not intend that the lease would invalidate the *eruv*. In addition, ibn Adret adds that, since it was not common for a Jew to lease to a non-Jew, the rabbis did not need to institute a new practice for an

[194] See the opinion of Rabbi Meir or Rothenberg and Rabbenu Asher in *Rosh*, *Eruvin*, chapter 6, no. 13. The opinion of Rabbi Meir of Rothenberg can also be found in Rabbi Meir ben Barukh mi-Rotenberg, *Teshuvot Pesakim U-Minhagim*, edited by Yitzhak Zev Kahane (Jerusalem, 1957), vol. 1, *pesakim u-minhagim*, no. 379.
[195] Rambam, *Mishneh Torah*, *Hilkhot Eruvin*, 2:16.

infrequent occurrence.[196] Rabbenu Asher argues that the lease of the non-Jew's property is only necessary if the Jew and non-Jew share a common area in the *hazer*. Therefore, he claims that in a situation in which Jews and non-Jews live together in a *hazer*, but the Jews and non-Jews do not share the common area of the *hazer*, as each enters the *reshut ha-rabbim* directly from their *hazer*, the Jews would not be required to lease the non-Jew's property in that *hazer*.[197] Rabbi Jacob Weil, one of the later German *rishonim* who lived in the fifteenth century, expands this concept and allows the Jews to carry the hot food (he calls it "cholent") from one Jewish home to another Jewish home since the non-Jews do not share access to the Jewish homes or *hazerot*.[198]

The application of the rules of leasing the property of a non-Jew in a *hazer* or a *mavoi* to the question of lease in a city can first be found in the commentary of Mordekhai ben Hillel. In his commentary, the author quotes the Tosafist, Rabbenu Yitzhak Ha-Zaken, who writes:

> One Jew who lives in a walled city with complete *eruv* partitions whose gates are locked at night is not required to lease the property from his non-Jewish neighbors. Even if there are many Jews living in one house, they do not need to lease the space since the only time they are required to lease the

[196] Shlomo ibn Adret, *Avodat Ha-Kodesh* (Zichron Yaakov, 2004), Sha'ar 4, no.103.
[197] *She'elot U-Teshuvot Le-Rabbenu Asher ben Yehiel*, edited by Yitzhak Shlomo Yudlov (Jerusalem, 1994), *Kelal* 21, no. 4.
[198] Rabbi Jacob Weil, *She'elot U-Teshuvot Rabbi Yaakov Veil*, (Jerusalem, 1959), denim va-halakhot, no. 70. This teshuvah is quoted in Yaakov Barukh Landau, *Sefer Ha-Aggur Ha-Shalem*, edited by Moshe Hirschler, (Jerusalem, 1960), no. 540.

space is in a case where there are two Jewish homes in the area.[199]

Given the fact that many cities in the medieval period were walled, the ability to limit the situations in which leasing from the non-Jew was necessary helped to simplify the *eruv* process and allowed Jews living in larger urban areas to carry on the Sabbath.

Furthermore, the *rishonim* debate the length of the lease period from the non-Jew. Rabbi Meir of Rothenberg writes that the lease works as long as the non-Jew does not renege on the lease.[200] He explains that the lease is like the food-sharing that can be done for a long period of time.[201] On the other hand, Rabbi Isaac of Vienna, in his *Or Zarua*, argues that the lease must be renewed every Friday.[202] He bases his opinion on the explanation of Rashi who explains that the reason that the rabbis insisted on leasing the property of the non-Jew, even according to the opinion that the property of a non-Jew is considered ownerless, is as follows: "Lest the Jews learn from the ways of the idolators, they [the rabbis] instituted the inconvenience and financial burden [to lease the property of the idolator] so that the Jew will not want to pay the lease fee each and every week and will move away from this *hazer*."[203] Rabbenu Asher explains that even according to Rashi, one would only have to renew

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[199] *Mordekhai*, *Eruvin* no. 509. Mordekhai ben Hillel agrees with Rabbenu Yitzhak Ha-Zaken in principle but believes that such an area does not need to have doors that are locked at night.

[201] See *Rosh*, *Eruvin*, chapter 6, no. 1. This view is also found in *Mordekhai*, *Eruvin*, no. 508.
[202] *Or Zarua*, vol. 2., no. 168.
[203] Rashi, *Eruvin* 62a, s.v. *ela de-khulei alma*.

the lease if the non-Jew reneged and that is the financial burden to which Rashi refers. However, the author of Or *Zarua*, expands on his explanation of Rashi's requirement to lease the property every week in order to encourage the Jew to move out of that *hazer* with the following case: If a Jew is sleeping in an inn owned by a non-Jew, Rabbi Isaac of Vienna requires that the Jew pay a special lease fee to the inn owner in order to be able to carry on the Sabbath within the inn and not rely on the fee his pays to sleep in the inn. He explains that this additional fee was instituted to dissuade Jews from staying in non-Jewish inns.[204]

As the issue of creating the *eruv* community expanded from the *hazer* and *mavoi* to the city *eruv*, the question arose how to lease the city from its non-Jewish residents. Some of the *rishonim* argued that even in a city, the Jews needed to lease the city from each non-Jewish resident. Mordekhai ben Hillel writes: "Rabbi Meir [of Rothenberg] decreed that it is not sufficient to lease the space from the governing official in the city. Rather, [the Jewish community] must lease from each individual non-Jewish resident."[205] Rabbi Jacob ben Asher in his *Tur* concurs with this view and writes: "It is not sufficient to lease from a governing official in the city."[206] Ibn Adret was asked: "Is it sufficient to lease from the governing official in the town who receives a stipend each year from each household or do you have to lease from each individual non-Jewish resident?" He responded that if the governing official has the

[204] *Rosh*, *Eruvin*, chapter 6, no. 1 and *Mordekhai*, *Eruvin*, no. 508.
[205] *Mordekhai*, *Eruvin*, no. 509. See *Teshuvot Rabbi Meir ben Barukh*, vo. 1, *pesakim u-minhagim*, no. 286.The view is also found in *Sefer Kol Bo* (Jerusalem, 1997), no 33.
[206] *Tur*, *OH*, 391.

right to expel people from their homes, one can lease directly from him. Otherwise, they must lease from each individual non-Jewish resident.[207]

There is, however, another consideration in the lease of the city from the city official. The Talmudic sources did not address the issue of lease from a governing official. Therefore, the *rishonim* were challenged to identify a precedent for their practice to lease the city from a governing official, albeit rarely the king. The *gemara* related the case of Lahman ben Ristak, the non-Jew who refused to lease his property in the *hazer* to the other Jews. The *gemara* concludes "'But rather,' said Rava, 'let one of them [the Jewish residents] approach [the non-Jew and borrow a place from him on which he shall put down something, so that [by becoming a tenant in the non-Jew's courtyard] he [the Jew] assumes the status of his hired laborer (*sekhiro u-lekito*) [and this is sufficient ownership by the Jew to allow all the residents of the *mavoi* to carry in that alley].'"[208] Ibn Adret argues that this story serves as the precedent for the lease of the city from the treasurer to the king since the money the treasurer collects goes directly to the king, the treasurer becomes an extension of the king. While this is not similar to the example presented by the *gemara* of a Jewish *sekhiro u-lekito*, the need to find a precedent for this lease from the king's treasurer justified the expansion of the category of *sekhiro u-lekito*.[209] Rabbi Isaac ben Sheshet explains this idea in the

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[207] *Teshuvot Ha-Rashba* (Jerusalem, 1997), vol. 1, no. 626.
[208] *Eruvin*, 63b-64a with translation by Elman, 97.
[209] *Teshuvot Ha-Rashba*, vol. 5, no. 6. Ibn Adret was asked if the Jewish community leased from the treasurer for a fixed amount of time and the treasurer died, did they have lease the space once again from the new treasurer. He responded that since they

following manner: since the treasurer has the right to place the king's property in every house in his jurisdiction, the treasurer becomes the *sekhiro u-lekito* of everyone in the kingdom and the lease can be done from him.[210]

Finally, Isaac ben Sheshet adds another consideration. He writes: "There is an additional reason to allow for leasing the space from the head of the city for it is known that the head of the city has the right to change the public roads and to force the non-Jews to travel on a different road."[211] According to Rabbi Isaac ben Sheshet, even if the government official does not have authority over the houses of the city, since he has authority over the streets, the Jews can lease the city from him.

The three explanations permitting the lease of the city from the government official based on his right to expel people from their homes, to place his wares in private homes or to control the roads point to the struggle on the part of the *rishonim* to apply the criteria of the Talmudic period to the realia of the medieval period. The practice of leasing the city from the government official was practiced in the large walled cities in Spain.[212]

Based on this expansion of the principle of *sekhiro u-lekito*, the *rishonim* identify the type of non-Jew from whom the Jews must lease the space. If a non-Jew

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leased the space for specific time period, they would not have to lease from the new treasurer.

[210] *She'elot U-Teshuvot Rivash*, no. 427. See also the discussion *Beit Yosef, Tur O.H.* 382: 12.

[211] *Rivash*, no. 427.

[212] *Beit Yosef, Tur OH*, 391:2.

living in a *hazer* leases his house to another non-Jew, from whom must the Jews of the *hazer* lease the space? *Rambam* writes that as long as the owner can evict the lesee, the lease for the purpose of the *eruv* may be done from the owner.[213] However, if the owner does not have the right to evict the leaseer, Ibn Adret writes that as long as the owner has the right to place his objects in the house, even if he does not actually place the objects in the house, he is still considered the owner and the lease may be executed with the owner Ibn Adret explains that the fact that a *sekhiro u-lekito* is able to represent the non-Jewish owner regarding the *eruv* simply because he places his wares in the home of the non-Jew shows that the right to place objects in one's house is the criterion in determining ownership regarding this aspect of the laws of *eruvin*.[214] Rabbi Aaron Ha-Kohen of Lunel, the early fourteenth century author of *Orhot Haim* expands the principle of ibn Adret in the following instance: If Jews are traveling on a boat together with non-Jews, how can they lease the space in order to allow carrying on the boat on the Sabbath? He explains that ideally the Jews should lease the space from the owner of the boat prior to the onset of the trip. However, if they did not, they may still lease the cabins of the non-Jews from the owner of the ship since he has the right to place objects in each cabin.[215]

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[213] Rambam, *Mishneh Torah, Hilkhot Eruvin,* 2:14.
[214] Rabbi Shlomo ibn Adret, *Avodat Ha-Kodesh*, sha'ar 4, no. 3. . In both all cases, the lease can be done from the lessee.
[215] Rabbi Aaron ha-Kohen of Lunel, *Orhot Haim* (Jerusalem, 1956), *Hilkhot Shabbat*, no. 429.

Although the *gemara* had stated that "The *halakhah* follows the lenient opinion regarding *eruvin*," the *rishonim* qualify this statement. Rabbi Meir of Rothenberg offers two important qualifications; first, he argues that this principle only applies to a disagreement among *tannaim*. However, in a disagreement among *amoriam*, the law does not necessarily follow the lenient view. Furthermore, he suggests that the law only follows the lenient view regarding the *eruv*-food-sharing-but when there is an issue regarding the partition it does not necessarily follow the lenient view.[216] The author of the *Rivash* explains the distinction between the food-sharing and the partitions as follows; the food-sharing is a rabbinic institution so the law can be lenient. However, the partitions relate to the Biblical prohibition of *hoza'a* so the law would not be lenient in such a dispute.[217] There are, however, *rishonim* who maintain this principle even regarding a dispute between *amoraim* and in issues regarding partitions. Tosafot argues that this principle can be applied even in a dispute among *amoraim*.[218] Furthermore, there is an alternate tradition that claims that Rabbi Meir of Rothenberg applies this principle of leniency regarding question of food-sharing and

[216] This version of Rabbi Meir of Rothenberg's opinion is found in Rosh, *Eruvin* 2:4.
[217] *Rivash*, no. 405. See also *Ritva*, *Eruvin* 89a s.v. *ve-ha* and ibn Adret, *Avodat Ha-Kodesh* 2:1 who concur with this view.
[218] Tosafot, *Eruvin* 65b s.v. *ikliu* as explained by *Hagahot Maimoniot*, Mishneh Torah, *Hilkhot Shabbat* chapter 16, no. 7. The author of the *Hagahot Maimoniot* also claims that there is a version of the works of Rabbi Meir of Rothenberg in which he argues that this principle applies regarding disputes among *amoraim*. See Rabbi Eliyahu of Vilna, *Orah Haim* 358:5 who argues that Rabbi Meir of Rothenberg, in addition to other *rishonim*, applies this principle to amoraic disputes.

partitions.[219] The application of this principle is significant as it serves as a useful vehicle to allow flexibility in applying the rules of the *gemara* and *rishonim* to practical scenarios in neighborhoods and cities.

Should One Create an Eruv?

Although the halakhic literature regarding the *eruv* is extensive during the medieval period, there is little discussion about the advisability of creating *eruvin*.[220] Did the rabbis in the medieval period encourage the building of *eruvin* or did they view *eruvin* as merely an acceptable means of avoiding the prohibition of *hoza'a* but not something that should be desired or encouraged? Rabbenu Asher, who moved with his family from Germany to Toledo, Spain, around 1305 and was the rabbinic leader of Toledo until his death in 1327, addresses this issue.[221] Rabbenu Asher is asked about an *eruv* in the city of Fredes by Yaakov ben Yitzhak. [222] The questioner describes the fact that there was an *eruv* in their city, complete with *tzurot ha-petah*

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[219] *Mordekhai*, *Eruvin* no. 482.

[220] There is a reference in the *teshuvot* of Rabbi Simeon ben Zemah Duran who served as a rabbi in Algiers after 1391. He writes: "Is there a threat of a sin if you establish an *eruv*? God Forbid! On the contrary, the one who is diligent will be praised." See *She'elot U-Teshuvot Tashbetz* (Jerusalem, 1998), II: 37.

[221] For a biography of Rabbenu Asher, see Hayyim Freimann, *Ha-Rosh: Rabbenu Asher ben R. Yehiel Ve-Tzetza'av Hayehem U-Feolom* (Jerusalem, 1986).

[222] The name of the city in the *teshuvah* is פרירש. Menachem Elon claims that this is a mistake and the city is פרידס. The city of Fredes is a small town in the medieval kingdom of Valencia, the place by which Rabbi Yaakov ben Moshe is identified in the *teshuvah*. See *Mafteah Ha-She'elot U-Teshuvot: Shu't Ha-Rosh*, edited by Menahem Elon (Jerusalem, 1965), 643. For a history of the Jews in the Kingdom of Valencia during the fourteenth century, see Mark D. Meyerson, *Jews in an Iberian Frontier Kingdom: Society, Economy and Politics in Morvedre, 1248-1391* (Leiden, 2004).

and the lease of the property of the local non-Jews, during the time of Rabbi Shlomo ben Ovadiah. The practice continued after his death until one of his students, Yaakov ben Moshe of Valencia, came and prohibited carrying in the city of Fredes. There was a debate in the city about this new policy and someone by name of Yaakov ben Yitzhak addressed the question to Rabbenu Asher. Rabbenu Asher responds in a series of four responsa.[223] The first, addressed to his questioner, rejects several of the proofs that were advanced during the debate in Fredes. Rabbenu Asher concludes that the original policy of the city was the correct one and that an *eruv* can be built there.[224] In the following responsum, directed to Yaakov ben Moshe of Valencia, Rabbenu Asher criticizes him, first, for claiming that the city *eruvin* that have been created by the rabbis in many communities throughout the diaspora were invalid. Rabbenu Asher writes, "You should know that these authors did not add to the Talmud nor subtract from it. However, since you do not understand even the format of the Talmud, you do not know anything about the laws of *eruvin* and you are mistaken regarding the words of these authors." Rabbenu Asher continues in this responsum to both disprove and mock the arguments of Yaakov ben Moshe. Finally, in this *teshuvah*, he criticizes Yaakov ben Moshe for being stringent on this issue. He writes: "And do not think, what difference does it make if I am stringent [on this matter], for you are causing an

[223] These four responsa are found in the *She'elot U-Teshuvot Le-Rabbenu Asher ben Yehiel*, edited by Yitzhak Shlomo Yudlov (Jerusalem, 1994), pp. 110-112 (*kellal* 21, no. 8:2-9:2.). Only the final two responsa are found in the earlier editions of the *Teshuvot Ha-Rosh*, *kellal* 21, no. 8-9. The additional two responsa were added from manuscripts of the responsa. See *Teshuvot Ha-Rosh* (Jerusalem, 1994), 110, f.n. 1.
[224] *She'elot U-Teshuvot Le-Rabbenu Asher* (Jerusalem, 1994), *kellal* 21 no. 8:2

unbearable condition through your unwillingness to create an *eruv*."[225] In the third responsum, he once again addresses Yaakov ben Moshe, this time with harsh personal words. He writes:

> A response concerning the fact that you do not want to retract from your inappropriate behavior concerning the *eruv*: You, Rabbi Yaakov ben Moshe of Valencia, I already wrote to you concerning the *eruv* that they are accustomed to permit throughout the Jewish diaspora through the building of a *tzurat ha-petah* even the open roads that pass through the non-Jewish neighborhoods. You have prohibited this for the community of Fredes and sent me your proofs which I have rejected. Furthermore, I warned you that you must change your mind and tell your community that they may construct the *eruv* as is customary based on their sages. It should be known that you remain in your rebellion and you cause the community to violate the Sabbath. Therefore, I decree that after you receive this letter you have two weeks to erect an *eruv* around the open roads in the non-Jewish neighborhoods through the use of a *tzurat ha-petah* and if you do not comply, I will excommunicate you. And, had I lived in the time of the Sanhedrin, they would have put you to death for you are seeking to uproot the rules of the Talmud established by Rav Ashi and to disagree with all the sages who lived to this point, those who have died and those who are still alive. Change your mind and do not reject the traditions of the Torah of Moshe Rabbenu.[226]

In the fourth responsum on this topic, Rabbenu Asher writes once again to Yaakov ben Yitzhak, calling on him and his community to carry out the threat of excommunication on this rabbi if he does not retract his opposition to the *eruv*. Rabbenu Asher explains

[225] Ibid., *kellal* 21, no. 8:3.
[226] *She'elot U-Teshuvot Le-Rabbenu Asher* (Jerusalem, 1994), *Kellal* 21, no. 8:4.

the rationale for his strong response: "This matter requires strengthening so that every fool without knowledge will not come to violate the Torah of Moshe." Rabbenu Asher continues his responsum calling on Yaakov ben Yitzhak to bring this letter to the head of the town so that he can collect a penalty of a thousand *zuz* from Rabbi Yaakov ben Moshe if he does not comply with Rabbenu Asher's demands. Finally, he writes that if none of this is successful, he should be excommunicated throughout Spanish Jewish communities.[227]

It is clear from the responsum addressed to Yaakov ben Moshe that the custom in many cities was to construct city *eruvin*, even if lease of the property of non-Jews was required.[228] While it is not clear why Rabbenu Asher became so infuriated with Yaakov ben Moshe, it was at least partially related to the importance that Rabbenu Asher placed on the creation of city *eruvin* and the respect he felt was due to the rabbis, both of previous and present generations, who had created city *eruvin*. In addition, he was upset that this rabbi, without the proper expertise, was being strict at the expense of the community.

Rabbenu Asher's personal experience in Toledo supported his enthusiasm for the creation of city *eruvin*. Rabbi Joseph Caro lists some of the large cities in Spain

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[227] Ibid., *Kellal* 21, no. 9

[228] Valencia, the city or region of Rabbi Yaakov ben Moshe, may also have had an *eruv*. See Zemah Duran, *She'elot U-Teshuvot Yakhin U-Boaz* (Livorno, 1782), 2:14 for a discussion of whether the lease of the non-Jewish properties in Valencia was possible thus enabling the creation of an *eruv* there in the fourteenth century.

which were walled and where the Jews leased the city from the local authority.[229] Toledo is one of those cities mentioned by Rabbi Caro. Toledo had a Jewish neighborhood dating back to the Moslem period that itself was walled within the city of Toledo walls. While most Jews lived within the Jewish neighborhood, called the Juderia, there were some Jews who chose, due to economic considerations or overcrowding, to move to a neighborhood within the city walls but outside the Juderia.[230] While there is no evidence whether the Toledo *eruv* extended beyond the Juderia and the exact date of the creation of this *eruv* is unknown, it is most likely that Rabbenu Asher moved to a city that had an *eruv* and to a region where *eruvin* were built in all the major cities.[231]

The living arrangements of the Jews in German lands also affected the development of the *eruv* in those places. Alfred Haverkamp wrote about the existence of compulsory ghettos in Germany in the medieval period, "The answers to the questions of when such "quarters" first came into existence in the German lands are as

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[229] *Beit Yosef*, *Tur OH*, 391:2.
[230] For an extensive description of the Jewish neighborhood in Toledo and the subsequent expansion by the Jews of Toledo outside this neighborhood, see Nina Melechan, *The Jews of Medieval Toledo: Their Economic and Social Contacts With Christians from 1150-1391* (unpublished dissertation, Fordham University, 1999), 31-64.
[230] Alfred Haverkamp, "The Jewish Quarters in German Towns During the late Middle Ages," in *In and Out of the Ghetto*, edited by R. Po-chia Hsia and Hartmut Lehmann (Washington, D.C., 1995), 14.
[231] Ibid., 14-22.
[231] Ibid., 22

confusing as the various uses of the term 'ghetto.'"[232] He continues to explain that in Germany the Jews often chose to live in a special quarter. However, this does not negate the possibility that in some cities these Jewish quarters were mandatory. Yet, just as in Spain, over time, there were Jews who moved out of these neighborhoods and lived in neighborhoods together with the Christians.[233] Therefore, the description of leasing the property of the non-Jew among the Northern European commentators reflected a reality that needed to be addressed. There is less data regarding whether the cities or the Jewish quarters were completely enclosed by walls. In the case of Vienna, in 1360, the Jews requested that their quarter be surrounded by a wall for security purposes.[234] There is also evidence that in certain cities the Jewish quarter was separated from the main city by means of ropes and chains. Although some historians have interpreted the building of ropes and chains around the Jewish neighborhood as an anti-Jewish form of segregation, the records of the Nuremberg Council of 1484 recognize these ropes and chains as having been erected "for the sake of the Sabbath."[235]

As the fate of the Jews in medieval Europe varied with place and time, the ability of the Jews to establish their presence in the developing European cities demanded that the issue of *eruvin* be addressed by the rabbis in each city and country.

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[235] Haverkamp, "Jewish Quarters,' 23.

It is this literature, which combines the traditional Talmudic commentary and the practical application of these laws that makes up the medieval rabbinic material on the *eruv*.

Shulhan Arukh

Definition of *Reshut Ha-Rabbim*

Rabbi Joseph Caro presents two opinions in the *Shulhan Arukh* concerning the definition of a *reshut ha-rabbim*. The first opinion states that a *reshut ha-rabbim* is a street or market that is at least sixteen *amot* wide without walls. According to this opinion, even if the area is walled, if the streets run from one end of the property to the other end, it is considered a *reshut-ha-rabbim*. The second opinion argues that a *reshut ha-rabbim* also requires that 600,000 people traverse it every day. The author of the *Shulhan Arukh* does not decide between these two opinions.

Rabbi Caro defines the prohibition of *hoza'ah* in the following manner. He writes that, according to the Torah, it is only prohibited to carry from a *reshut ha-yahid* to a *reshut ha-rabbim*. The rabbis extended the prohibition to include carrying from or into a *karmelit* from a *reshut ha-rabbim* or a *reshut ha-yahid*. However, it is permissible to carry from a *makom patur* to a *reshut ha-rabbim* or a *reshut ha-yahid*.[236]

[236] Ibid., no. 346.

Regarding the areas around which an *eruv* can be created, Rabbi Caro writes as follows: In order to be permitted to carry in a *reshut ha-rabbim*, it must be enclosed by gates. He quotes two opinions as to whether these gates must be actually be closed at night or whether it is sufficient that they could be closed. Once the area is walled and the gates are either closed or are able to be closed, even a *reshut ha-rabbim* can be considered as one *hazer* and carrying in it would be permitted on the Sabbath.[237]

Rabbi Caro describes in detail the different types of partitions that are required for a *hazer* and *mavoi*. He begins by writing that "The rabbis prohibited carrying in a space that has three partitions until a correction is made on the fourth side."[238] Regarding a *hazer*, the fourth side must be partitioned by a *tzurat ha-petah* if the unwalled area on the periphery of the *hazer* exceeds ten *amot.*[239] A *mavoi* also requires a *tzurat ha-petah* if the entranceway is greater than ten *amot*.[240] He describes a *tzurat ha-petah* as two end-posts with a post or rope on top connected to both of these end-posts. He invalidates a *tzurat ha-petah min ha-tzad* where the top post or rope is connected to the side of the end posts.[241] Rabbi Moshe Isserles adds in his gloss on the *Shulhan Arukh* as follows: "There are those who say that nowadays the custom is to

[237] Ibid. 364:2.
[238] Ibid., 363:1.
[239] Ibid., 363:2
[240] Ibid., 363:26.
[241] Ibid., 362:11.

enclose all roads with a *tzurat ha-petah* for all our roads have the status of a *hazer* [even if the openings are less than ten *amot*]."[242]

Regarding the use of natural boundaries as *eruv* partitions, he author of the *Shulhan Arukh* writes concerning the fear that the sea will build up sediment, "We are not concerned that the sea will build up sediment." Rabbi Isserles quotes the dissenting opinion, "There are those who disagree and argue that we are concerned that the sea will build up sediment."[243] There is no discussion in the *Shulhan Arukh* regarding whether public traffic nullifies the *eruv* partitions

Food Sharing

The author of the *Shulhan Arukh* writes that there are two methods in which to effect the food sharing that is necessary to complete the *eruv* in a *hazer* or *mavoi* which is inhabited by Jews. The members of the *hazer* or *mavoi* can collect bread or matzah from each resident and place the bread or matzah in one of the homes in the *hazer* or *mavoi*.[244] Alternatively, one resident can take his own bread or matzah and, through transferring it to one other resident, include all the residents in this *eruv*.[245] In addition, the *eruv* can be accomplished in both the *hazer* and the *mavoi* with either bread or matzah or with other types of food, including wine.[246] Rabbi Isserles adds

[242]Rama, *Shulhan Arukh, O.H.,* 363:26.
[243] *Shulhan Arukh, O.H.* 363:29.
[244] *Shulhan Arukh, O.H.,* 366:1.
[245] Ibid., 366:9.
[246] Ibid., 387:1.

that the custom in Poland was to collect flour from each resident in order to bake the bread or the matzah.[247] The *Shulhan Arukh* writes that even if the residents of the *mavoi* make an *eruv* through food other than bread, the residents of each *hazer* must still make an *eruv* with bread in their *hazer* so that the children will not forget about the mitzvah of *eruv*. However, if the *shittuf* in the *mavoi* was done with bread, there is no need to make an *eruv* in each *hazer* as the children are aware of this *eruv* since bread was the main form of food.[248] Rabbi Isserles adds that the custom in his generation was that the contribution of flour from the residents of each *hazer* in the *mavoi* is sufficient and it is unnecessary and, therefore forbidden, to make multiple *eruvin* for the *hazerot* and the *mavoi*.[249] Finally, Rabbi Isserles writes that the custom was to place the *eruv* food in the synagogue rather than in the homes of one of the residents.[250] Rabbi Caro his discussion regarding the food sharing necessary for the creation of an eruv as follows: "It is a mitzvah to make an eruvei hazerot."[251] Rabbi Isserles does not disagree.

Lease of Property

The author of the *Shulhan Arukh* describes the various situations of Jews with marginal status and non-Jews regarding their ability to relinquish their share in the

[247] Rama, *Shulhan Arukh, O.H.*, 366:6.
[248] *Shulhan Arukh, O.H.*, 387:1.
[249] Rama, *Shulhan Arukh, O.H.*, 387:1.
[250] Rama, *Shulhan Arukh, O.H.*, 366:3.
[251] *Shulhan Arukh, O.H.*, 366:13.

hazer or *mavoi* in order to allow the *eruv* to function and the need to lease their property in order to facilitate the *eruv*. Regarding a Sabbath violator, he writes that if he violates the Sabbath in public he cannot relinquish his property and the Jews must lease his property. If he violates the Sabbath in private, he has the status of an ordinary Jew and he can relinquish his property.[252] A Sadducee is considered a Jew and can relinquish his property. However, since he denies the laws of *eruv*, he cannot participate in the *eruv* through his sharing of food with the other members of the *hazer* or *mavoi*.[253]

Regarding Jews and non-Jews living together in a *hazer*, the non-Jew only prevents the *eruv* if two Jews live in that *hazer*. In that situation, the Jews must lease the property of the non-Jew. The lease can be done for less than a *perutah* worth of value, an insignificant amount; the lease can be done without specifying the reasons for the lease and, as long as the non-Jew does not renege on the lease arrangement, the lease is valid. Rabbi Caro continues and says that the lease can be done from the wife of the non-Jewish owner of the *hazer* or from his *sekhiro u-lekito*.[254] The author of the *Shulhan Arukh* describes additional specifics concerning the non-Jew's place in the *hazer*. He writes that the only time that lease is required is a situation in which the non-Jew and the Jewish residents share access to a common courtyard, such as a case where the non-Jew must pass through the courtyard of the Jew to enter the *reshut ha-*

[252] *Shulhan Arukh, O.H.,* 385:2.
[253] Ibid., 385:1.
[254] Ibid., 382: 2-11.

rabbim. However, if the non-Jew does not have access to the courtyards of the Jews such as a case where they each enter the *reshut ha-rabbim* directly from their own houses, a lease is not required.[255]

Rabbi Isserles adds several laws to this discussion. He writes that if a Jew leases his home in the *hazer* to a non-Jew, a lease is not required for *eruv* purposes. However, if the non-Jew leases his house to a Jew and the non-Jewish owner lives in the house together with the Jew, then the Jew cannot lease the property from the non-Jew for the sake of the *eruv* since the Jew has rights in the house through his lease.[256] The Rama explains that the Jews are permitted to lease the property of the non-Jews from the treasurer of the king. However, if they are no longer under the jurisdiction of the king, the lease is void.[257] Finally, he argues that, if Jews are traveling on a boat, they must lease the space from the owner of the boat or include this lease in the fee they pay for the trip.[258]

Rabbi Caro concludes the laws of lease of space from the non-Jews in the following manner: "You are required to lease from each *hazer* of the non-Jew and it is not sufficient to lease from the head of the city. This is describing a case where the governing official does not own the houses of the city and he does not have the right to use the houses even in a time of war. However, in a city where all the activities of the

[255] Ibid., 382: 3.
[256] Rama, *Shulhan Arukh, O.H.*, 382: 1.
[257] Ibid., 382:14.
[258] Ibid., 382:20.

city are conducted under the auspices of the governing official or his assistant, then lease from this official or his assistant is permitted, for he has permission to place people and weapons in the houses during a time of war even without the knowledge or consent of the residents."[259]

Rabbi Caro and Rabbi Isserles codify many of the laws that were found in the Talmud and in the medieval commentaries. Yet, regarding the definition of a *reshut ha-rabbim*, Rabbi Caro quotes both opinions whether a *reshut ha-rabbim* requires 600,000 people without deciding between them and Rabbi Isserles does not address this topic. This vagueness becomes all the more important since Rabbi Caro explained that an *eruv* can be constructed around any domain other than a *reshut ha-rabbim* through the erection of *tzurot ha-petah*. In a *reshut ha-rabbim*, however, the *eruv* is not valid unless the area is surrounded by partitions that include gates that can be locked at night. This issue is addressed by the commentaries on the *Shulhan Arukh*. Both Rabbi Abraham Gombiner, author of the *Magen Avraham* and David Ha-Levi Segal, author of the *Turei Zahav* (*Taz*), early seventeenth century commentators, explain that, even though there are many rabbis who argue that a *reshut ha-rabbim* does not require 600,000 people, the majority of the rabbinic authorities and the custom of the people was to define a *reshut ha-rabbim* as an area that has at least

[259] *Shulhan Arukh, O.H.,* 371:1.

600,000 people traversing through it everyday.[260] The *Taz* adds, "The strict one should be strict for himself but should not criticize those who follow the present day custom to be lenient."[261] These opinions and the *Taz's* view that the stringent one should not criticize the more lenient person reflect the fact that this issue was a practical one in the construction of *eruvin* at the time. While there were few, if any, cities that had populations of 600,000, many cities and even small towns had streets that were at least sixteen *amot* wide. According to the strict opinion referred to be the *Taz*, any city with a street that was sixteen *amot* wide would require gates to establish an *eruv*. According to the lenient view, all of those cities would be able to establish *eruvin* through the construction of *tzurot ha-petah*. It is only the rare city with a population of 600,000 that would require the gates to create the *eruv*.

In the first decades of the nineteenth century, as more and more city walls (with gateways as entrances) began to be demolished, the debate was rekindled concerning the definition of a *reshut ha-rabbim* and, hence, whether *eruvin* could be built in most Jewish cities and towns. This debate took place between Rabbi Jacob Brukhin, the Rabbi of Karlin in Lithuania and a student of Rabbi Chaim of Volozhin, the student of the Vilna Gaon and founder of the Lithuanian yeshiva movement, on the one hand, and Rabbi Ephraim Zalman Margolioth, the rabbi of Brod in Poland and the leading halakhic authority for Polish Jewry. In an exchange of lengthy responsa

[260] Avraham Gombiner, *Magen Avraham, O.H.* 345: 7 and David Ha-Levi Segal, *Taz, O.H.* 345: 6.
[261] *Taz, O.H.* 345: 6.

regarding the question of the definition of a *reshut ha-rabbim*, Rabbi Brukhin sent the following question to Rabbi Margolioth in Brod: "A question concerning the custom nowadays to permit carrying in all cities through the use of a *tzurat ha-petah* with a post on one side etc. This is done even in cities which have open roadways and streets and markets that are sixteen *amot* wide and, furthermore, the king's path passes through these cities. Are they correct [in building *eruvin* on these cities] or not?"[262] Interestingly, he includes a very lengthy response to his own question which accompanied the letter to Brod. He begins his response: "It appears clear that they are not acting properly and I consider their actions to be mistaken."[263] The author of the *Mishkenot Yaakov* rejects the opinions of the *Magen Avraham* and the *Taz* and tallies the number of *rishonim* who considered a *reshut ha-rabbim* as not requiring daily passage by 600,000 people. He concludes that these *rishonim* constitute a majority of opinions and, therefore, the *halakhah* is against the *Magen Avraham* and *Taz* and any city with a street that is sixteen *amot* wide is considered a *reshut ha-rabbim*.[264]

Rabbi Margolioth responded to Rabbi Brukhin with his own lengthy responsum.[265] After conducting his own tally of the opinions of the *rishonim* on this issue, he writes: "No one has the authority to condemn a custom that was established

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[262] Rabbi Jacob Brukhin of Karlin, *Mishkenot Ya'akov* (Jerusalem,1960), *Orah Haim*, no. 120 (p. 105).
[263] Ibid.
[264] Ibid., no. 120.
[265] Rabbi Ephraim Zalman Margolioth, *Beit Ephraim* (Warsaw, 1884), *Orah Haim*, no. 26.

by the great rabbis of France and Germany, from whom we descend and from whose water [Torah] we drink."[266] Rabbi Brukhin had counted all of the legal authorities including those who lived in Spanish and Middle Eastern countries. Rabbi Margolioth argued that these rabbis were not to be included since the Jews of Eastern Europe were descendants of the German and French rabbis who overwhelmingly supported the view that a *reshut ha-rabbim* required 600,000 people. In addition, he wrote that it was impossible to tally the number of rabbis who were lenient and those who were stringent since it is impossible to know which of their writings are still in manuscript form and have not been published. Therefore, according to Rabbi Margolioth, most of the cities and towns in which the Jews lived would not be considered a *reshut ha-rabbim*.[267]

Rabbi Brukhin responded to Rabbi Margolioth's arguments in another lengthy responsum which elicited another reply from Rabbi Margolioth.[268] Rabbi Brukhin sent the final letter in their exchange, once again supporting his view and trying to disprove Rabbi Margolioth's arguments.[269] The argument between these two great *poskim*, Rabbi Brukhin, the leading *posek* in Lithuania, and Rabbi Margolioth, the leading *posek* in Galicia, was expressed in harsh language and reflected a certain sensitivity that each felt regarding the respect that they were paying to the other. Rabbi

[266] Ibid., 98.
[267] Ibid., 98-9.
[268] See *Mishkenot Yaakov, O.H.*, no. 121 and *Beit Ephraim, O.H.*, no. 27.
[269] See *Mishkenot Yaakov, O.H.*, no. 122.

Margolioth writes, "The sage has brought other proofs but none of them has any validity. The wise man has his eyes in his head and knows that each one of them can be refuted. And, if it did not take so much time, I would respond to each one of them."[270] Rabbi Brukhin responds in his second responsum, "Your honored one [Rabbi Margolioth] has raised his eyes from responding to my arguments even in brief. What evil did he find in them that he wrote that he would not address them?"[271]

The debate regarding the definition of a *reshut ha-rabbim* continued until the twentieth century, initially dividing the Jews of Galicia who followed the *Beit Ephraim* and the Lithuanian Jews who followed the *Mishkenot Yaakov*. Yet, over the centuries the debate incorporated all rabbis and communities who dealt with the question of city *eruvin*.[272] In these centuries, in the countries of Eastern Europe, the cities and towns did not have populations of 600,000, but often contained streets sixteen *amot* wide. All the *eruvin* that were built in these cities which no longer had walls and gates that closed at night were built according to the conclusion of Rabbi Margolioth. Rabbi Brukhin would not have permitted *eruvin* in any of these cities and towns.[273] The development of the Talmudic rules and principles regarding *eruvin* and

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[270] Ibid., p. 92.
[271] *Mishkenot Yaakov*, p. 133.
[272] For a collection of traditions and sources that address the continuation of the debate between the *Mishkenot Yaakov* and the *Beit Ephraim* and which authorities followed each opinion, see *Me-Az U-Mi-Kedem* (Brooklyn, NY, 2008).
[273] For a list of the many cities and towns that has eruvin in Eastern Europe, see *Me-Az U-Mi-Kedem* and *www.israel613.com/books/KKE12_**LIST**ALL-E.pdf* (viewed 9/14/09).

their application, where relevant, to real life situations provided the foundation and the precedent for the creation of community and city *eruvin* in cities and towns in Europe and America in the early modern and modern periods.

CHAPTER 3

Eruvin in the Early Modern and Modern Periods

The rabbinic discussion concerning the building and creation of city *eruvin* during the early modern and modern periods was based on the earlier halakhic material and the ability to apply this material to ever-changing landscapes and political conditions.

Leasing of Property in Early European Eruvin

The issue of *sekhirat reshut*, leasing of property, from the non-Jew raised serious issues in the creation of city *eruvin*. Could the Jews lease the city from one local authority or did they need to lease the city from each non-Jewish property owner. The author of the *Tur* had written that the city must be leased from each non-Jewish property owner. Yet, Rabbi Joseph Caro disagreed and wrote that the Jews could lease from the city official as long as he had the right to place people and weapons in homes during war time.

In his commentary on the *Tur*, *Beit Yosef*, Rabbi Joseph Caro quotes two *teshuvot* in his collection of *teshuvot*, *Avkat Rohel*, written by his uncle, Rabbi Isaac Caro, regarding this issue.[274] Rabbi Isaac Caro was born in Toledo in 1458, escaped to

[274] *Avkat Rohel* (Jerusalem, 2002), no. 47 and 48

Turkey in 1497 where he was a rabbi in Constantinople and he died in 1535.[275] He wrote in a responsum that he was asked by his son whether the Jews living in a walled city with gates had to lease the city from each non-Jewish property owner or whether it was sufficient to lease from the prince or the guard of the city gates since it was impossible for them to lease from the king. The questioner had been asked this question by the community of Sitia, Crete[276] and had responded that the custom in the large cities in Spain prior to the expulsion had been to lease the city from the official of the city and that this city could rely on the Spanish precedent. He informed Rabbi Caro that he had received a letter from a sage who argued that leasing even from the king in Constantinople would not have been sufficient. The questioner asked Rabbi Caro for his opinion. Rabbi Isaac Caro justified this practice and argued that in these cities one could lease the area from the prince who was the head of the city or the gatekeeper who was the representative of the king. The power of the prince or his representative was based on his power to place objects in any home at his will and that the king's official has the status of a *sekhiro u-lekito*. Rabbi Caro argued that this lease was valid even though the city official did not have the right to evict the

[275] For a biography of Rabbi Isaac Caro, see Abraham David, *Rabbi Yitzhak Caro*, in *Sinai* 66, 6-7 (Adar I 5730): 367-81.

[276] Even though there had been a Jewish community in Crete for many centuries, some Jews came to Crete following the expulsion from Spain and Portugal. For the history of the Jews of Crete, see Joshua Starr, "Jewish Life in Crete Under the Rule of Venice," *Proceedings of the American Academy for Jewish Research* 12 (1942): 59-114. There are several responsa in *Avkat Rohel* that relate to Crete, see nos. 63, 64, 65 and 67.

residents from their homes.[277] It is noteworthy that whereas Rabbi Joseph Caro quotes his uncle's *teshuvah* in his *Beit Yosef*, in his *Shulhan Arukh*, he modifies the view and allows leasing from the local official even if the official only has the right to place people and weapons in the city homes during war time.[278]

Rabbi Isaac Caro includes historical evidence for the relationship between the Jewish community and the king in various cities and countries. He writes that the Jews of Constantinople attempted to lease the city from the Sultan of Turkey but the Sultan refused since he was afraid that if he leased the city, he would no longer be able to collect taxes. In another instance, the Jews requested the lease of the city from an official who refused since his advisors warned him that if he leased the city, the Jews would remove him from his position. These two episodes point to the fact that although the Jews considered this lease to be a mere formality, the non-Jewish authorities feared that the Jews would utilize it for political purposes.

In later generations, the question was raised concerning the leasing of space from officials who did not meet the requirements of the *Shulhan Arukh*. In 1656, Hakham Zevi Ashkenazi, the rabbi of Altona, which was located nearby Hamburg, questioned the leasing of the area in Hamburg from the Burgermeister, the leading

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[277] *Avkat Rohel* (Leipzig, 1859), no. 47 and 48. *Beit Yosef*, *Tur Shulhan Arukh*, 391. For the identification of these responsa to Rabbi Isaac Caro, uncle of Rabbi Joseph Caro, see Abraham David, *Rabbi Yitzhak Caro*, in *Sinai* 66, 6-7 (Adar I, 5730): 367 especially n. 5.

local official appointed by the emperor. Hakham Ashkenzi addressed the *Shulhan Arukh's* requirement of being able to place people and weapons in homes during war. He argued that there was no basis for the limitation of this right to wartime and suggested that the author of the *Shulhan Arukh* was referring to a situation where the authority has permission to engage in war without consulting with the townspeople. The Burgermeister, however, did not have the right in engage in war without the permission of the people of Hamburg. In addition, the Rivash's criterion for the person from whom the city could be leased, namely, the ability to redirect traffic on the city streets, did not extend to the Burgermeister who did not have that right. Finally, Hakham Ashkenazi writes that the ability to collect taxes does not carry with it the authority to lease the city to the Jews. Therefore the *sekhirat reshut* in Hamburg was not acceptable. In his discussion of leasing of the city from an acceptable government official, Hakham Ashkenazi argues that even though a weekly lease is not required, the king would not allow for a "lease of fifty years."[279]

Rabbi Samuel Aboab, a seventeenth century Venetian rabbi, in a responsum dated 1683, addressed certain concerns regarding the *eruv* in Genoa. He explained that the *eruv* in Genoa had been accepted "for generations." However, he argued that one can no longer rely on this *eruv*. One of his reasons he rejected the *eruv* was that

[279] Zevi Ashkenazi, *She'elot u-Teshuvot Hakham Zevi* (Jerusalem, 2004), no. 6. For a description of the role of the Bergermeister and a discussion of the relationship of the Jews and the Bergermeister in Hamburg during this period, see Joachim Whaley, *Religious Toleration and Social Change in Hamburg, 1529-1819* (Cambridge MA, 1985), 8-44.

the "Protectores," who are appointed exclusively to deal with Jewish affairs and from whom the Jews leased the area did not have the authority either to alter the houses or streets or to place people in the homes without the permission of the homeowners. Therefore, the situation in Genoa did not meet the requirements of the *Shulhan Arukh* regarding leasing of space from the city official.[280]

In the middle of the eighteenth century, Rabbi Yehezkel Landau of Prague addressed the following question. In as much as leasing of the city was acceptable due to the authority of the city official vis a vis the houses and people in the city, what is the status of that lease if there is a military presence in the city? Since the city official has no authority over the soldiers of the emperor, would the lease still be effective? Rabbi Landau was asked this question regarding a troop of soldiers who were stationed in Prague. He responded that if the soldiers were stationed in homes of residents of the city then, since the authority of the city official applies to those residents and their houses, the lease would still be effective. However, if the soldiers have to sleep in their own barracks, then the lease would have to be made from an official of the emperor.[281]

These sources highlight the fact that the history of city *eruvin* was linked with the relationship between the Jews and the local officials. The definition of this relationship constituted the foundation of determining whether or not the *eruv* in these

[280] Samuel Aboab, *Sefer Dvar Shmuel* (Venice, 1702), no. 257
[281] Ezekiel Landau, *Nodah Bi-Yehudah, Tinyana* (Jerusalem, 1990) no. 32.

cities was acceptable. Furthermore, it is noteworthy that both Rabbi Aboab and Rabbi Ashkenazi were willing to reject city *eruvin* in Genoa and Hamburg that had been in use for generations and Rabbi Landau declared that, at least during that period in Prague, the lease had to be redone. While the tradition had been to encourage the creation of *eruvin*, the potential violation of the prohibition of *hoza'a* led these rabbis to reject the *eruvin* in Hamburg and Genoa.

Early City Eruvin

We have additional reports of city *eruvin* that were in existence in the sixteenth, seventeenth and eighteenth centuries. Rabbi Joseph ibn Lev, a sixteenth century rabbi in Salonika and Constantinople, discusses the *eruv* in both cities. Both cities were walled and he discusses the creation of the proper *eruv* partitions around the Jewish quarter. He concludes that in a walled city such as Salonika and Constantinople, there is no need for any additional *eruv* partitions.[282] Rabbi Joseph Trani, a rabbi in Constantinople in the beginning of the seventeenth century, was also asked about constructing an *eruv* around the Jewish quarter of Constantinople. He describes the *tzurot ha-petah* that would be required. However, he concludes as follows: "However, to fix the roads of the Jews alone is difficult since the non-Jew will not permit *tzurot ha-petah* in places where they travel. Therefore, you should rely on the walls that enclose the entire city." Regarding the leasing of the city, Rabbi

[282] Joseph ibn Lev, *She'elot U-Teshuvot Mahari ibn Lev* (Frankfurt, 1726), III: 74.

Trani has no question that the king in Constantinople has the authority required by the *Shulhan Arukh* to place people and weapons in houses at his will, so the lease agreement can be made with the king or his representative who has the status of a *sekhiro u-lekito*.[283]

Rabbi Yom Tov Zahalon, a rabbinic authority from Safed who lived at the end of the sixteenth and early seventeenth centuries, describes the need for an enclosure in Safed due to the destruction of the city walls by intruders. In addition, he adds that several of the scholars in Safed had questioned the validity of the *eruv* in the city. Rabbi Zahalon explains *that tzurot ha-petah* should be erected throughout the city. He argues that Safed did not require a walled enclosure since its population did not exceed 600,000. He concludes his responsum asserting that other great rabbinic authorities in Safed agreed with his decision.[284]

Rabbi Yair Bachrach, a German rabbi in the second half of the seventeenth century, discusses the following walled cities that had *eruvin*: Frankfurt, Trier, Koblenz, Mondheim and Heidelberg. He argues that in these walled cities, which have one street that is closed at night, the closing of that one street with gates on either end allowed for carrying throughout the city. While these cities did not have 600,000

[283] Joseph Trani, *She'elot U-Teshuvot Maharit* (Lvov, 1861), I: 94. Abraham Gombiner, (*Magen Avraham*, *Orah Haim* 363, no. 31) writes that there was an *eruv* in Constantinople at the time but he did not discuss the details of that *eruv*.
[284] Yom Tov ben Moses Zahalon, *She'elot U-Teshuvot Maharitz* (Venice, 1694), no. 251. See a discussion of this responsum in Jacob Saul Elyashar*, She'elot U-Teshuvot Simhah Le-Ish* (Jerusalem, 1888), no. 3.

people, he argued that, since the cities had streets that were sixteen *amot* wide, the cities had the status of a *reshut ha-rabbim*. However, he considers the closing of one street to be adequate to eliminate the status of a *reshut ha-rabbim* from these cities. Interestingly, he mentions that in some of these cities there was a *tzurat ha-petah* at the end of the Jewish quarter that served as an *eruv* partition. This was evidently done in order to create an eruv in the Jewish neighborhood without including the entire city. Finally, he writes that in his town he has not heard about a renewal of the lease of the city from the local official and he wonders why nobody has discussed this lack of renewed lease.[285]

In the late seventeenth and eighteenth centuries there are several references to city *eruvin* in cities that were not surrounded by walls.[286] The first mention of an *eruv* of this type during this period is the *eruv* in The Hague, which was first inhabited by Portuguese Jews in the last decades of the seventeenth century. The Hague was surrounded by canals and at the end of the seventeenth century there was a rabbinic discussion concerning the permissibility of carrying in The Hague on the Sabbath that revolved around the issue whether the canal walls served as *eruv* boundaries. In 1692, a responsum was written by the rabbinical court of Amsterdam, consisting of three

[285] Jair Bachrach, *She'elot U-Teshuvot Havot Yair* (Jerusalem, 1968), no. 135.
[286] Rabbi Hayim Alagzi, rabbi of Rhodes in the late seventeenth century, defends the sharing of food that was practiced in Rhodes. Rhodes was a walled city and, therefore, there was no need for an enclosures. See Hayim Algazi, *Sefer Banei Hayyei* (Constantinople, 1707), p. 16a. For the history of the Jews of Rhodes, see Marc D. Angel, *The Jews of Rhodes: The History of a Sephardic Community* (New York, 1978).

leaders of the Portuguese Jewish community of Amsterdam, Rabbi Isaac Aboab, Rabbi Jacob Sasportas and Rabbi Solomon de Olivierra.[287] These rabbis explained that the The Hague was completely surrounded by canals and waterways, and since the water was higher than ten *tefahim*, it created an acceptable *eruv* boundary. However, they continued this responsum by evaluating some of the potential problems that were presented in The Hague. First, did the existence of bridges throughout the city constitute a breach in the *eruv* as it created public traffic through the *eruv* partitions, which deemed the *eruv* unacceptable according to some *rishonim*? They concluded that since these bridges were drawbridges and could be raised at any time, they did not constitute a breach in the *eruv* even when they were not raised. Furthermore, they argued that, even according to those rabbis who would consider The Hague a *reshut ha-rabbim* since it had streets that were sixteen *amot* wide, the *eruv* was acceptable since these bridges can be locked as a security measure, thereby creating a wall enclosure with locked gates around the entire city.[288] At the conclusion of one of the versions of the responsum, Rabbi Sasportas wrote "After several days, I myself went to The Hague and based on my word the *eruv* was created and I permitted carrying on

[287] For a biography of these three rabbis, see *Kitvei Rabbenu Yitzhak Aboab Fonseca*, ed. Yosef Dovid Whiteman (Jerusalem, 2007), 33-63

[288] Jacob Sasportas, *Ohel Yaakov* (Amsterdam, 1737), no. 73. The text of the *teshuvah* is reprinted in *Kitvei Rabbenu Yitzhak Aboab Fonseca*, ed. Yosef Dovid Whiteman, 33-36 based on a manuscript in the Etz Hayyim Library in Amsterdam.

the Sabbath. Furthermore, I purchased the area from the governmental authorities and the *eruv* was created according to the letter of the law."[289]

The utilization of natural boundaries in order to create an *eruv* raised the issue of the limits of these natural boundaries. Hakham Zevi Ashkenazi, head of the rabbinical court in Altona, was asked, in a responsum dated 1694, whether the sea walls surrounding Great Britain would allow the entire island of England to be considered enclosed by an *eruv*. Hakham Ashkenazi answers that if the sea walls were indeed acceptable *eruv* partitions, they would allow carrying even in the entire England. However, he explains that the sea walls cannot serve as *eruv* boundaries for the following reason. As previously mentioned, Tosafot ask why the entire Land of Israel is not considered enclosed since there are mountains and valleys around Israel. Tosafot answered that even though we generally hold that public traffic does not nullify the partitions, that is only true regarding man-made partitions. However, the public traffic does nullify natural partitions.[290] Hakham Ashkenazi argues that the same thing is true regarding England where the fact that people travel in and out of

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[289] *Ohel Yaakov*, no. 73. Hakham Zevi Ashkenazi wrote a responsum in 1696 in which he also permitted carrying in The Hague on the Sabbath. His responsum is limited to a discussion of the utilization of sea walls as *eruv* boundaries and he did not address the problem of the bridges. He was not aware of the responsum of the Amsterdam rabbinical court which had not yet been published. See *Hakham Zevi* (Amsterdam, 1722), no. 5 reprinted in abbreviated form in Whiteman, 37-39. See p. 37 n. 9 for a discussion of the dating of the publication of the responsum of the Amsterdam Rabbinical Court, which did not occur until 1736.

[290] Tosafot, *Eruvin* 22b. s.v. *dilma*. *Ritba* (*Eruvin* 22b) explains that *eruv* partitions are only valid if they are close enough to the city to be considered accessible.

England nullifies the *eruv* partitions.[291] Hakham Askenazi's response reflects a reliance on the view of Tosafot and this distinction between natural and man-made *eruv* partitions will be utilized in subsequent discussions of city *eruvin*.

The issue of whether natural boundaries were acceptable eruv "walls" was addressed in the early eighteenth century regarding the city of Rotterdam. Rabbi Salomo Lipschutz, the Ashkenazi rabbi in Rotterdam,[292] wrote to Rabbi Jacob Reischer, a rabbinic authority in Western Europe at the beginning of the eighteenth century, concerning the *eruv* in Rotterdam. The rabbi wrote, "I have been a rabbi in Rotterdam for the past ten years. This city has no walls but is surrounded by waterways and ever since the Jewish community has been established here, the Jews have permitted themselves to carry on the Sabbath. Furthermore, all the rabbis in the city know of this practice and are not critical of it. When I asked the rabbis for the source of this leniency, they responded that it was based on the decision of the three rabbis concerning the permissibility to carry in The Hague."[293] The rabbi was not satisfied with this explanation for the following reason. He argued that since the waters around Rotterdam become icy during the winter months, these boundaries do

[291] *Hakham Zevi*, no. 37

[292] Rabbi Lipschutz served as the rabbi in Rotterdam from 1718-36. Previously, he was the Ashkenazic rabbi in The Hague. See *Pinkas Hakehillot: The Netherlands*, edited by Jozeph Michman, Hartog Beem and Dan Michman (Jerusaelm, 1985), 244, 392 and 403.

[293] Rabbi Jacob Reischer, *Sefer Shevut Yaakov* (Brooklyn, 1961), vol. 3, no. 28. This same question was asked by the rabbi in Rotterdam of Rabbi Yaakov Katz of Prague. Rabbi Katz concluded that during the winter months, when the water is icy, one should not carry on the Sabbath. See Rabbi Yaakov Katz, *Shev Yaakov* (Frankfurt a.M., 1742), no. 17.

not serve as *eruv* "walls." He based his argument on the opinion of the *Taz* concerning the city of Shtaynitz in Moravia[294] that they were relying on an *eruv* that was not acceptable and that they had to repent for all of the weeks in which they carried in Shtaynitz. The rabbi in Rotterdam wrote to Rabbi Reischer asking whether he should follow the opinions of either the *Taz* or the *Magen Avraham*, who only invalidated the forozen waters in the winter, and prohibit carrying on the Sabbath in Rotterdam either all year long or at least during the winter.

Rabbi Reischer responded that since the rule that the *eruv* boundary is nullified due to the freezing of the water is mentioned neither in the Talmud nor in the earlier commentaries, it would be inappropriate to prohibit carrying in Rotterdam which had been accepted for many generations based on the consent of the leading rabbis of the city. This responsum by one of the leading rabbinic authority of the period highlights two important concepts; first, that regarding *eruvin* one does not seek out the most stringent view; second, that the long-standing-tradition of carrying in Rotterdam was respected by Rabbi Reischer.[295]

The gradual freedom that was granted to the Jews to move outside the European Jewish ghetto led to further discussion about the creation of an *eruv* based on natural boundaries. On July 7, 1797, the walls of the Venetian ghetto were demolished as the Venetian government abdicated and approved the French

[294] This town was officially named Ungarisch-Ostra, Moravia.
[295] Regarding the issue of using the rivers as eruv partitions in Rotterdam even though they freeze in the winter, see also *Hatam Sofer*, O.H., no. 89.

occupation. While the restrictions of the ghetto had been relaxed in the several decades prior to 1797, this act represented the end of the Jewish ghetto in Venice.[296] In a responsum dated 1808, Rabbi Ishmael Ha-Kohen of Modena described the situation of the Jews in Venice:

> I received the suggestion of his honor to correct the problem in the city of Venice where things have changed from the way they used to be. Originally, the Jews had a quarter separate from the city and they were permitted to carry in this area based on the natural boundaries found there…However, now that the permission has been granted for Jews to live wherever they desire, we see that they are unable to prevent people from carrying from their homes on the Sabbath.[297]

In the continuation of this responsum, he analyzed the permissibility of carrying on the Sabbath in the entire city of Venice. He began his analysis referring to an earlier responsum that he had written concerning carrying on the Sabbath in Verona. Verona was a city that was surrounded by walls on three sides and by a river on the fourth side. In that lengthy responsum, he analyzed the effectiveness of the sea wall as an *eruv* boundary. He discussed the question whether the fact that the water that served as an *eruv* boundary might fill with sediment and dirt nullifies its status as an *eruv* boundary, since it no longer serves as a distinct sea wall. Whether this is a problem was the subject of a dispute between Rabbi Joseph Caro and Rabbi Moses Isserles in *Shulhan Arukh* which was previously mentioned, in which Rabbi Caro

[296] Riccardo Calimani, *The Ghetto of Venice* (New York, 1987), 238-56.
[297] Ishmael Ha-Kohen of Modena, *Zera Emet* (Livorno, 1823), vol. 3, no. 41.

argued that one does not have to worry about the build up of sediment while Rabbi Isserles quoted one opinion that stated that sediment build-up is a concern and therefore a waterway cannot serve as an *eruv* boundary.[298] Rabbi Ishmael concluded, however, that this fear of sediment buildup is only a problem in the sea and not in a river so it does not disqualify the river surrounding Verona as serving as an *eruv* boundary. Finally, he concluded, quoting Rabbi Reischer, that the fact that the water freezes in the winter does not nullify the *eruv* even during those winter months. Therefore, he permitted carrying in Verona on the Sabbath.[299]

In his subsequent responsum concerning Venice, he based his decision to permit carrying on the Sabbath in Venice on his earlier responsum regarding Verona. In addition, he added that he believed that the law follows Rashi and his supporters that an area is only considered a *reshut ha-rabbim* if it has traffic of at least 600,000 people. Therefore, Venice is not considered a *reshut ha-rabbim*. He writes that the buildings on the banks of the canals serve as *tzurot ha-petah* to complete the *eruv* around the city. He concludes his *teshuvah* as follows: "There are logical explanations to permit carrying throughout the city of Venice through the *eruv* and the leasing of the city from the official or his assistant as is in the custom through the Jewish diaspora.[300]

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[298] *Shulhan Arukh, Orah Haim*, 363:29
[299] *Zera Emet*, vol. 1 no. 45
[300] *Zera Emet*, vol. 3, no. 41.

City *Eruvin* in the Nineteenth Century: Should One Create an Eruv?

The emancipation of the Jews, combined with the gradual demolition of the walls of the European cities and towns, created new opportunities for the Jews but greater challenges for the establishment of community *eruvin*. Given the fact that many, if not most, observant Jews had been used to living in towns with *eruvin*, thus being allowed to carry on the Sabbath, it is not surprising that Rabbi Moses Sofer, the great rabbinic authority of the early nineteenth century and the head of the rabbinical seminary in Pressburg, was asked in 1827 by the rabbi of Wurzburg to provide rabbinic proofs that it is appropriate for every community to have an *eruv*. Rabbi Sofer's response is very instructive. He wrote:

> This fact does not require proof as it is logical. The logic obligates the establishment of *eruvin* as it is known that the observance of the Sabbath is one of the leading commandments and one who does not observe the Sabbath is a heretic and a rejecter of the entire Torah. The prohibition of carrying from one domain to another is one of the categories of labor for which you are considered a rejecter of the entire Torah…Therefore, every logical person will realize that it is impossible for every Jew to protect his children, the women and the weak of character for the entire Sabbath day without leaving the house with small items or the children with their food in their hands. In addition, this causes pain for the adult men who are unable to carry their *siddur* and their *tallit*. Therefore, logic dictates that it is proper and obligatory to fix the courtyards with an *eruv* to permit carrying.[301]

[301] *She'elot u-Teshuvot Hatam Sofer* (Bratislava, 1841) vol. 1, no. 99.

Rabbi Sofer follows the tradition dating back to the author of the *Halakhot Gedolot* and Rabbenu Asher stressing the importance of creating community *eruvin*. Yet, Rabbi Sofer's argument is the most direct argument to date for the creating of community *eruvin*, as he cites the necessity for the *eruv* given the impossibility that all the Jews will observe the Sabbath properly. During this same period, there was a strong movement in Hasidic communities in Poland to build community *eruvin*. The Baal Shem Tov is quoted as follows: "Ritual slaughter, *eruv* and *mikveh* are the three foundations by which the world will stand."[302] This tradition led many Hasidic leaders to encourage their Hasidim to build *eruvin* in their communities. To give one example; in the mid-nineteenth century, there was no *eruv* in the Hungarian town of Sighet. The Hasidic Rebbe in the town, Rabbi Yekutiel Yehudah Teitelbaum, responded to a fire which destroyed all the property of an influential member of the community in the following manner. He explained to his congregation that the cause of the fire was the fact that people were violating the prohibition of *hoza'a* on the Sabbath. He, therefore, promised anyone who would build an *eruv* in Sighet a successful life, and the rabbi offered to give up his share in the world to come if someone built this *eruv*. The *eruv* was not built during Rabbi Teitelbaum's lifetime due to opposition within the community to the building of the eruv.[303]

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[302] *Sefer Ba'al Shem Tov al ha-Torah* (Jerusaelm, 1992), 338.

[303] See *Sefer Gedulat Yehoshua*, edited by Moshe Arye Low (Brooklyn, NY, 1986), I: 20. The editor adds that he did not include the name of the opponent to the building of the *eruv* in order to protect his family's reputation. For the abundant literature on the history of Hasidim and community *eruvin*, see *Me-Az U-Mi-Kedem*.

City Eruvin in the Nineteenth Century: Defining a Reshut Ha-Rabbim

In the first decades of the nineteenth century, as more and more city walls (with gateways as entrances) began to be demolished, the debate was rekindled concerning the definition of a *reshut ha-rabbim* and, hence, whether *eruvin* could be built in most Jewish cities and towns. This debate took place between Rabbi Jacob Brukhin, the Rabbi of Karlin in Lithuania and a student of Rabbi Chaim of Volozhin, the student of the Vilna Gaon and founder of the Lithuanian yeshiva movement, on the one hand, and Rabbi Ephraim Zalman Margolioth, the rabbi of Brod in Poland and the leading halakhic authority for Polish Jewry. In an exchange of lengthy responsa regarding the question of the definition of a *reshut ha-rabbim*, Rabbi Brukhin sent the following question to Rabbi Margolioth in Brod: "A question concerning the custom nowadays to permit carrying in all cities through the use of a *tzurat ha-petah* with a post on one side etc. This is done even in cities which have open roadways and streets and markets that are sixteen *amot* wide and, furthermore, the king's path (highway) passes through these cities. Are they correct [in building *eruvin* on these cities] or not?"[304] Interestingly, he includes a very lengthy response to his own question which accompanied the letter to Brod. He begins his response: "It appears clear that they are not acting properly and I consider their actions to be mistaken."[305] Rabbi Brukhin rejects the opinions of the *Magen Avraham* and the *Taz* and tallies the number of

[304] Rabbi Jacob Brukhin of Karlin, *Mishkenot Ya'akov* (Jerusalem,1960), *Orah Haim*, no. 120 (p. 105).
[305] Ibid.

rishonim who considered a *reshut ha-rabbim* as not requiring daily passage by 600,000 people. He concludes that these *rishonim* constitute a majority of opinions and, therefore, the *halakhah* is against the *Magen Avraham* and *Taz* and any city with a street that is sixteen *amot* wide is considered a *reshut ha-rabbim*.[306]

Rabbi Margolioth responded to Rabbi Brukhin with his own lengthy responsum.[307] After conducting his own tally of the opinions of the *rishonim* on this issue, he writes: "No one has the authority to condemn a custom that was established by the great rabbis of France and Germany, from whom we descend and from whose water [Torah] we drink."[308] Rabbi Brukhin had counted all of the legal authorities including those who lived in Spanish and Middle Eastern countries. Rabbi Margolioth argued that these rabbis were not to be included since the Jews of Eastern Europe were descendants of the German and French rabbis who overwhelmingly supported the view that a *reshut ha-rabbim* required 600,000 people. In addition, he wrote that it was impossible to tally the number of rabbis who were lenient and those who were stringent since it is impossible to know which of their writings are still in manuscript form and have not been published. Therefore, according to Rabbi Margolioth, most of

[306] Ibid., no. 120.
[307] Rabbi Ephraim Zalman Margolioth, *Beit Ephraim* (Warsaw, 1884), *Orah Haim*, no. 26.
[308] Ibid., p. 98.

the cities and towns in which the Jews lived would not be considered a *reshut ha-rabbim*.[309]

Rabbi Brukhin responded to Rabbi Margolioth's arguments in another lengthy responsum which elicited another reply from Rabbi Margolioth.[310] Rabbi Brukhin sent the final letter in their exchange, once again supporting his view and trying to disprove Rabbi Margolioth's arguments.[311] The argument between these two great *poskim*, Rabbi Brukhin, the leading *posek* in Lithuania, and Rabbi Margolioth, the leading *posek* in Galicia, was expressed in harsh language and, nevertheless, reflected a certain sensitivity that each felt regarding the respect that they were paying to the other. Rabbi Margolioth writes, "The sage has brought other proofs but none of them has any validity. The wise man has his eyes in his head and knows that each one of them can be refuted. And, if it did not take so much time, I would respond to each one of them."[312] Rabbi Brukhin responds in his second responsum, "Your honored one [Rabbi Margolioth] has raised his eyes from responding to my arguments even in brief. What evil did he find in them that he wrote that he would not address them?"[313]

The debate regarding the definition of a *reshut ha-rabbim* continued until the twentieth century, initially dividing the Jews of Galicia who followed the *Beit*

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[309] Ibid., 98-9.
[310] See *Mishkenot Yaakov, O.H.*, no. 121 and *Beit Ephraim, O.H.*, no. 27.
[311] See *Mishkenot Yaakov, O.H.*, no. 122.
[312] Ibid., p. 92.
[313] *Mishkenot Yaakov*, p. 133.

Ephraim and the Lithuanian Jews who followed the *Mishkenot Yaakov*. Yet, over the centuries the debate incorporated all rabbis and communities who dealt with the question of city *eruvin*.[314] In these centuries, in the countries of Eastern Europe, the cities and towns did not have populations of 600,000, but often contained streets sixteen *amot* wide. All the *eruvin* that were built in these cities which no longer had walls and gates that closed at night were built according to the conclusion of Rabbi Margolioth. Rabbi Brukhin would not have permitted *eruvin* in any of these cities and towns.[315]

City Eruvin in the Nineteenth Century: Construction of the Eruv

While Rabbi Sofer and the Hasidic leaders were emphatic in their insistence that community *eruvin* be built, the question remained how to build these *eruvin* in cities that were no longer surrounded by walls. Although the natural boundaries that were analyzed by the rabbis regarding The Hague, Rotterdam and Venice provided one avenue of inquiry, there were evidently many cities and towns where these natural boundaries either did not exist or failed to enclose the city properly. Therefore, the

rabbis of the nineteenth century began to explore the utilization of other forms of *eruv*

[314] For a collection of traditions and sources that address the continuation of the debate between the *Mishkenot Yaakov* and the *Beit Ephraim* and which authorities followed each opinion, see *Me-Az U-Mi-Kedem* (Brooklyn, NY, 2008).
[315] For a list of the many cities and towns that has eruvin in Eastern Europe, see *Me-Az U-Mi-Kedem* and *www.israel613.com/books/KKE12_**LIST**ALL-E.pdf* (viewed 9/14/09).

boundaries. As the Talmud had discussed in great detail, a Jewish neighborhood that did not have the status of a *reshut ha-rabbim* could be enclosed utilizing *tzurot ha-petah* that would symbolically enclose the area and allow for the creation of the *eruv*.

Nevertheless, a serious problem existed regarding the building of *tzurot ha-petach* because these structures could only be built with the permission of the city authorities. Although this permission varied from city to city, in Pressburg, Rabbi Sofer wrote:

> Thank God the kings and their assistants and officers in the places where the Jews reside have allowed the Jews to practice their religious freely. Specifically, they allow the Jews to establish *eruvin* in their courtyards, even in the courtyards where the members of the royalty reside…And, where will you find a larger city than our city Pressburg, the metropolis of our country? Several times the kings and his advisors stop here and it is presently the seat of the government and all the government officials gather here. There is one place that requires a *tzurat ha-petah* with two poles and a string between them….and they do not prohibit them at all.[316]

Rabbi Sofer concluded his letter to the rabbi of Wurzburg with the wish that he, too, would be able to convince the bishop of his city to allow the Jews to construct an *eruv* there.

While Rabbi Sofer described in glowing terms the cooperation that he received from the Austro-Hungarian authorities in building *tzurot ha-petah*, this permission

[316] *Hatam Sofer*, vol. 1 no. 99.

was not given in all locations. Rabbi Gershon Leiner, a great nineteenth century rabbinic scholar and member of the Izbica Hasidic dynasty, wrote a pamphlet in which he attempted to answer the following question: "Can we rely on the construction of gateways that have been introduced in our times in order to carry on the Sabbath since the age old tradition of building *tzurot ha-petah* is impossible today."[317] Rabbi Leiner was evidently referring to the fact that the governmental authorities did not allow the building of *tzurot ha-petah* in his town. It is possible, inasmuch as he wrote this responsum, that this obstacle was prevalent throughout Poland, but is also possible that this issue depended on the specific governmental official in each town. Thus, wherever the building of *tzurot hapetah* was not possible, there was a need to find a new solution for the creation of *eruvin*.

A possible solution to the problem of finding acceptable *eruv* partitions in a time and place when *tzurot ha-petah* were not permitted to be built was found in the invention of the telegraph and the building of telegraph poles and wires. In the mid-nineteenth century, the invention of the electrical telegraph led to the building of telegraph poles throughout the cities and countryside of Europe and the United States.[318] The introduction of telegraph poles and wires created a halakhic problem for the rabbinic community. On one hand, they seemed to provide the perfect solution for

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[317] Gershon Leiner, *Maamar Daltot Shaar Ha-ir* (Warsaw, 1892), 9.
[318] For a history of the telegraph and the construction of telegraph poles in the nineteenth century, see Tom Standage, *The Victorian Internet: The Remarkable Story of the Telegraph and the Nineteenth Century On-Line Pioneers* (NY, 1998).

the necessary *eruv* partitions as they lined the cities and towns and could be utilized as *tzurot ha-petah*. However, the question was raised whether these poles with wires

running between them constituted acceptable *eruv* partitions. Rabbi Joseph Nathanson, rabbi in Lemberg and one of the leading Galician rabbinic scholars in the middle of the nineteenth century argued that telegraph poles could be utilized as *eruv* boundaries even though the wire did not go directly on top of the poles. He argued that the *gemara* invalidated a *tzurat ha-petah min ha-tzad* in a situation in which the *tzurat ha-petah* was built and the string or rope between the two posts was intentionally connected to the sides of the end-posts. However, in this case where the telegraph poles were not created for the sake of an *eruv*, the fact that they are connected to the sides of the poles does not invalidate them as *eruv* partitions.[319] Rabbi Shnayer Zalman Fradkin of Lublin wrote a lengthy responsum analyzing the opinion of Rabbi Nathanson. At the end of the responsum, he disagrees with Rabbi Nathanson's opinion, arguing that Rabbi Nathanson had no basis for distinguishing between two types of *tzurot ha-petah min ha-tzad* and that any time the rope is connected to the side of the end-posts, the *eruv* partition is invalid.[320] Finally, Rabbi Sholom Mordekhai Shvadron wrote that although the lenient position on this matter is

[319] Joseph Nathanson, *Shoel u-Meshiv, Mahadurah Kamma* (Brooklyn NY, 1980), vol. 2, no. 88.
[320] Shnayer Zalman Fradkin, *Torat Hesed* (Warsaw, 1883), Orah Haim, no. 9 section 4. See also Avraham Eliyahu Feingold *Tikkun Eruvin* (Lublin, 1891), 43 who also disagreed with Rabbi Nathanson.

halakhically weak, one can rely on Rabbi Nathanson's opinion in the case of great necessity.[321] Although each of these three rabbinic scholars quoted the *gemara* in *Eruvin* that invalidates *tzurat ha-petah min ha-tzad*, there was little if any precedent for this situation, in as much as throughout history the *tzurat ha-petah* had been constructed solely for the purpose of creating an *eruv* partition. Yet, this disagreement played a critical role in the creation of early *eruvin* because the telegraph pole was the simplest *eruv* boundary in many situations and there was often no alternative if an *eruv* was going to be created in a city or town.[322]

Another issue that was addressed during the nineteenth century was the existence of bridges that intersected the *eruv* boundaries. Rabbi Sofer writes, "What use if all the discussion [about the *eruv*] since there are bridges that cross the river. Yet, I have not seen this issue discussed in any volume."[323] This issue had been addressed by Rabbi Ezekiel Landau. Rabbi Landau was asked a bridge nullified the

eruv. The questioner assumed that the problem with the bridge was the fact that people could cross the build thus nullifying it due to the rule of *ati rabbim u-mevatlei mehitzah*. Rabbi Landau argues that the problem created by a bridge is not the fact

[321] Sholom Mordekhai Shvadron, *Shut Maharsham* (Jerusalem, 1974), vol. 3 no. 262
[322] For an excellent review of all the opinions regarding the use of telegraph poles, see Elimelekh Lange, *Hilkhot Eruvin* (Jerusalem, 1973), pp. 52-3 and n. 67. The issue of the acceptability of telegraph poles as *eruv* boundaries was also addressed in Western Europe. See Mordechai Breuer, *Modernity Within Tradition: The Social History of Orthodox Jewry in Imperial Germany* (NY, 1992), 261 especially f.n. 246.
[323] *Hatam Sofer, O.H.*, no. 89.

that people pass over the bridge. Rather, the problem is that the bridge creates a breech in the *eruv*. This breech can be rectified through the erection of a *tzurat ha-petah* on the bridge.[324] Rabbi Sofer also argues that a *tzurat ha-petah* can be established on the bridges thereby alleviating the breech in the *eruv* created by the bridge.[325]

The Eruv in Cracow

Many of the issues that had been addressed since the writing of the *Shulhan Arukh* played a central role in the rabbinic disputes concerning the creation of *eruvin* in several eastern European cities at the end of the nineteenth century and beginning of the twentieth century. In Cracow, there was a tradition that the city had an *eruv* since the sixteenth century. During that period all of Cracow's Jews lived in Kazimierz, a municipality with its own charter, right outside of Cracow.[326] The Jews had been relocated to Kazimierz in 1495 by Jan Olbracht, King of Poland. This municipality had been surrounded by defensive walls since 1340. According to a proclamation published in Cracow in 1892, the sixteenth-century *eruv* in Cracow relied on the closing of the gates of the city walls to create an enclosed area.[327]

In 1795, Poland was partitioned for the third time and Cracow and its surrounding areas were annexed by Austria. By 1800, the city of Kazimierz was

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[324] *Nodah Bi-Yehudah, Mahadurah Tinyana, O.H.*, no. 42.
[325] *Hatam Sofer*, *O.H.*, no. 89.
[326] For the history of the Jews of Cracow, see Majer Balaban, *A History of the Jews in Cracow and Kazimierz 1304-1868* (Hebrew) (Jerusalem, 2002), 2 volumes.
[327] *HaMaggid*, December 22, 1887, no. 49 and *HaZefirah*, December 23, 1887, no. 274.

incorporated into Cracow. Under the Austro-Hungarian Empire, between 1815-1846, Cracow was briefly a free city and the walls separating the Jewish and Christian sections were torn down. In 1846, Cracow once again became part of the Austro-Hungarian Empire and some Jews were permitted to live in the Christian section. In 1867, when Austria gave greater autonomy to Galicia, Cracow was emancipated and all Jews were given permission to live in Cracow. Since there were no longer walls around the Jewish community, there became a need to construct an *eruv* around Cracow.[328]

Rabbi Chaim Leibush Horowitz, a member of the rabbinical court in Cracow, wrote in his introduction to his volume on the Cracow *eruv*, entitled *Tikkun Eruvin*, that the lack of an *eruv* caused tremendous violation of the Sabbath on the part of the Cracow Jews. He continued that in 1886 he had analyzed the parameters of the city and recognized that utilizing the existing structures on the outskirts of the city, there would be a need to erect only eight *tzurot ha-petah* in order to completely enclose the city. He explained that unbeknownst to him someone had approached the government authorities in Cracow asking for permission to build these structures. The government prohibited the building of these structures and demanded that the *eruv* be dismantled in the old Jewish neighborhood. Rabbi Horowitz wrote that he became discouraged at this news. However, he was excited to learn that the military had erected new ramparts upon which to build train tracks which would enclose the entire city of Cracow. After

[328] Ibid.

consulting with other rabbis, Rabbi Horowitz decided that these man-made ramparts could serve as acceptable *eruv* boundaries and he declared Cracow to be enclosed by an *eruv*.[329]

Rabbi Horowitz's *eruv* consisted of enclosures of elevated train tracks, ramparts built by the military and the Vistula River. Rabbi Horowitz explained that he was not concerned that the river would freeze or become obliterated by sediment and that the train tracks and ramparts were too high to create an acceptable *eruv* boundary. He also utilized several telegraph poles to complete the enclosure. He explained that, since there was a dispute whether telegraph poles and wires constituted an acceptable *eruv* partition, he was able to erect side-posts next to the outermost telegraph poles, thereby allowing the telegraph wires to be considered as running on top of these side-posts.[330] Rabbi Horowitz's wrote several responsa in which he explained the rationale for the creation of the Cracow *eruv*. He concluded his work as follows: "It can be concluded that our city has the status of being surrounded by four walls on which we can rely to carry throughout the city. However, due to the fact that we are limited by the will of the governmental authorities, we have no choice but to be lenient regarding questions on which there is a dispute among the *poskim*."[331] He also included a

[329] Chaim Horowitz, *Sefer Tikkun Eruvin* (Cracow, 1887), Introduction, n.p.
[330] Ibid., 32b.
[331] Ibid., 31a

number of responsa permitting the creation of the Cracow *eruv* written by other Galician rabbis.[332]

In 1891, three years after Rabbi Horowitz wrote his work, Rabbi Menachem Mendel Krengel published ten responsa in a volume entitled *Torat Eruv* in which he claimed that Rabbi Horowitz's *eruv* was not acceptable.[333] He argued that the Vistula River had the potential to freeze and to be filled with sediment and that not all of the riverbanks of the Vistula were high enough to be considered *eruv* boundaries. He explained that previous rabbis of Cracow had never considered the Vistula River to be an *eruv* boundary.[334] In addition, he claimed that the telegraph poles did not serve as acceptable *eruv* boundaries as they were *tzurot ha-petah min ha-tzad*. He added that the rabbis in Lemberg and Warsaw had not allowed telegraph poles to be utilized as *eruv* boundaries in their cities and that Cracow should not be treated any differently.[335]. In addition, Rabbi Krengel disagreed with Rabbi Horowitz's willingness to be lenient regarding the creation of the *eruv* in Cracow. He quoted the *rishonim* who argued that the principle that "the *halakhah* follows the lenient opinion in *eruvin*" did not apply to disputes among *amoraim* and did not apply to disputes about partitions. Since the issues regarding the Cracow *eruv* revolved around the

[332] Ibid., 24-28
[333] Menahem Mendel Krengel, *Torat Eruv* (Cracow, 1891).
[334] Ibid., Responsa 2-3, pp. 6-10.
[335] Ibid., Responsum 6, pp. 26-29.

viability of the partitions, he argued that Rabbi Horowitz's lenient views were based on a misunderstanding of how to determine the laws of *eruvin*.[336]

In March, 1892, Rabbi Horowitz responded to Rabbi Krengel's work. Together with three other rabbis who constituted the rabbinical court of Cracow, he issued a proclamation condemning Rabbi Krengel's work. The proclamation claimed that it had been more than four years since they permitted carrying in Cracow and that Rabbi Krengel's volume was filled with lies and misinformation. They explained that Rabbi Krengel did not properly understand the *eruv* boundaries that they had delineated. Furthermore, concerning his argument that the previous Cracow rabbis had not allowed the use of the banks of the Vistula, they commented that in previous generations, the entire Jewish community had been surrounded by ramparts so there had been no need for the enclosure of the Vistula River.[337]

In June, 1892, Rabbi Krengel reprinted *Torat Eruv* and renamed it *Torat Eruvin*. In the reprinted volume, he included a responsum refuting the claims of these rabbis. He began by claiming that the rabbis who signed the proclamation with Rabbi Horowitz had taken Rabbi Horowitz's word and had never read neither Rabbi Horowitz nor rabbi Krengel's books on the Cracow *eruv*. He argued that in the last hundred years since the government had allowed the Jews to live throughout Cracow,

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[336] Ibid., Responsum 8, pp. 16-18.
[337] A copy of this proclamation can be found at http://eruvonline.blogspot.com/2006/02/history-of-city-eruvin-part-3-eruv-in.html (viewed 1/6/10).

the rabbis could have made use of Rabbi Horowitz's arguments. Yet they chose not to utilize his leniencies. Furthermore, he explained that Rabbi Horowitz's claim that the reason that he did not create an *eruv* based on *tzurot ha-petah* was not due to the opposition of the government authorities. Rather, he claimed, Rabbi Horowitz wanted to prove his ability as a rabbinic authority to justify an *eruv* even without the use of *tzurot ha-petah*.[338] Rabbi Krengel included a number of letters from rabbis who agreed with his position. Among these, was a letter written by Rabbi Isaac Elchanan Spektor of Kovno, who wrote that he agreed in principle with Rabbi Krengel's opposition to the Cracow *eruv* and apologized for his inability to write a more extensive response due to his weak physical condition and his distance from Cracow.[339]

The debate concerning the Cracow *eruv* points to several important factors in the history of the community *eruv*. First, it highlights the fact that legal debates of previous generations underlie the current disputes concerning the actual creation of city *eruv*in. The arguments between these two local rabbis were based on earlier

[338] Menahem Mendel Krengel, *Torat Eruvin* (Cracow, 1892), 45-52.
[339] Ibid., 62. Rabbi Yehudah Leib Graubart, the Polish rabbi who immigrated to North America and created an *eruv* in Toronto, wrote that the *eruv* controversy in Cracow was especially fierce. See his *Sefer Zikharon* (Lodz, 1925), 167. In 1925, Rabbi Yosef Nechemiah Kornitser became the Chief Rabbi of Cracow. One of his responsibilities was the upkeep of the *eruv* in Cracow. While several *tzurot ha-petah* had been added by that time, the main enclosures were the same ones that had been introduced by Rabbi Horowitz. (Rabbi Yosef Nehemiah Kornitser, *Shut ve-Hiddushei Rabbenu Yosef Nehemiah* [Bnei Brak, 1986], 22).

positions published in other communities and commentaries on *Shulhan Arukh* regarding the acceptability of telegraph poles as *eruv* boundaries and the legitimacy of utilizing sea walls, given the risk of sediment build-up, and the fact that they might freeze in the winter. Second, the debate between Rabbis Horowitz and Krengel identifies the permission given by the government for the building of *tzurot ha-petah* as a crucial element in the possibility of creating *eruvin* in each city. While it is impossible to determine which one of these rabbis presented an accurate picture of the government's position, the lack of governmental approval would clearly have made the creation of the *eruv* in Cracow much more difficult. Finally, the Cracow *eruv* debate highlighted the personal, ad hominem rabbinic battle that the construction of an *eruv* can engender.[340]

The Eruv in Warsaw

It is important to contrast the debate in Cracow with the history of the *eruv* in Warsaw. As the walls were taken down in Warsaw, the issue of whether the Vistula River and the local telegraph poles could be utilized as *eruv* boundaries was discussed by the rabbinic authorities. Rabbi Yitzchak Meir Alter wrote an undated responsum, sometime before his death in 1866, permitting the banks of the Vistula River to be used as an *eruv* boundary. He began his responsum with the strong words to his questioner, "I do not know why you are looking for stringencies in this matter." He quotes the view of Rabbi Trani who wrote that the river serves as a valid *eruv* partition

even though it is not ten *tefahim* deep at the point it reaches the land. Even though the Vistula River was not ten *tefahim* deep at that point, Rabbi Alter argues that it is still a valid *eruv* partition. Regarding the fact that the river freezes in the winter, Rabbi Alter explains that since Rabbi Isserles lived in Cracow where the rivers froze in the winter, if he believed that frozen rivers invalidated the eruv, he would have written it explicitly.[341] In a responsum dated 1885, Rabbi Ben Zion of Bilsk discussed whether the Warsaw community could rely on telegraph poles to create the *eruv*. He explained the Jews of Warsaw wanted to find a way to permit the *eruv*, as Sabbath violation was rampant following the demolition of the walls of Warsaw. In a lengthy responsum, he permitted the use of telegraph poles in Warsaw as *eruv* partitions. He explains that even though the telegraph wires connected to the sides of the poles would be considered *tzurot ha-petah min ha-tzad*, as long as small poles are inserted at the base of the two extreme telegraph poles on the streets, the telegraph poles and wires would be acceptable *eruv* partitions.[342] Unlike the situation in Cracow, in both instances of the Warsaw *eruv*, a generation apart, the rabbinic authorities attempted to permit the creation of an *eruv* in Warsaw and there was no dispute regarding their decisions.

The Eruv in Odessa and the Definition of a Reshut Ha-Rabbim

Until this point in history, all city *eruvin* were constructed in cities and towns that had a population of fewer than 600,000 people. Therefore, according to Rabbi

[341]Yitzchak Meir Alter, *Sefer Shut Ha-Rim* (Warsaw, 1882), *Orah Haim*, no. 4.
[342] Ben Zion ben Arye Leib of Bilsk, *Sefer Shaarei Zion* (Pietrokov, 1903), no. 3

Margolioth, an *eruv* did not need to consist of actual walls and the rabbis could rely on different combinations of *tzurot ha-petah* and natural boundaries to create the local *eruvin*. The first discussion about whether an *eruv* could be constructed around a city that had a population of more than 600,000 people arose in Odessa in 1899. Rabbi Chaim Tchernowitz, at the time a young rabbi in Odessa who had recently received his ordination from Rabbi Isaac Elchanan Spektor, wrote a volume entitled *Sefer Tikkun Shabbat* in which he supported the establishment of an *eruv* in Odessa based on boundaries consisting of the banks of the Black Sea, telegraph and telephone poles and railroad tracks. [343] Rabbi Malkiel Tzvi of Lomza wrote a responsum to Rabbi Tchernowitz regarding the permissibility of building an *eruv* in Odessa. He concluded his lengthy responsum by agreeing that an *eruv* could be created in Odessa. Regarding the telegraph poles and wires, he argued that as long as small poles are placed at the base of the outermost telegraph pole on every street, the telegraph poles and wires can be used as eruv partitions.[344] Rabbi Chaim Berlin, in a letter to Rabbi Tchernowitz, wrote regarding the use of telegraph poles and wires, "It is my view that the tradition

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[343] Chaim Tchernowitz, *Sefer Tikkun Shabbat* (Odessa, 1899) 23-5. Tchernowitz founded his own yeshivah in Odessa, eventually transforming it into a rabbinical seminary (1907) which attracted many students from the Jewish intelligentsia in Russia, including Hayyim Nahman Bialik and Joseph Klausner. Tchernowitz's ambition was to combine traditional study with modern research in order to rejuvenate Jewish learning. His pseudonym Rav Ẓa'ir (young rabbi) reflects his aims. Tchernowitz received a Ph.D. from the University of Wurzburg in 1914. Settling in the United States in 1923, he taught Talmud at the Jewish Institute of Religion in New York. For a biography, see Eliezer Raphael Malachi, *Peri Eẓ Ḥayyim: Bibliyographia shel Kitve Hayim Tshernovits* (New York, 1946).

[344] Malkiel Tzvi ha-Levi of Lomza, *Shut Divrei Malkiel* (Jerusalem, 1987), vol. 3 no. 16.

in many cities is to use telegraph poles and wires and to consider them as *tzurot ha-petah* and they are no considered *tzurot ha-petah min ha-tzad*."[345]

At the conclusion of Rabbi Malkiel's responsum, he wrote: "It is for this reason that we are able to create *eruvin* in large cities such as Odessa and not be concerned that these cities have populations that exceed 600,000 people. This is due to the fact that these large cities do not have one street that runs through the entire city."[346] According to Rabbi Malkiel, even though all rabbinic authorities agreed that if a city had both a population of 600,000 people and a street that was sixteen cubits wide which runs from one end of the city to the other end, the city would be deemed a public domain and an *eruv* could not be constructed without walls and gates, he argued that this is rarely a problem, since large cities do not have one street that runs through the entire city. Interestingly, in an addendum to his responsum, Rabbi Malkiel wrote that he was informed by the rabbis in Odessa that the population there "was about 600,000 people." If this was true, he explained, then it depended whether Odessa had streets that ran from one end of the city to the other end. If, indeed, these streets existed, an *eruv* could not be built without walls and gates and he was retracting his earlier permissive ruling regarding the *eruv* in Odessa.[347]

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[345] Chaim Tchernowitz, *Sefer Tikun Shabbat* (Odessa, 1899), 30.
[346] *Divrei Malkiel*, vol. 4 no. 3.
[347] Ibid., vol. 3, *Hashmatot*, p. 134. See also Rabbi Haim Berlin, *Sefer Nishmat Haim* (Bnei Brak, 2002), *Orah Haim*, no. 29 who also raises the possibility that Odessa had a population that exceeded 600,000. He suggested, that if this was so, then a small

Regarding the *eruv* in Odessa, the issue of *sekhirat reshut* was also addressed. Even though the leasing of the city from the proper government official had become accepted practice, Rabbi Tchernowitz and Rabbi Berlin raise the question of whether this lease applies to the Jewish Sabbath violators in the city. The author of the *Shulhan Arukh* codified the law that the members of the *eruv* community must lease the space from the Sabbath violators and they cannot relinquish their property. Rabbi Tchernowitz quotes a disagreement among the *rishonim* regarding this issue. However, he concludes: "With all this, due to the necessity of the circumstances, to protect the masses and to remove the prohibition [of *hoza'a*] we can rely on Rabbenu Asher who argues that leasing from the authority or his *sekhiro u-lekito* applies even to those who do not agree with the *eruv*."[348] Rabbi Berlin explains that the lease from the non-Jewish authority applies to all the Jews since everyone pays taxes to the government and relies on their officials to protect them.[349]

The argument that an *eruv* can be constructed even in a city with a population of 600,000 was also made by Rabbi Shlomo David Kahane, a member of the rabbinical court in Warsaw, who explained in a letter that he wrote at the end of 1933 that even though Warsaw had a population of over 600,000 people, an *eruv* could be

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portion of the city be left outside the *eruv* like the *ir shel rabbim* described by the *gemara*.

[348] *Sefer Tikkun Shabbat*, 30.

[349] *Nishmat Haim*, no. 30.

constructed since Warsaw did not have any street that ran through the entire city.[350] Finally, in 1939, Rabbi Chaim Ozer Grodzovsky, the head of the rabbinical court in Vilna, wrote a letter which discussed the creation of an *eruv* in Paris, which had a population of more than 600,000 people. He wrote that, since Paris is surrounded by boundaries that constitute real walls, an *eruv* could be created even though the population exceeded 600,000 people.[351]

Eruvin in Non-Western Cities

Rabbi Shemouel Laniado, an early eighteenth century rabbinic sage from Aleppo, describes eruvin in both Aleppo and Damascus during his lifetime.[352] Rabbi Abdalala Somekh, a nineteenth century rabbi from Baghdad, quotes Rabbi Moses Pardo, head of the Sephardic Rabbinic Court in Jerusalem and later a rabbi in Alexandria, who says that there was an *eruv* in Bombay in his time.[353] Rabbi Yosef Hayyim of Baghdad writes, in the later half of the nineteenth century, that Baghdad was a walled city in which in which Jews were permitted to carry on the Sabbath. He explains that they designated the shared food once a year and used matzah that was kosher for Passover.[354] Rabbi Mosheh Kalfon, Chief Rabbi of Djerba from 1917-1950, writes that since Djerba is surrounded by waterways, it was permissible to carry

[350] Rabbi Kahane's responsum can be found in Menahem Mendel Kasher, *Sefer Divrei Menahem* (Jerusalem, 1980), vol. 2, 42-3.
[351] Ibid., 39-42.
[352] Shemouel Laniado, *Sefer Shulhan ha-Melekh* (Aleppo, 1923), No. 40.
[353] Abdalala Abraham Josef Someah, *Zivhei Zedek* (Jerusalem, 2008), III: 102.
[354] Yosef Hayyim of Baghdad, *Sefer Ben Ish Hai* (Jerusalem, 1898), 11a and 71a.

objects on the Sabbath on the island and that this had been the practice in Djerba for generations.[355] There is no recorded controversy concerning any of these *eruvin*.

In 1922, Rabbi Abraham Abikhzir, the Assistant Chief Rabbi of Alexandria, Egypt, wrote a letter to Rabbi Ben Zion Koenka, the *av beit din* of the Sephardic Rabbinical Court, explaining that even the religious Jews in Alexandria carrying objects outside on the Sabbath and he asked Rabbi Koenka whether it would be permissible to create an *eruv* around Alexandria. Rabbi Koenka responds that it was permissible to create an *eruv* around Alexandria and he encourages Rabbi Abikhzir to construct the *eruv* and to lease the city from the governmental official. Rabbi Abikhzir replies "Today, we made an *eruv hazerot* … and we sent announcement to the synagogues together with a map of the boundaries of the *eruv*."[356]

Rabbi Joseph Messas, who died in 1974, was a rabbi in Algeria and Morocco prior to becoming the Sephardic Chief Rabbi of Haifa. He was asked by an anonymous questioner regarding a city that was surrounded by walls but had many openings in the walls. After analyzing the validity of creating *tzurot ha-petah* in this city, he writes the following. According to Rambam, it is forbidden to carry in a *karmelit*, even though a *karmelit* is not a public domain, due to the similarity between

[355] Mosheh Kalfon, *Sefer Shoel Ve-Nishal* (Bnei Brak, 1998), V: 54.
[356] Rabbi Abikhzir's letter is found in *Ha-Measef* Shanah Aleph, hoveret 1 (Shevat 5739): 49-55. Rabbi Koenka response can be found in *Ha-Measef* Shanah aleph, hoveret 2 (Tammuz 5739): 138-59. Rabbi Abikhzir's reply is found in *Ha-Measef* Shanah aleph, hoveret 3 (Kislev, 5740): 326.

a *karmelit* and *a reshut ha-rabbim* in which carrying an object is Biblically prohibited. If one is permitted to carry on object in a *karmelit*, they may become confused and also carry an object in a *reshut ha-rabbim*.[357] Rabbi Messas argues that since today we do not consider any city to be a *reshut ha-rabbim* because he claims that there are no cities with populations that exceed 600,000, there is no risk of confusing a *karmelit* with a *reshut ha-rabbim*. Therefore, Rabbi Messas concludes that there is no need for an *eruv* today in order to transform a *karmelit* into a *reshut ha-yahid* because there is no risk of mistaking the *karmelit* for a *reshut ha-rabbim*. Although Rabbi Messas writes that the Jewish tradition has always required the creation of *eruvin* and that, therefore, an *eruv* must be created in this situation, this view reflects a fascinating attempt to enable Jews to carry items on the Sabbath.[358]

The Eruv in Jerusalem

The issue of the definition of a *reshut ha-rabbim* regarding the creation of a city *eruv* was also addressed regarding the *eruv* in Jerusalem. In the second half of the nineteenth century, the Jewish community of Jerusalem began to expand outside the walls of the Old City and by 1900 there were many Jewish communities outside of the

[357] Rambam, *Hilkhot Shabbat* 14:11.
[358] Joseph Messas, *Sefer Mayim Hayim* (Jerusalem, 2000), I: 100. Rabbi Joseph Messas' younger cousin, Rabbi Shalom Messas considers the view that eruvin are no longer necessary as unacceptable. (See Shalom Messas, *Sefer Tevu'ot Shemesh* (Jerusalem, 1979), p. 167). For a biography of Rabbi Messas emphasizing his approach to Jewish law and the opposition to that approach among leading Sephardic rabbinic authorities, see Marc B. Shapiro, "Rabbi Joseph Messas," *Conversations* 7 (2010): 95-102.

Old City.[359] The first mention of an *eruv* in new communities of Jerusalem is found in the responsa of Rabbi Jacob Saul Elyashar, who became head of the rabbinical court in Jerusalem in 1869 and the Sephardic Chief Rabbi in 1893.[360] In a responsum dated 1880, Rabbi Elyashar describes the following situation in Jerusalem: Rabbi Akiva Schlesinger, leader of the Ashkenazi community, has erected *tzurot ha-petah* in the new Jewish community of Even Yisrael. Rabbi Isaac of Prague, a Sephardic rabbi, writes to Rabbi Elyashar asking for his intervention to prevent the creation of an *eruv* in this neighborhood. His argument is based on the fact that even though Rabbi Caro in *Shulhan Arukh* quotes both opinions regarding whether a *reshut ha-rabbim* requires 600,000 people, the tradition of the Sephardim was to follow the first opinion quoted in *Shulhan Arukh*, if the second opinion is introduced as merely "there are those who say." In this case, the first opinion quoted in *Shulhan Arukh* was the opinion that a *reshut ha-rabbim* does not require 600,000 people. Therefore, the new neighborhoods of Jerusalem had the status of a *reshut ha-rabbim* and an *eruv* could not be built.[361]

Rabbi Elyashar responds that since the Ashkenazim and Sephadim live together in this neighborhood, the Sephardim who see the Ashkenzim relying on this *eruv* will never heed the strict view of Rabbi Caro. Therefore, he writes that it is our responsibility to rely on the alternative definition of a *reshut ha-rabbim* and to rule

[359] Mordekhai Eliav, *Eretz Yisrael Ve-Yishuvah Be-Meah Ha-Yud-Tet* (Jerusalem, 1978), 173-78 and 322-27.
[360] For a biography of Rabbi Elyashar, see Yaakov Gellis, *Encyclopedia Le-Toldot Hakhmei Eretz Yisrael* (Jerusalem, 1977), II: 120-22.
[361] Jacob Saul Elyashar, *She'elot U-Teshuvot Simhah Le-Ish* (Jerusalem, 1888), no. 3.

that, since this neighborhood does not have 600,000 people, it is not a *reshut ha-rabbim* and an *eruv* can be created. In truth, Rabbi Elyashar is not completely comfortable ruling against the Sephardic tradition. However, he explains that, at least, those Sephardim who carry on the Sabbath will be in the category of "unintentional" rather than "intentional" violators of the Sabbath.[362]

In the first decade of the twentieth century, the Jerusalem *eruv* was supervised by Elijah David Rabinowitz-Teomim, the head of the Ashkenazi community in Jerusalem. The *eruv* was inspected weekly by Rabbi Ben-Zion Yadler, who describes in his memoirs that Rabbi Rabinowitz-Teomim was the rabbinic authority to whom all questions regarding the eruv were addressed. Following Rabbi Rabinowitz-Teomim's death in 1905, the authority was passed to Rabbi Samuel Salant, his successor as head of the Jerusalem Ashkenazic community. Rabbi Yadler describes that permission was received from the British authorities after 1917 to build the necessary *eruv* partitions. At the same time, Rabbi Yadler received a warning from the British Postmaster General in 1931 warning him that the *eruv* wires that had been erected presented a risk to the telegraph wires in Talbieh and that a heavy fine would be levied on the Jewish community if these lines were damaged. During the war of Independence, Rabbi Yadler instructed each community to establish separate *eruvin* in each community. Nevertheless, Rabbi Yadler continued to check the city *eruv* during the war to the best of his ability. Rabbi Yadler continued to inspect the Jerusalem until shortly before his

[362] Ibid., no. 3 and no. 6.

death in 1962. Throughout Jerusalem, there were signs announcing "The borders of Rabbi Yadler's *eruv* reach this point."[363]

The Eruv in Frankfurt

There was a major dispute concerning the *eruv* that was built in Frankfurt am Main just prior to World War I. This *eruv* was built by Rabbi Nehemia Nobel, rabbi of the Orthodox Israelitische Gemeinde.[364] He explained his justification for the building of this *eruv* in a volume entitled *Porat Yosef: Kuntres Odot Tikun Eruvin be-Frankfurt am Main*.[365] In the introduction, he wrote that it had been fifty years since the Jews had lived in a walled area in Frankfurt which constituted an *eruv*. He also claimed that Rabbi Samson Raphael Hirsch had attempted to create an *eruv* in Frankfurt but was

[363] See Rabbi Ben-Zion Yadler, *Be-Tuv Yerushalayim* (Bnei Brak, 1967). The description of the Jerusalem eruv and the accompanying documents from the British authorities are found on pp. 249-64.

[364] Rabbi Nobel was born in Hungary in 1871. After receiving his rabbinical ordination at the Berlin Rabbinerseminar, he studies at the University of Marburg under Herman Cohen. In addition, he was an early proponent of modern Zionism and took part in the founding convention of Mizrachi in Pressburg in 1904. After several other rabbinic position, he succeeded Rabbi Marcus Horowitz in Frankfurt in 1910. For a biography of Rabbi Nobel, see Rachel Heuberger, *Rabbi Nehemiah Anton Nobel: The Jewish Renaissance in Frankfurt am Main* (Frankfurt am Main: 2007).

[365]Frankfurt am Main, 1914. It is reprinted in a collection of Rabbi Nobel's writings entitled *Hagot ve-Halakhah* (Jerusalem, 1969), 145-178. Rabbi Israel Krieger, a rabbi in Frankfurt at the time, wrote a defense of *eruvin* in large cities in 1922. It was published in Frankfurt but it does not mention the *eruv* in Frankfurt specifically and may be addressing the question of city *eruvin* in general and not the Frankfurt *eruv*. See Rabbi Israel Avraham Abba Krieger, *Divrei Shalom Ve-Emet* (Frankfurt am Main, 1922).

unsuccessful.[366] However, Rabbi Salomon Breuer, Rabbi Hirsch's successor as the rabbi of the secessionist Israelitische Religionsgesellschaft, published an announcement declaring Rabbi Nobel's *eruv* illegitimate and forbidding its use. The *eruv* dispute in Frankfurt soon became the most important practical and symbolic difference between the two Orthodox communities. Many members of Rabbi Breuer's community would stay in Rabbi Nobel's community for the Sabbath so that they would be able to carry.[367] There were not 600,000 people in Frankfurt at the time so the debate revolved around the issues of establishing proper *eruv* boundaries. Rabbi Nobel argued that he was following precedent in using the telegraph and telephone poles for the *eruv* boundaries.[368]

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[366] See Breuer, *Modernity Within Tradition*, 319, where he claimed that the Frankfurt magistrate repeatedly denied Rabbi Hirsch permission to build an *eruv*.

[367] See Matthias Morgenstern, *From Frankfurt to Jerusalem: Isaac Breuer and the History of the Secession Dispute in Modern Jewish Orthodoxy* (Leiden, 2002), 223-24. For the history of the eruv in Germna cities including Frankfurt, Altona, Hamburg, Ahrensburg and Wandsbek, see Peter Freimark, "Eruw/Judentore: Zur Geschichte einer rituellen Instituin im Hamburger Raum (und anderswo), *Judentore Kuggel, Steuerkonten: Untersuchungen zur Geschichte der deutschen Juden, vornehmlich im Hamburger Raum* edited by Peter Freimark, Ina Lorenz and Gunter Marwedel (Hamburg, 1983), 10-69. For a history of the eruv in Furth, see Gisela Blume, "Die von den Juden uber die Stassen gezogenen Drahte oder Der Eruv in Furth," *Further Heimatblatter: Herausgegeben vom Geschichtsverein Furth E.V.*, Neue Folge/50. Jahrgang (2000/nr.1): 1-17.

[368] There were other *eruvin* that were built in the early decades of the twentieth century that did not provoke rabbinic debate. See for example, Sholom Sternberg, *Sefer Birkat Shalom* (Antwerp, 1930), which discussed the *eruv* built in Antwerp in 1902. Also, see Mordechai Breisch, *Sefer Helkat Yaakov* (Tel Aviv, 1992), vol. 1 nos. 171-184, for a lengthy discussion of the *eruv* that Rabbi Breisch built in Dieburg, Germany. The responsum was published in 1933 and contains an analysis of all of the major issues that had been addressed by the earlier authorities concerning the construction of communal *eruvin*.

Conclusion

As the Jewish communities expanded in the Early Modern period, the Talmudic principles regarding *eruvin* needed to be applied to ever-changing realities. Yet, the basis of these discussions remained the Talmudic rules as they had been developed and applied throughout the centuries. The tension that was often wrought between an affinity to the *halakhah* and the necessities of each new Jewish community required the creativity of rabbinic scholars who were called upon to determine where and when *eruvin* could be created. The details of the lease of the city varied with the authority of each ruler and the *eruv* boundaries were dependant on the specific location and geography of each city. The nineteenth century invention of the telegraph created new challenges as the rabbinic authorities struggled to determine whether these telegraph poles and wires met the standards defined by the Talmud fifteen-hundred-years earlier. Yet, during this period, the rallying cry of Rabbi Moshe Sofer that *eruvin* must be created in each community seemed to lie at the foundation of all halakhic discussions. Although not all rabbis encouraged or allowed *eruvin* to be built in these cities, the basic principle that *eruvin* were a benefit for the Jews of the community was accepted by these rabbinic authorities.

Although the general background regarding *eruvin* is critical in the study of the early *eruvin* in North America, the debates regarding *eruvin* in the large cities of Eastern Europe played a central role in the debates that would transpire in North America. As the Jews moved from restricted neighborhoods in the nineteenth century,

the need to create *eruvin* that would enclose the entire city became a source of debate among the members of the rabbinic community. Rules and principles that had been applied throughout the centuries in small Jewish neighborhoods were being extended to apply to the largest cities in Eastern Europe. Could *eruvin* be constructed around these cities? Was it advisable to create such *eruvin*?

As the Eastern European rabbis began to immigrate to North America, they came with an understanding not only of the rabbinic sources concerning *eruvin* but, also, with an appreciation of the tension that city *eruvin* had caused in Eastern Europe and the fact that, in spite of this tension and debate, many *eruvin* had been built and there were Jews in each city and town who relied on these *eruvin* to carry objects on the Sabbath. Did these immigrant rabbis attempt to recreate the eastern European Jewish experience in America or did they recognize that they would face a different set of challenges in America that would require a completely different approach? The experience of the city *eruvin* of Eastern Europe will create the base line for resolving both the legal and social issues concerning the rabbinic attitude towards the creation of *eruvin* in North America.

CHAPTER 4

The St. Louis *Eruv*

The first documented *eruv* in North America was established in the last decade of the nineteenth century in St. Louis, Missouri. The end of the nineteenth century and the first decades of the twentieth century brought a large influx of immigrant Jews to St. Louis. From 1880-1920, over fifty thousand Jews from the Russian Pale of Settlement, the Kingdom of Poland, Hapsburg Galicia and Romania settled in St. Louis.[369] The first of these Eastern European Jewish immigrants were not happy with the religious situation that they found in St. Louis. One newcomer commented, "Unfortunately, we came to a city where there was not a single sacred place to offer prayers…Many who have come before us had one objective in view--money-seeking."[370] Faced with the lack of a *minyan*, the most basic institution in communal Jewish life, a group of Latvian Jews met and informally organized a *minyan*. Although the exact date of the founding of this *minyan* is unknown, by October, 1881, they had completed their constitution and became known as Beth Hamedrosh Hagodol. By 1890, the congregation had enough funds to purchase a modest building

[369] Averam B. Bender, *History of the Beth Hamedrosh Hagodol Congregation of St. Louis*, 1879-1969 in *The Bulletin of the Missouri Historical Society* (October 1970): 68-69.

[370] Bender, 69. For the history of the Jews in St. Louis prior to 1880, see Walter Ehrlich, *Zion in the Valley: The Jewish Community of St. Louis* (Columbia, MI, 1997), vol. 1.

from the German Evangelical Protestant Congregation of the Church of the Holy Ghost. Although its membership did not exceed twenty-five or more people, a Chevra Mishnah Gemora was established for the daily study of Talmud and a Hebrew school, the first in St. Louis, was founded in 1893.[371]

Several other small synagogues were created by these immigrants. All of these synagogues were built in the neighborhood known as the Jewish Ghetto, a crowded rectangular area in the north side of St. Louis.[372] Most of them met in rented space and occupied no more than one room with a makeshift cabinet to house the Torah scrolls that had been brought from Eastern Europe. There is little documentation about the early history of these small synagogues. One of them was named Sheerith Sfard. According to one report, it was begun in 1887, whereas another report suggested that it began a year earlier as a private *minyan* in someone's home.[373] Although Sheerith Sfard was founded after Beth Hamedrosh Hagodol, it was able to purchase a building before the older synagogue. With more than half of the four-hundred dollar cost of the building raised from the sale of High Holiday seats, it moved into their new building

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[371] Bender, 69-72.

[372] This neighborhood was bounded on the east by the Mississippi River, on the west by Grand St., on the north by Cass Avenue and on the south side by Delmar Avenue. See *Zion in the Valley* (Columbia, MI., 2002), II:29.

[373] See "Twenty-Five Years Ago, 1887," in *Voice*, February 12, 1912, and Z. Abrams, *The Book of Memories* (St. Louis, 1932) 67. In David B. Gould, *Gould's St. Louis Directory of 1888,* 1665, the congregation is listed as Sheerit Sfalt. *Sfalt* in Yiddish means to split and the reference might reflect the manner in which this congregation was known at the time. It is not known from which synagogue it split.

in September, 1888. The success of Sheerith Sfard led to its purchase in 1891 of a new, larger building and in 1905 they purchased a former church that was remodeled to seat about 2,500 worshipers. Sheerith Sfard became an important cultural and social center for these immigrants and it hosted cantorial concerts and guest lectures.[374]

During the last decade of the nineteenth century, Rabbi Sholom Elchanan Jaffe and Rabbi Zekhariah Yosef Rosenfeld served contemporaneously as rabbis of the two branches of Sheerith Sfard, both of which were located on North Ninth St.[375] Their interaction and involvement --- indeed, immediate mutual antagonism --- with one another is best exemplified by two disputes between them regarding the establishment of a *mikveh* and an *eruv* in the city.

Rabbi Jaffe was born in 1858 in Vabalninkas, in the province of Vilnius Gubernia. At the age of 14, he went to study at the famed yeshiva in Volozhin and he received his rabbinical ordination at age 19 from such leading Lithuanian rabbis as Rabbi Isaac Elchanan Spektor, Rabbi Naphtali Zvi Yehudah Berlin and Rabbi Rephael

[374] Ehrlich, I: 311-13. Ira Robinson claimed that the title Sfard reflected the Hasidic nature of the congregation since the Hasidim followed the Sephardic rite in their services and he traced the title throughout North America to highlight the gradual increase of Hasidism in North America during the period of the great migration to North America. Sheerith Sfard was not a Hasidic congregation but it may have been started by Russian Jews who were uncomfortable in the St. Louis congregation which followed an Ashkenazi liturgy. See Ira Robinson, "Anshe Sfard: The Creation of the First Hasidic Congregations in North America" *American Jewish Archives* 62, 1-2 (2005):

[375] Bender, 76.

Shapiro.[376] In 1879, he became the rabbi of Upyna, in the province of Kovno, and from 1884-7 he served as rabbi of Zeimelis, in the province of Vilnius.[377] In a portent of things to come, he became embroiled in a dispute during his time in Zeimelis and in 1887[378] he departed for the United States.[379] By November, 1887, he apparently was accorded the title of Chief Rabbi of the St. Louis Orthodox Jewish Community[380] and served as rabbi of Congregation Sheerith Sfard. His first stint in St. Louis was also tumultuous[381] and he returned to Russia to serve as rabbi in his hometown of Vabalninkas.[382] By 1891, he had returned to St. Louis[383] and later that year he was appointed rabbi of Beth Hamedrosh Hagodol.[384] His second experience in St. Louis was equally tumultuous and in 1895 he left Beth Hamedrosh Hagodol.[385] By 1897, he

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[376] Benzion Eisenstadt, *LeToldot Yisrael B'America* (New York, 1917), 60 and Judah David Eisenstein, *Otzar Zikhronotai* (New York, 1930), 158.
[377] *Hamelitz*, November 21, 1884, 1417.
[378] Rabbi Eliyahu David Rabinowitz-Teomim, *Seder Eliyahu* (Jerusalem, 1983), 90. In this autobiography, Rabbi Rabinowitz-Teomim, a rabbinic authority in Lithuania who moved to Jerusalem in 1901 to lead the Ashkenazic community there, mentioned that between the years 1885 and 1886 he was called to Zeimelis to settle a dispute between Rabbi Jaffe and Rabbi Sholom Dov Sprints.
[379] The ship's manifest for the *Suvia,* September 7, 1887, line 146 listed Scholem Jaffe.
[380] *The Jewish Free Press*, November 4, 1887. Rabbi Jaffe never signed any document as Chief Rabbi. This newspaper report is the only published reference according him the title which may reflect the fact that there was no official mechanism to designate a chief rabbi, so the title could be claimed by or accorded to virtually any rabbi. He signed his works *Av Beit Din* of St. Louis. See, for example, (Jaffe, Shoel Ka-Inyan), 23.
[381] *Voice*, January 27, 1888.
[382] Eisenstadt, 60.
[383] *Voice*, January 16, 1891.
[384] *Gould's 1891*, 1513.
[385] Bender, 76.

was rabbi of a splinter *minyan* of Sheerith Sfard,[386] but he left later that year to become rabbi of Congregation Beth Hamidrash in Brooklyn.[387] His stay in Brooklyn was marred by yet another feud.[388] In 1902, he was appointed rabbi at Beth Hamidrash Hagadol on the Lower East Side.[389] He remained in this position until his death in 1923.[390]

The other rabbi in St. Louis in the last decade of the nineteenth century was Rabbi Zekhariah Yosef Rosenfeld. Rosenfeld was born in Turisk, in the province of Volhynia Gubernia in 1847[391] and he served as a rabbi in Kovel, also in the Volhynia Gubernica province[392] and in his hometown of Turisk, where he was respected for his Torah scholarship and his knowledge of medicine.[393] He left Turisk in 1893[394] and, after spending a short time in New York and Baltimore,[395] was elected rabbi of the

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[386] *Gould's 1897*, 854 and 2262. By 1900, this splinter minyan had disappeared. See *Gould's 1900*, 2459.
[387] Bender, 76.
[388] Rabbi Jaffe fought with Rabbi Shabsi Rosenberg, rabbi of Beth Hamidrash Hagadol Keser Torah in Brooklyn. See Rabbi Jaffe's obituary in *Morgen Zhurnal*, November 16, 1923, 2.
[389] Eisenstadt, 60.
[390] See the obituary in *Morgen Zhurnal,* November 16, 1923, 2, and *New York Tribune*, November 17, 1923.
[391] Samuel Noach Gottlieb, *Ohalei Shem* (Pinsk, 1912) 308, *American Jewish Year Book,* 5, (*1903-04*): 91. While the article gives 1850 as his date of birth, his tombstone states that he was born in 1847.
[392] *Modern View*, September 10, 1915, 44.
[393] *Turisk Yizkor Book*, 16, 179.
[394] The ship's manifest for the *Weimar,* August 22, 1893, line 410, lists a Josef Rosenfeld. Josef was Rabbi Rosenfeld's middle name. In view of the fact that the 1900 Census stated that his year of immigration was 1893, it seems likely that he sailed on the *Weimar*.
[395] *American Jewish Year Book,* 5, (1903-04): 91. Hereafter referred to as *AJYB.*

Agudat Ha-Kehilot, the United Congregations, of St. Louis.[396] In that capacity, he was rabbi of several synagogues, including Bnai Yaakov, Bnai Binyamin, Tifereth Israel, Beth Abraham and his permanent position in Sheerith Sfard, where he served from 1897 until his death in 1915.[397]

During the period in which Rabbis Jaffe and Rosenfeld served contemporaneously in St. Louis, Rabbi Jaffe built the *mikveh* and it was criticized by Rabbi Rosenfeld, whereas Rabbi Rosenfeld built the *eruv* and it was criticized by Rabbi Jaffe. In the absence of contemporaneous documentation, it is impossible to know which of the two launched the first attack against the other's institution. Regarding the *mikveh* controversy in St. Louis, in 1894, Rabbi Rosenfeld published a volume entitled *Tikvat Zekhariah I* claiming that the *mikveh* built by Rabbi Jaffe was not kosher. He included a proclamation at the beginning of this volume declaring the *mikveh* invalid.[398] Rabbi Jaffe defended the validity of his *mikveh* in the second part of *Shoel Ka-Inyan*, published in Jerusalem in 1895.

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[396] The exact date of his arrival in St. Louis is unknown. He signed the letter at the beginning of his work *Tikvat Zekhariah I* on February 24, 1894. See *Tikvat Zekhariah I* (St. Louis, 1896), 7. Yet, he is still listed in the *Baltimore City Directory* in 1895. He may have commuted between Baltimore and St. Louis. By 1896, he is only listed in the St. Louis city directory, see *Gould's 1896*, 1360.

[397] *AJYB*, 2 (*1900-01*): 310 and *AJYB* 9 (1907-08): 234, *AJYB* 2, (1900-01): 310, *AJYB* 5, (1903-04) 91, *AJYB* 9 (1907-08): 234, *AJYB* 9, (1907-08): 233, *AJYB* 2 (1900-01): 309; *AJYB* 5 (1903-04): 91; and *AJYB* 9 (1907-08): 234.
His obituary appeared in *St. Louis Globe-Democrat*, September 10, 1915, and *St. Louis Post-Dispatch*, September 10, 1915.

[398] *Tikvat Zekhariah I* (St. Louis, 1894). The Yiddish proclamation can be found on pp. 5-7.

Concerning the *eruv*, Rabbi Jaffe dated his anti-*eruv* document which was subsequently published in his volume *Shoel Ka-Inyan* on January 9, 1894. Therefore, although it is impossible to fix a precise date when the two began their clash regarding the *eruv*, it evidently occurred within a few months of Rabbi Rosenfeld's arrival in St. Louis at the end of 1893.

In 1896, Rabbi Rosenfeld published *Tikvat Zekharia II*, in which he defended the *eruv* against the arguments made by Rabbi Jaffe in *Shoel Ka-Inyan*, which, as mentioned, was published in Jerusalem in 1895. However, Rabbi Rosenfeld did not refer to Rabbi Jaffe by name or to *Shoel Ka-Inyan* itself in this volume.[399] In that same year, 1896, Rabbi Jaffe wrote yet another polemic against the *eruv* entitled *Teshuvah Ka-Halakhah* that merely rehearsed, in a different format, all of the points made by him two years previously in *Shoel Ka-Inyan*. In addition, *Teshuvah Ka-Halakhah* commenced with an extremely nasty *ad hominem* introduction attacking Rabbi Rosenfeld personally: Rabbi Jaffe wrote, "Anyone who has Jewish blood flowing through his arteries will not be able to restrain himself due to the fact that Rabbi Rosenfeld has disparaged those rabbis who are not comfortable with his *eruv*…We see that his only intention is to find favor with the masses."[400] *Teshuvah Ka-Halakhah* added very little material that was not already found in *Shoel Ka-Inyan*. With the exception of the personal attack on Rabbi Rosenfeld, all that this volume did

[399] *Tikvat Zekhariah II* (Chicago, 1896).
[400] *Teshuvah Ka-Halakhah Ve-Divrei Shalom* (Jerusalem, 1896), 16.

was organize Rabbi Jaffe's argument by referencing each paragraph to the corresponding page in Rabbi Rosenfeld's *Tikvat Zekhariah II*.

Tracing the back and forth arguments between Rabbi Jaffe and Rosenfeld, this analysis of the *eruv* will divide the discussion of the St. Louis *eruv* based on the issues that both rabbis addressed.

Should One Create an *Eruv*?

Rabbi Rosenfeld prefaces his halakhic arguments with a discussion of the importance of creating community *eruvin*. He begins by quoting the view of Rabbi Moshe Sofer in Pressburg who wrote to the rabbi in Wurzburg that it was incumbent on the rabbi of the community to arrange for the creation of an *eruv* in the community in order to prevent Sabbath violation. Rabbi Sofer wrote that, because it was impossible to prevent women and children- who are weak-minded and will carry-from walking outside on the Sabbath, there is no alternative to the creation of an *eruv* in each community.[401] Rabbi Rosenfeld adds that if the rabbi receives a salary, it is his special responsibility to create an *eruv* in his community.[402]

Rabbi Rosenfeld quotes the letter that Rabbi Asher wrote to Rabbi Yaakov ben Moshe regarding the importance of creating an *eruv* in the local community of

[401] *She'elot U-Teshuvot Hatam Sofer*, vol. 1, no. 99.
[402] *Tikvat Zekhariah II*, 1.

Freres.[403] Based on this responsum, Rabbi Rosenfeld concludes this section, "We see how upset Rabbenu Asher became and he criticized this man, Yaakov ben Moshe, for leading people to violate the Sabbath. Therefore, I find myself obligated to travel around St. Louis and explore the possibility to create an *eruv* that will allow Jews to carry on the Sabbath."[404]

Rabbi Jaffe responds to Rabbi Rosenfeld's claim that it is incumbent on the community rabbi to create an *eruv* in the community by struggling to reinterpret the sources that Rabbi Rosenfeld quoted. First, Rabbi Jaffe explains that Rabbi Sofer was addressing a situation in which the Jews of Wurzburg did not want to create an *eruv* and were willing to prevent the women and children from going outside on the Sabbath. In that situation, Rabbi Sofer wrote to the rabbi that it was incumbent upon him to create a community *eruv* and not to rely on the Jews of the town to prevent carrying on the Sabbath. Regarding the responsum of Rabbenu Asher, Rabbi Jaffe explains that this responsum undermines Rabbi Rosenfeld's argument for the following reason. Rabbenu Asher reprimanded Yaakov ben Moshe for refusing to rely on the use of *tzurot ha-petah* to create an *eruv* in Freres. However, argues Rabbi Jaffe, Rabbenu Asher would never allow an *eruv* to be created without enclosures such as *tzurot ha-petah*. Yet, Rabbi Jaffe claims that Rabbi Rosenfeld is attempting to justify

[403] *She'elot U-Teshuvot Le-Rabbenu Asher* (Jerusalem, 1994), 110-12.
[404] *Tikvat Zekhariah II*, 6.

the *eruv* in St. Louis even though the city boundaries did not constitute four valid *eruv* walls.[405]

Reshut Ha-Rabbim

The first issue that each of the rabbis discussed was whether St. Louis should be considered a *reshut ha-rabbim*, necessitating the surrounding of the city with real walls in order to create an acceptable *eruv*.

At the beginning of *Tikvat Zekhariah II* Rabbi Rosenfeld clarified his view regarding the definition of a *reshut ha-rabbim*, claiming that most of the rabbinic authorities followed the opinion that a *reshut ha-rabbim* was created only if the population of the area exceeded 600,000. He explained, based on the opinion of Rabbenu Nissim that 600,000 people had to gather in one place each day, as was the case in the desert in which the entire population gathered in the Levite camp and it was called a *reshut ha-rabbim*. If there were one street in which everyone gathered, Rabbi Rosenfeld argued, then the entire city would be considered a *reshut ha-rabbim* similar to the camps in the desert in which people only congregated in the Levite camp yet the entire Jewish encampment was considered as a *reshut ha-rabbim*.[406] In the addendum to *Tikvat Zekhariah II*, Rabbi Rosenfeld elaborates on the possible definition of St. Louis as a *reshut ha-rabbim*. First, he states that the population of St.

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[405] *Teshuvah Ka-Halakhah*, 16-17, 22.
[406] *Tikvat Zekhariah II*, 6-9. See *Shabbat* 96b and Rashi s.v. *mahaneh* for the relationship between the Levite camp and a *reshut ha-Rabbim* and *Hiddushei Ha-Ran al Massekhet Eruvin*, 6a s.v. *kan*.

Louis three years prior to the creation of the *eruv* was 460,000 and that the present count was approximately 500,000, thereby negating its classification as a *reshut ha-rabbim* according to the majority of rabbinic authorities who require 600,000 for a city to be considered a *reshut ha-rabbim*. Furthermore, he explains that most people traveled the streets in electric or steam trolleys but each trolley car had the status of a *reshut ha-yahid* and, therefore, those passengers would not be included in the tally of 600,000 necessary to create a *reshut ha-rabbim*. Furthermore, the ground underneath these trolleys would also have the status of a *reshut ha-yahid*. Finally, he argued that since the trolleys made it dangerous for people to cross the streets, St. Louis could not be considered a *reshut ha-rabbim* since the inability for people to walk on the streets disqualified these streets as a public area. He considers the fact that the sidewalks might create their own *reshut ha-rabbim*. However, he concludes that the width of the sidewalks cannot be combined with the width of the streets to create a *reshut ha-rabbim*.[407]

These two qualifications concerning the presence of trolleys on the streets of St. Louis requires further consideration, because they lie at the foundation of Rabbi Rosenfeld's determination that St. Louis did not have the status of a *reshut ha-rabbim*. There is some precedent regarding Rabbi Rosenfeld's claim that the passengers in the trolleys were not to be included in the tally of 600,000. By analogy, Rabbi Ephraim Margolioth wrote that people traveling on horses or in wagons were not included in

[407] *Tikvat Zekhariah II*, 40-41.

the tally of 600,000.[408] Rabbi Israel Trunk, a Polish rabbinic authority who died in 1893, wrote that the road over which the train tracks run did not have the status of a *reshut ha-rabbim*.[409] Rabbi Rosenfeld does not quote either of these authorities. Yet, he seems to combine the arguments of both Rabbis Margolioth and Trunk in determining that passengers in trolleys are not included in the tally of 600,000 and that the roadway under the trolleys was not considered a *reshut ha-rabbim*. Regarding his claim that since people are afraid to travel in the streets due to the risk of injury due to the trolleys, Rabbi Rosenfeld quotes the opinion of the early fourteenth century Spanish scholar Rabbenu Yeroham who argues that a *reshut ha-rabbim* needs to be accessible to the public without any interference.[410] Although Rabbi Rosenfeld makes use of precedent regarding both of these issues, his application to the situation in St. Louis is largely his own creation.

Rabbi Rosenfeld concludes his volume reiterating that the population of St. Louis had not reached 600,000 people. However, he adds that, even if the population did reach 600,000, the *eruv* in St. Louis would still be valid because the streets do not open into a market that itself had the status of a *reshut ha-rabbim*. Therefore, these streets were not considered *mefulash*, open from one *reshut ha-rabbim* to another

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[408] *She'elot U-Teshuvot Beit Ephraim, O.H.*, no. 29, p. 98.
[409] Israel Trunk, *She'elot U-Teshuvot Yeshuot Malko* (Petrokow, 1927), no. 27. See also *She'elot U-Teshuvot Maharsham*, O.H., no. 161 who agrees with Rabbi Trunk.
[410] Yeruham ben Meshullam, *Sefer Toldot Adam Ve-Hava* (Jerusalem, 1974), netiv 12, nos. 4 and 17. See also Abraham Yudelovitz, *She'elot U-Teshuvot Beit Av Tinyana* (New York, 1929), no. 9:2 who quotes Rabbi Rosenfeld's opinion regarding the nullification of the streets due to the trolleys and disagrees with him claiming that the streets would still have the status of a *karmelit*.

reshut ha-rabbim, which is a necessary criterion for the creation of a *reshut ha-rabbim* even if the population exceeds 600,000.[411]

Rabbi Jaffe began his polemic, *Shoel Ka-Inyan*, by claiming that St. Louis had a population greater than 600,000, thereby creating a *reshut ha-rabbim* for which walls and gates that had the potential to be closed at night would be needed to allow carrying on the Sabbath. He explained that it would be impossible to erect these gates since trains travel in and out of the city all day and night. In addition, he added that the city was 18 miles long and 12 miles wide with 150 streets lengthwise and 60 streets across its width. The streets were more than 16 *amot* wide, with some as much as 60 *amot* wide. From one side of the city, all the streets intersected Broadway which was the widest street and from the other side of the city, the streets ran parallel to Broadway. Broadway and many of the other streets traversed the city from one end to the other end leading to intercity highways. Rabbi Jaffe added that all the cities in America were built in this fashion.

Rabbi Jaffe elaborated on the halakhic status of St. Louis. He argued that even if there were not 600,000 people who traversed the city every day, the city would still be considered a *reshut ha-rabbim*. This was due, either to the rabbinic position that a *reshut ha-rabbim* is determined by the width of the streets and not the size of the population or to the position that argued that, even in a city without 600,000 people, if there is a street that is *mefulash*, traverses the city from one end to the other end, that

[411] Ibid., 57.

city is considered a *reshut ha-rabbim*. Rabbi Jaffe argued that carrying on the Sabbath could only be allowed in St. Louis if the city would be enclosed by walls and gates. He bases his argument on the comments of the *Hagahot Asheri*, who writes that, even according to Rashi's view that a *reshut ha-rabbim* requires 600,000 that is only valid in determining whether there is a violation of the Biblical prohibition of carrying in such a domain. However, even if there are less than 600,000, walls and gates would be required in order to allow carrying on the Sabbath.[412]

Rabbi Jaffe continues his argument by analyzing, in a historical fashion, the view of Rabbi Margolioth in his collection of response, *Beit Ephraim*. He argues that Rabbi Margolioth only allowed carrying in the absence of walls and gates because it was impossible to build gates in the cities and towns of Eastern Europe. However, Rabbi Jaffe concludes, "Even if we are lenient and follow the opinion of the *Beit Ephraim* and his followers [that a *reshut ha-Rabbim* is determined by the size of the population] and permit the surrounding of the city with a *tzurat ha-petah*, this *tzurat ha-petah* had to be constructed according to all the legal stringencies since the concept that erecting a *tzurat ha-petah* is sufficient for creating an *eruv* boundary [in a *reshut ha-Rabbim*] is itself a leniency."[413]

He claims that even according to the opinion of the *Beit Ephraim*, each street in St. Louis and in other American cities would have the status of a *mavoi ha-mefulash*

[412] *Hagahot Asheri*, *Eruvin*, chapter 1, no. 8.
[413] *Shoel Ka-Inyan*, 2-8. The quotation is found on page 7.

since it leads into a public area even if that area into which the street opens does not meet the requirements of a *reshut ha-rabbim*. Since each street has the status of a *mavoi ha-mefulash*, it would require a *tzurat ha-petah* on the end that leads into the public space. Rabbi Jaffe explained that erecting a *tzurat ha-petah* on each street in American cities was impossible due to the costs involved and the fact that the local government would never grant permission for the erection of these *tzurot ha-petah* and, therefore, "It is obvious that in all big cities in America that are built in this fashion, it is not possible to allow for carrying on the Sabbath."[414] Rabbi Jaffe supports his opinion based on the opinion of Rabbi Moshe Sofer who argued that even where an *eruv* boundary is only required by rabbinic decree, this boundary must be built with all the stringencies of an *eruv* boundary which is required by Biblical law.[415] Therefore, argues Rabbi Jaffe, since, according to many authorities, St. Louis has the status of *a reshut ha-rabbim*, it requires an *eruv* boundary that would meet the requirements described by Rabbi Sofer and must meet all the requirements of a *tzurat ha-petah* as explained in the *Gemara*. He concludes this argument reflecting back to the prophetic reference to the prohibition of carrying on the Sabbath, "This serious Biblical prohibition is mentioned in the words of the holy prophets for even in the absence of a Biblical *reshut ha-rabbim*, the prophet Jeremiah warned against carrying [on the Sabbath]."[416]

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[414] Ibid., 8.
[415] *Teshuvot Hatam Sofer, O.H.*, nos. 79 and 80.
[416] *Shoel Ka-Inyan*, 16.

Rabbi Jaffe continued to attack specific details of Rabbi Rosenfeld's *eruv* definition of St. Louis as a *reshut ha-rabbim*. First, Rabbi Jaffe disagreed with Rabbi Rosenfeld's claim that the streets of the city were not considered to be 16 *amot* wide, because the streets and the sidewalks were not to be combined in calculating the 16 *amot* necessary to establish a *reshut ha-rabbim*. Rabbi Jaffe claimed that the sidewalks were indeed part of the streets to calculate the sixteen *amot*. Furthermore, he stated that there were streets in St. Louis that were 16 *amot* wide even without the sidewalks..[417]

In *Teshuvah Ka-Halakhah*, Rabbi Jaffe continues to address Rabbi Rosenfeld's claims regarding the streets of St. Louis. First, he writes that the claim that the road under the trolleys and cars has a status of a *reshut ha-yahid* is wrong, and "It is an embarrassment to mention it in front of Torah scholars." He continues that such an argument is "silly," because no person ever suggested that people riding in trolleys or cars should not be included in the tally of 600,000. He brings a proof from the *Magen Avraham* who writes that people traveling on boats are still included in the tally of those people who negate the *eruv* boundary of the river even though the individual boats have the status of a *reshut ha-yahid*.[418] Furthermore, Rabbi Jaffe argues that Rabbenu Yeroham's requirement that the streets be accessible to pedestrians does not mean that people regularly walk on the streets. If the streets are accessible to cars and

[417] Ibid., 16-17.
[418] Magen Avraham, O.H., 363:30.

trolleys that would be sufficient according to Rabbenu Yeroham. Finally, he claims that many people walk in the streets in spite of the fact that there are trolleys and cars on the street.[419]

He claims that Rabbi Rosenfeld also said that the manhole covers for the underground waterworks could be considered as doorways that open and close and would constitute a door according to those rabbinic authorities who require that the city be enclosed by gates that have the potential to be opened and closed. Rabbi Jaffe disagreed that the manholes could be considered "doors" and claimed that even if they were, the city would still be considered a *reshut ha-rabbim* because these manhole covers did not sufficiently enclose the city. As previously discussed, Rabbi Jaffe's initial rejections of the *eruv* was published prior to Rabbi Rosenfeld's defense of the *eruv*. Although most of the arguments that Rabbi Jaffe claims that Rabbi Rosenfeld used in the creation of the St. Louis *eruv* are addressed by Rabbi Rosenfeld in *Tikvat Zekhariah II*, Rabbi Rosenfeld does not mention the utilization of manhole cover as gates to enclose the city. Since this argument for the use of manholes has no basis in earlier rabbinic sources, it is possible that Rabbi Rosenfeld changed his mind or that Rabbi Jaffe attributed the argument to Rabbi Rosenfeld even though Rabbi Rosenfeld never actually used it in support of his *eruv*. [420]

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[419] *Teshuvah Ka-Halakhah*, 21 and 26. The printed edition of *Teshuvah Ka-Halakhah* skips pages 22-25.
[420] Ibid., 17-20.

In *Teshuvah Ka-Halakhah*, Rabbi Jaffe questions Rabbi Rosenfeld's conclusion regarding the population of St. Louis. Rabbi Rosenfeld estimated that at the time of the creation of the *eruv* there were about 500,000 people in St. Louis. Rabbi Jaffe claimed that Rabbi Rosenfeld had taken this population figure from a Yiddish paper and that Rabbi Rosenfeld was no expert on population numbers in St. Louis. Rabbi Jaffe argues that he had heard from several knowledgeable people and had read in English-language books that the total population in St. Louis exceeded 700,000 people. Furthermore, he said, inasmuch as the main railroad station of the region was in St. Louis and passenger trains were constantly arriving and departing, there were bound to be even more people in the city at any one time. He concluded that during the World's Fair there were close to one million people in the city.[421] Rabbi Jaffe does not address Rabbi Rosenfeld's claim that a *reshut ha-rabbim* requires 600,000 in one place without regard to those pass through the city. For Rabbi Rosenfeld this is not an important consideration since he claims that the population of St. Louis did not reach 600,000. However, Rabbi Jaffe must have believed that a city is considered a *reshut ha-rabbim* as long as there are 600,000 in the entire city. Rabbi Jaffe's view about who constituted the necessary 600,000 reflected a departure from the traditional definition of *reshut ha-rabbim* as expressed by the rabbinic authorities in Eastern Eiurope. For instance, Rabbi Margolioth, who was the accepted authority

[421] Ibid., 21. The St. Louis World's Fair was first held in 1904. Rabbi Jaffe may have been referring to the annual St. Louis Fair.

on *eruvin*, required that 600,000 pass through one place or one street for the city to be considered a *reshut ha-rabbim*.[422]

There is available information in order to determine the exact population of St. Louis in those years. The population of St. Louis in 1893, according to *Gould's St. Louis Directory* was 574,569.[423] Rabbi Jaffe claims that Rabbi Rosenfeld had taken his population estimate of 500,000 from a Yiddish paper. However, Rabbi Jaffe was likewise not exact in his calculation of the population and his claim that the population of St. Louis exceeded 700,000 was without foundation creating the false impression that the *eruv* could not be established in St. Louis. In 1896, the year in which *Teshuvah Ka-Halakhah* was published, according to *Gould's St. Louis Directory*, the population of St. Louis was 611, 268.[424]

Telegraph Poles and Wires

Rabbi Jaffe writes that *eruvin* could not be built in any American city without erecting *tzurot ha-petah*, since the natural boundaries were insufficient. He argued, "It is impossible to construct them [*tzurot ha-petah*] due to the monetary issue and the fact that it would not be allowed by the governmental authorities."[425] Therefore, the use of telegraph wires became the only viable solution to complete this *eruv* and the

[422] *Beit Ephraim, O.H.*, no. 26, p. 87.
[423] *Gould's St. Louis Directory* 1893-94, 25.
[424] *Gould's St. Louis Directory*, 1896-97, 24.
[425] *Shoel Ka-Inyan*, 8.

permissibility of telegraph poles and wires as *eruv* boundaries played a critical role in the debate between Rabbis Jaffe and Rosenfeld.

In *Tikvat Zekhariah II*, Rabbi Rosenfeld made several different arguments in defense of his use of telegraph poles, basing himself on the opinion of Rabbi Joseph Nathanson of Lemberg, who had been the major proponent of the use of telegraph wires as *eruv* boundaries in the nineteenth century.[426] Rabbi Rosenfeld proceeded to explain that the objections of Rabbi Fradkin, the major opponent of the use of telegraph wires in the nineteenth century, did not apply in St. Louis.[427] First, Rabbi Rosenfeld claimed that since the telegraph wires in St. Louis were affixed on top of the crossarms, they were considered acceptable *eruv* boundaries and could not be disqualified by saying that they were not connected to the tops of the telegraph poles.[428] Second, he argued that the telegraph poles could be considered *tzurot ha-petah* even though they were not built explicitly for the purpose of creating doorways, since in St. Louis, the wires on top of the telegraph poles did serve to create the semblance of an entrance on different streets and roads, therefore, they satisfied Rabbi Fradkin's requirement that the *tzurat ha-petah* must be erected for the purpose of creating an entranceway. Rabbi Rosenfeld explains that since the telegraph poles are

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[426] Joseph Nathanson, *Shoel u-Meshiv, Mahadurah Kamma* (Brooklyn NY, 1980), vol. 2, no. 88.
[427] Shnayer Zalman Fradkin, *Torat Hesed* (Warsaw, 1883), *Orah Haim*, no. 9 section 4.
[428] *Tikvat Zekhariah II*, 26-28.

erected at the street corners and not in the middle of the street, their purpose was to provide entranceways to and from the street.[429]

Finally, he addressed the fact that the telegraph poles were often located at a distance of greater than three *tefahim* from the houses thereby creating an unacceptable break in the *eruv*. He explains that the *Gemara* and the *Shulhan Arukh* consider a break of three *tefahim* in the *eruv* walls a disqualification of the *eruv*.[430] However, Rabbi Rosenfeld claims that this rule applies to a situation in which the *tzurat ha-petah* combines with the walls of the houses to create an *eruv* boundary in which case there cannot be a gap that exceeds three *tefahim* between the *tzurat ha-petah* and the other *eruv* walls. However, in the case of the telegraph poles in St. Louis, the *tzurat ha-petah* created by the telegraph poles extends along the entire street and creates its own *eruv* boundary. Therefore, there is no concern regarding the fact that the *tzurat ha-petah* is more than three *tefahim* from the walls of the houses. He concludes this section of *Tikvat Zekhariah* explaining that in St. Louis this discussion is merely theoretical since in this city the telegraph poles and wires actually reach the other *eruv* boundaries, thereby enclosing the city within these boundaries. [431]

Rabbi Jaffe argued that telegraph poles were not acceptable *eruv* boundaries for two reasons. First, he said that, since the telegraph wire is connected to the side of the telegraph pole and did not run across the top of the pole they had the status of a

[429] Ibid., 28-31.
[430] See *Eruvin* 5a and *Shulhan Arukh*, *O.H.*, 365:1.
[431] *Tikvat Zekhariah II*, 31-33.

tzurat ha-petah min ha-tzad which is not acceptable as an *eruv* boundary. He does not mention the disagreement between Rabbis Nathanson and Fradkin concerning utilizing telegraph poles and wires. However, he claims, without exception that telegraph poles and wires are not acceptable *eruv* boundaries.[432]

Furthermore, he makes the following argument. He writes that even if the telegraph poles and wires did constitute an acceptable *tzurat ha-petah*, they would not serve the purpose of created an *eruv* boundary in St. Louis since the gap between the telegraph wires and the walls of the houses exceeds three *tefahim*. Initially, he does not address Rabbi Rosenfeld's claim that this gap is not a problem since, in St. Louis, the telegraph poles and wires constitute an entire *eruv* boundary and, therefore, their distance from the walls is not a disqualification. At the conclusion of his discussion of this topic, however, Rabbi Jaffe does address Rabbi Rosenfeld's claim that the *tzurat ha-petah* creates an entire *eruv* wall in St. Louis. In response to this claim, which he does not mention explicitly, he quotes Rabbi Jacob Sasportas, a member of the Rabbinical Court of Amsterdam at the end of the seventeenth century who had allowed for the creation of an *eruv* in The Hague, who argued that a *tzurat ha-petah* cannot be used as an *eruv* boundary to enclose an open space that exceeds thirty *amot*.[433] Therefore, Rabbi Jaffe argues that the *tzurat ha-petah* in St. Louis is not an acceptable *eruv* boundary since the telegraph poles and wires extend for longer than

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[432] *Shoel Ka-Inyan*, 9

[433] Jacob Sasportas, *Ohel Yaakov*(Amsterdam, 1737), no. 46 and *Shaarei Teshuvah*, *O.H.* 363: 12.

thirty *amot* and that "it is clear that there is no way to rely on the telegraph poles and wires in American cities."[434]

In *Teshuvah Ka-Halakhah,* Rabbi Jaffe reiterated his opposition to the use of telegraph wires as *eruv* boundaries based on the fact that they were connected to the side of the poles. In addition, he added that the gaps between the telegraph lines and the houses disqualified them from serving as *eruv* boundaries. Furthermore, he argues that Rabbi Rosenfeld misrepresented the opinion of Rabbi Nathanson, whom Rabbi Rosenfeld used as a precedent for the acceptability of telegraph lines as *eruv* boundaries. Rabbi Jaffe quotes Rabbi Eliezer Grayefsky who commented in his glosses on *Sheol ka-Inyan* that even though Rabbi Nathanson allowed for telegraph lines to be used as *eruv* boundaries in Lemberg, he required that small poles be erected under the *tzurot ha-petah* in Lemberg so that people would be reminded not to pass through the *eruv* boundary thereby invalidating it. Rabbi Jaffe mocks Rabbi Rosenfeld asking sarcastically whether he too intended to erect such small poles on every street in St. Louis.[435] In addition, at the conclusion of *Teshuvah Ka-Halakhah*, Rabbi Jaffe wrote, "I have drawn a picture of the telegraph wires and they are all connected from the side and they are at a great distance from the houses….I ask whether it is correct to place a stumbling block before the people for generations to

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[434] *Shoel Ka-Inyan*, 9-12.
[435] *Teshuvah Ka-Halakhah*, 19-20. See Rabbbi Grayefsky's comments in *Shoel Ka-Inyan*, 12 and 23 and Rabbi Nathanson's discussion about the use of telegraph lines in Lemberg in *Shoel U-Meshiv, Mehadurah Kamma*, vol. 2, no. 88, section 2.

come due to the corrupt assumptions of one rabbi who wishes to argue with the great rabbinic scholars of the generation."[436]

[436] *Teshuvah Ka-Halakhah*, 29-30.

Eruv Boundaries

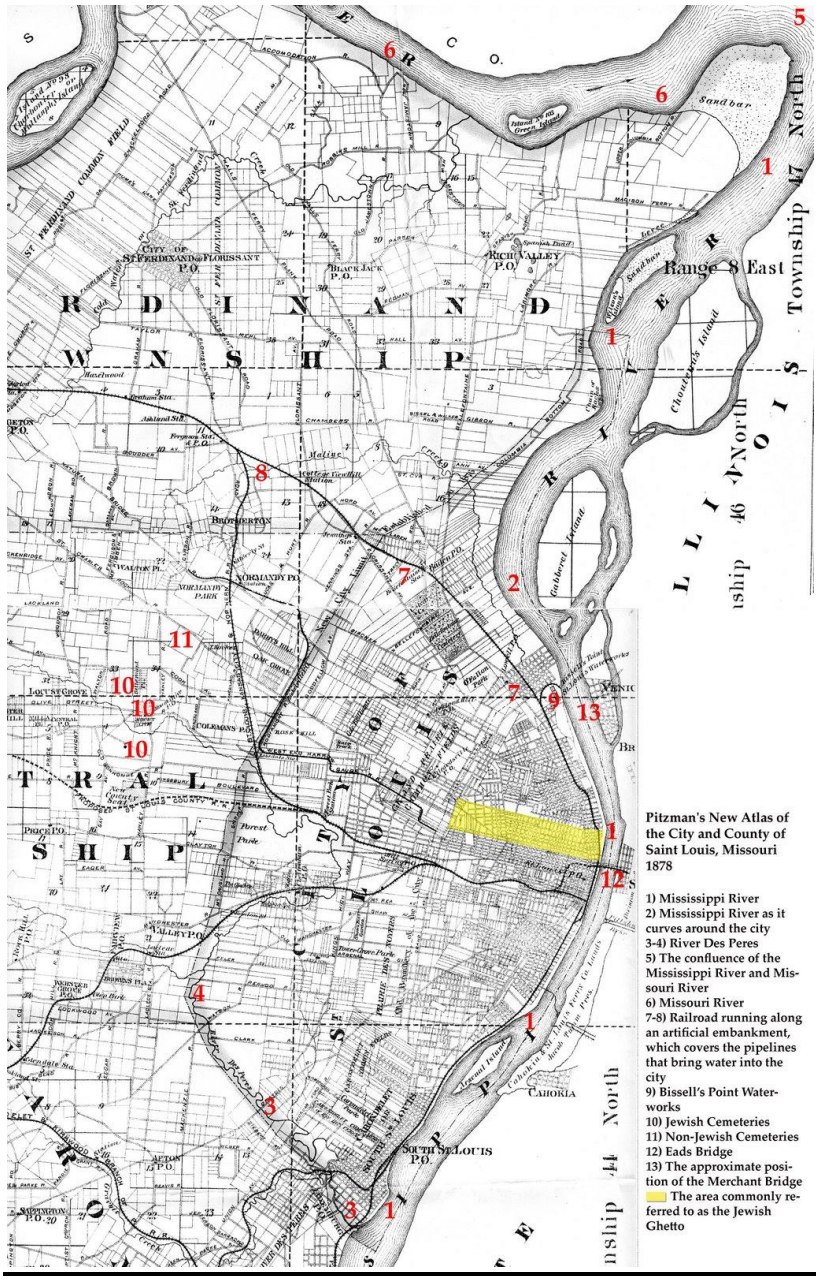

Fig. 1 - Map of St. Louis with possible *eruv* boundaries (Pitzman, Julius. *Pitzman's New Atlas of the City and County of Saint Louis, Missouri*, 1878)

Rabbis Rosenfeld and Jaffe debated both the description of the *eruv* boundaries and the ability to utilize these boundaries as *eruv* walls. Rabbi Rosenfeld delineated the boundaries of the *eruv* that he claims enclosed the Jewish neighborhood of St. Louis. On the east side, the boundary was the Mississippi River (numbers 1-2 on the map); on the south side the River Des Peres (numbers 3-4 on the map); on the north side, the Mississippi River (numbers 5-6 on the map).[437] In addition, closer to the city on the north side, the railroad ran along artificial embankments. One embankment was longer and steeper than the others and covered the pipelines that brought water into St. Louis (numbers 7-9 on the map). The west side created the greatest problem for the *eruv*. There was a deep artificial trench that ran south from the Mississippi River. There were also walls in the vicinity that consisted of fences that surrounded Jewish and non-Jewish cemeteries (numbers 10-11 on the map). However, there were many breaks in these walls that exceeded ten *amot*. Therefore, Rabbi Rosenfeld suggests another alternative for the *eruv* boundary on the west side. Telegraph lines that began at the northern artificial embankment continued right to the banks of the River Des Pees so there was no breach between the northern and southern boundaries of the *eruv* (the telegraph lines ran from numbers 7-8 all the way to numbers 3-4).[438]

Rabbi Rosenfeld discusses several specific problems that arose with these *eruv* boundaries. First, he explains that the river banks of the Mississippi River and the

[437] Rabbi Rosenfeld refers to this boundary as the Mississippi River even though it is really the Missouri River.
[438] *Tikvat Zekhariah, II*, 42.

River Des Peres rose ten *tefahim* above the water line. This opinion follows the view of the *Magen Avraham* that the river creates an *eruv* boundary only if the river bank creates an acceptable *eruv* wall.[439] He explains that there was only one bridge on which the railroad ran that crossed the River Des Peres. However, this bridge did not create a breach in the *eruv* since it had a structure at the entrance to the bridge that served as a *tzurat ha-petah*. There were several bridges that crossed the artificial embankments. Rabbi Rosenfeld explains that Rabbi Shlomo Kluger argues that bridges do not negate the use of river banks as acceptable *eruv* boundaries.[440] However, Rabbi Rosenfeld does not want to rely on leniencies and, therefore, writes that he prefers to rely on the telegraph wires that run uninterrupted from the northern to southern *eruv* boundaries.[441]

Rabbi Rosenfeld further explains that the risk of sediment build-up is not an issue in St. Louis since the *eruv* boundary is created by river banks that rise above the water line in both the Mississippi and Des Peres Rivers. Additionally, the opinion of the *Magen Avraham* that disqualifies the river as an *eruv* boundary if the distance from the houses exceeds ten *amot* is also not a problem in St. Louis even though the Mississippi River is further than ten *tefahim* from the houses for the following reason.[442] As previousy explained, the *Magen Avraham* is only referring to a situation in which the river and the houses combine to form one of the *eruv* boundaries.

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[439] *Magen Avraham*, O.H., 363: 30
[440] Rabbi Shlomo Kluger, *Sefer U-Vaharta Ba-Hayim* (Vienna, 1934), no. 117.
[441] *Tikvat Zekhariah, II*, 43-44.
[442] *Magen Avraham*, O.H. 363:31.

However, In St. Louis, since the river forms an entire *eruv* boundary, its distance from the houses is of no consequence.[443]

Finally, Rabbi Rosenfeld argues that the passengers who embarked on and disembarked from these ships did not create a breach in the *eruv*. According to the *Magen Avraham*, if people cross a natural boundary they disqualify that boundary as an *eruv* wall. In the case of St. Louis, passengers embark and disembark on ships on the Mississippi River, a natural boundary, and should thereby negating the *eruv* wall. Rabbi Rosenfeld presents three arguments to explain his view that passengers did not negate the *eruv*. First, he argued that Rabbi Ezekiel Katzenellenbogen explains that passengers only negate the natural *eruv* boundary if the city is not surrounded by man-made boundaries.[444] However, since in St. Louis two of the sides of the cities are enclosed by the man-made boundaries of telegraph poles and natural embankments, these people do not negate the boundaries. Second, he quotes Rabbi Shneur Zalman of Lyady, who explains in his *Shulhan Arukh* that if there are three sides of the *eruv* in which people do not cross over the boundary, the fact that they cross over on the fourth sides does not negate the *eruv*.[445] Lastly, he quotes the *Magen Avraham* who claimed that the only time that people crossing the boundaries negate the boundary is a situation in which 600,000 people cross the boundary in one day.[446] That, said Rabbi

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[443] *Tikvat Zekhariah, II,* 44.
[444] Ezekiel Katzenellenbogen, *She'elot U-Teshuvot Knesset Yehezkel* (Warsaw, 1883), no. 3.
[445] Shneur Zalman of Lyady, *Shulhan Arukh*, no. 363.
[446] *Magen Avraham, O.H.* 363: 40.

Rosenfeld, was clearly not the case in St. Louis and, therefore, this did not create a problem.[447]

In *Shoel Ka-Inyan*, Rabbi Jaffe rejects the *eruv* boundaries that Rabbi Rosenfeld suggested. It is clear that this *teshuvah* was written before he saw Rabbi Rosenfeld's defense of these boundaries, Rabbi Jaffe lists many possible reasons to disqualify each of the eruv boundaries. Regarding the use of the Mississippi River as an *eruv* boundary, Rabbi Jaffe argued that there was a risk of sediment build-up thereby negating the river as an acceptable boundary. Second, he claims that the passengers embarking on and disembarking from ships negated the use of the river as an *eruv* boundary. Finally, he argues that the river is not acceptable since there is a break of greater than ten *amot* between the river and the walls of the houses. He further claims that many of the roadways in St. Louis are not enclosed by the *eruv* boundaries at all. Unaware of Rabbi Rosenfeld's explanation of each of these issues, Rabbi Jaffe merely lists this series of reasons to disqualify this *eruv* boundary. Rabbi Jaffe does add one additional consideration. He quotes the *Peri Megadim* who argues that a natural *eruv* boundary is not acceptable if the city is larger than 5,000 square *amot* since these natural boundaries were not built specifically to enclose the city but preceded the building of the city.[448] Rabbi Shneur Zalman of Lyady applies this ruling

[447] *Tikvat Zekhariah* II, 44-54.
[448] Joseph ben Meir Teomim, *Peri Megadim*, *O.H.* 363:31.

to the case of a river that encloses a large city which he disqualifies as an *eruv* boundary since it predated the building of the city.[449]

Rabbi Jaffe rejects Rabbi Rosenfeld's use of the hills on the outskirts of town as an *eruv* boundary, for the same reasons that he rejected the use of the Mississippi River. He claimed that the hills were not acceptable due to the fact they were more than ten *amot* from the continuation of the *eruv* wall created by the houses in the city and the fact that they predated the creation of the city also disqualified them.[450]

Rabbi Jaffe claims that Rabbi Rosenfeld had argued that *eruvin* could be built in all cities in America since the streets were built on an incline that created an *eruv* boundary. Rabbi Jaffe contends that these streets did not have the necessary incline of four *tefahim* over a ten *amot* area since the trolleys or cars would not have been able to ride up such steep streets.[451] Rabbi Rosenfeld never made this claim about building *eruvin* in all American cities.

In *Teshuvah Ka-Halakhah,* Rabbi Jaffe once again attacks the boundaries that Rabbi Rosenfeld had delineated for the *eruv*. In this rebuttal to *Tikvat Zekhariah*, he addressed many of Rabbi Rosenfeld's arguments. First, Rabbi Jaffe claimed that there was no exclusively Jewish neighborhood in St. Louis and that Jews lived together with non-Jews. Therefore, it was impossible to talk about enclosing the Jewish

[449] Shneur Zalman of Lyady, *Shulhan Arukh,* 363:44. See *Shoel Ka-Inyan,* 12-14.
[450] *Shoel Ka-Inyan,* 14.
[451] Ibid., 14.

neighborhood. He argues that the Mississippi River did not adequately enclose the entire eastern side of the city since the river did not run in a straight line and even the streets that ran near the river were more than 10 amot from the river.[452]

Regarding the southern border of the *eruv*, Rabbi Jaffe claims that the River Des Peres was nothing more than a crevice that was dry most of the year. It had several bridges spanning this crevice. He also claimed that there were no river banks in St. Louis that rose 10 *tefahim* above the water line. Therefore, the river banks did not create acceptable *eruv* boundaries. Given the fact that the river banks did not rise above the water line, Rabbi Jaffe argues that the risk of the rivers freezing in the winter negated the rivers as acceptable *eruv* boundaries. In addition, he claims that the banks of the Mississippi River tended to be eroded by the strong flow of the river.[453]

Rabbi Jaffe raises several questions concerning the *eruv* boundaries on the northern side of the city. First, he asks, what role the Mississippi River played as a boundary on the north since Rabbi Rosenfeld claims that it was separated from the city by artificial embankments. Furthermore, Rabbi Jaffe questions the existence of these artificial embankments. He claimed that in America all such embankments were leveled out. Finally, he explained that even if there were some small embankments

[452] *Teshuvah Ka-Halakhah*, 27 and no. 10 (the page numbers are out of order at the beginning of *Teshuvah Ka-Halakhah*).
[453] Ibid.

closer to the city, they were still too far from the houses to be considered valid *eruv* boundaries.[454]

As far as the *eruv* boundaries on the western side of the city, Rabbi Jaffe rejects Rabbi Rosenfeld's use of telegraph lines as he had previously explained that they are not acceptable *tzurot ha-petah*. Therefore, Rabbi Jaffe focuses on Rabbi Rosenfeld's arguments that there were other acceptable boundaries on the west side. First, Rabbi Jaffe claims that the artificial trench that Rabbi Rosenfeld claims could serve as a boundary did not actually exist. There were some small furrows but they were far from the city. In addition, Rabbi Jaffe argues that the cemeteries were only one block long so the fences surrounding the cemeteries would not have provided adequate enclosure.[455]

Rabbi Rosenfeld delineates the *eruv* boundaries that he believed enclosed the Jewish community of St. Louis. Rabbi Jaffe disagrees with Rabbi Rosenfeld based on halakhic arguments that negated the use of these boundaries as well as questions whether Rabbi Rosenfeld's boundaries actually existed. Although it is possible to identify several of these boundaries based on the contemporaneous map, it is difficult to ascertain whether the trenches and embankments actually existed or whether the River Des Peres actually had river walls that could serve as *eruv* boundaries. Rabbi Rosenfeld seems to be intentionally vague in identifying some of these boundaries.

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[454] Ibid., 28.
[455] Ibid., 28-29.

The fact that he writes that the northern border was created by the Mississippi River when in truth the Missouri River runs to the north of St. Louis further highlights Rabbi Rosenfeld's lack of knowledge or intentional blurring of the details of the *eruv* boundaries. Given the importance of identifying these boundaries, both Rabbis Rosenfeld and Jaffe approached these questions with their own foregone conclusion about the ultimate acceptability of the *eruv*.

Leasing the City

Finally Rabbis Jaffe and Rosenfeld disagreed regarding the feasibility of leasing the city from the government authorities. Rabbi Rosenfeld addresses two issues in *Tikvat Zekhariah II*. First, he discusses whether the right to lease the property of a non-Jew from his *sekhiro u-lekito*, his tenant or agent, extends to leasing the property of a Jewish Sabbath violator living in the city. Rabbi Rosenfeld quotes the opinion of *Tosafot* who suggest that leasing from the *sekhiro u-lekito* only applies to leasing from a non-Jew and not from a Jew.[456] Rabbi Akiva Eiger argues that this is indeed the *halakhah* and leasing from the *sekhiro u-lekito* does not work from a Jew.[457] Rabbi Rosenfeld, however, claims that Rabbi Eiger is only addressing utilizing *sekhiro u-lekito* on behalf of an observant Jew which he does not permit. However, even Rabbi Eiger would allow leasing from the *sekhiro u-lekito* of a Sabbath violator. Rabbi Rosenfeld bases his opinion on the view of Rabbi Meir of Rothenberg who claims

[456] *Tosafot, Eruvin* 70a-b s.v. *yoresh*.
[457] Rabbi Akiva Eigder, *Gilyon Ha-Shas, Eruvin* 80a s.v. *de-ishto*.

that, since we treat the Sabbath violator as a non-Jew, all the laws of *eruvin* that apply to non-Jews apply to Sabbath violators.[458]

Second, he addresses the question whether the categories introduced by Rabbi Isaac ben Sheshet regarding the ability to lease the property of the non-Jews from government officials applied in the United States. Rabbi Isaac ben Sheshet wrote that if the government official had the right to place objects in the homes of the city or the right to alter the public roads, the city could be leased from him for the purpose of creating an *eruv*.[459] Rabbi Rosenfeld believed that this level of authority was satisfied in the United States. First, he claims that, since the city government had the right of eminent domain-to acquire land and to demolish homes on it if the government determined that it needed the area for new roads-city officials were considered authorities from whom the area could be leased. Furthermore, he argued that, since the government authorities also had the right to issue warrants to enter homes and if they were not admitted they could break down the door, such authorities had the status of the city official required by Jewish law. Finally, the fact that the municipal health department representatives could examine the hygienic conditions of each home gave them a right of entry. He concluded by explaining that, since these local officials including police officers and all city authorities involved in municipal matters were elected by the people and receive their salaries from the people of the city, they have

[458] *Rabbenu Asher, Eruvin* chapter 6, no. 13. For Rabbi Rosenfeld's discussion of this topic, see *Tikvat Zekhariah II*, 36-38.
[459] *Rivash*, no. 427.

the status of *sekhiro u-lekito* and lease of the city may be done through any one of them.[460]

Rabbi Jaffe criticized the manner in which Rabbi Rosenfeld leased the city from a local policeman. He describes the way in which Rabbi Rosenfeld actually leased the enclosed area:

> The scholar who permitted the *eruv* was very proud of his discovery and he asked some of his people to give something to a policeman. They gave the policeman something to satisfy him and he sold him the authority for the entire city. And, he added in a joking manner that he was also selling them Chicago. (This is true for he had just as much right to sell Chicago as he did to sell St. Louis)…In all the cities in America they are just waiting for rabbis to adopt this discovery….for with this idea, he wanted to allow an *eruv* in Baltimore.[461]

Rabbi Jaffe asks by what authority did Rabbi Rosenfeld consider the policeman the *sekhiro u-lekito* of the city mayor. Rabbi Jaffe claims that in a democracy the mayor does not have the right to perform any action without the consent of the electorate and fulfillment of the laws of the land. Therefore, in America, one would not be allowed to lease the city for the sake of *eruvin* from the city mayor and the only way to create an *eruv* would be to lease the properties of each non-Jew in the city individually. He quotes the opinion of Rabbi Ezekiel Landau that even in a city where the local

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[460] *Tikvat Zekhariah*, II: 39-40. This view of Rabbi Rosenfeld regarding rental of the city is discussed by Bechhofer, 111-17.

[461] *Shoel Ka-Inyan*, 20. Rabbi Jaffe probably chose the example of Baltimore since Rabbi Rosenfeld had lived in Baltimore before moving to St. Louis. There is no reference in Rabbi Rosenfeld's writings to an attempt to create an *eruv* in Baltimore.

authority can categorically lease property to the Jewish community, if there are certain houses that are excluded from the official's authority, they must be leased separately.[462] Rabbi Jaffe argues that every house in the United States would fall into the category of those houses excluded from the authority of the local governmental officials . Finally, he makes fun of Rabbi Rosenfeld's suggestion to lease the city from the local policeman. He writes that this is merely: "words of laughter and the cause of a desecration of God's name" for the policeman does not have any special rights in the private houses in the United States.[463]

In *Teshuvah Ka-Halakhah*, Rabbi Jaffe elaborated on his view regarding the status of the local authorities regarding leasing of the city. He writes:

> In addition, no official has the authority to remove someone from his home, even if it is in the public's good, without paying the inhabitant of the home. This is not what the permitting rabbi wrote as he does not know the truth. Yet, this is known to every child in America. Furthermore, all the rest of his arguments are useless words for even the officer who is called a detective can only enter homes against the will of the owner in a case of suspected robbery but not for other reasons. In addition, there is a problem because the policemen are replaced every year.[464]

Rabbi Jaffe elaborates on this issue in a reply to Rabbi Naphtali Hertz Vaidenboim of Jaffa who had written an approbation to *Shoel Ka-Inyan* but had questioned Rabbi

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[462] *Noda Bi-Yehudah, Madurah Tinyana*, no. 32.
[463] Ibid, 21-22.
[464] *Teshuvah Ka-Halakhah*, 20.

Jaffe's claim regarding the inability to lease the area from a local government official. Rabbi Vaidenboim argued that the mayor had the status of the *sekhiro u-lekito* of the residents of the city. Rabbi Jaffe responded by quoting the opinion of Noah Zevi Hayyim Berlin, an eighteenth century German rabbi who authored a volume entitled *Azei Almogim* on the laws of *eruvin*, who claims that the ability to lease the properties of non-Jews from a government official is dependent on whether the official has the right to evict the residents from their homes for not paying their taxes.[465] Rabbi Jaffe writes that since in the United States people cannot be evicted from their homes for not paying taxes property cannot be leased by these government officials.[466]

In addition, Rabbi Jaffe argues with Rabbi Rosenfeld about the ability to lease the property of a non-observant Jew from the *sekhiro u-lekito*. Rabbi Jaffe argued that the property of a Jew cannot be leased from the *sekhiro u-lekito*. Rabbi Jaffe quotes the opinion of Noah Zevi Hayyim Berlin who wrote that the property of a Sadducee or a *mumar*, a Jew who has rejected Judaism, may not be leased from the *sekhiro u-lekito*.[467] Rabbi Jaffe added that "Most of the Jews here, both the wealthy and the poor Jews, are public Sabbath violators and reject the basic principles of the Sabbath."[468]

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[465] Noah Zevi Hayyim Berlin, *Sefer Azei Almogim* (Brooklyn, 1977), no. 391.
[466] Teshuvah Ka-Halakhah, 31, and 34.
[467] *Sefer Azei Almogim*, no. 391.
[468] *Teshuvah Ka-Halakhah*, 20.

Rabbi Jaffe concluded this section arguing that this discussion about leasing the space is theoretical, because leasing is not sufficient in a *reshut ha-rabbim* such as St. Louis where walls and doors must be erected.

Social-Religious Context

Although legal arguments occupy the majority of these volumes, both Rabbis Jaffe and Rosenfeld also explained their positions based on their view of the American Orthodox community at the time. Rabbi Rosenfeld begins his volume with a comment about the situation of Orthodoxy in America at the time. He writes:

> I arrived in this nation and I witnessed even many of the religious Jews carrying on the Sabbath. A religious Jew is not embarrassed to carry his *talit* in public and to wear it in the synagogue. I said to myself, what should I do for the sake of my people to remove this terrible sin. If I raise my voice like the *shofar* to decry the severity of the prohibition, I know that my words will not make an impact because people have already become accustomed to carrying on the Sabbath. In addition, the preachers in this country have already set the standard of raising their voices, stamping their feet, clapping their hands and shaking every limb in their bodies to criticize the actions of the people. Yet they have been unsuccessful and their words have been ignored. If I get upset and embarrass the sinner, I will have nothing to my credit other than my anger…. I therefore have decided to return to the words of the law and to look for a way in which the Jewish tradition would allow for carrying on the Sabbath…. When I was appointed rabbi in St. Louis, I continued my search and I found a correct and acceptable way to permit carrying on the Sabbath."[469]

[469] *Tikvat Zekhariah II*, Introduction, 3-4.

Rabbi Rosenfeld takes a critical approach towards the American Orthodox community claiming that not only did they look for leniencies, but, they actually carried on the Sabbath. However, he believes that an *eruv* could be created in St. Louis and would be much more effective in curbing Sabbath violation than public criticism and rebuke.

Rabbi Jaffe begins *Shoel Ka-Inyan* with the following introduction:

> Recently a rabbi has come to St. Louis and has permitted carrying on the Sabbath with made-up arguments that have no basis at all. Worse than that, he has built an entire structure on these arguments, one that permits carrying on the Sabbath in all American cities. Furthermore, violators are rampant in this generation and those in America hang on to his coattails and argue that 'it is preferable to be permissive.' And, this matter can easily become a plague in the cities of America, for what will prevent other rabbis from permitting that which is prohibited merely to gain the favor of the masses? Furthermore, some have claimed that this rabbi will allow them to keep their stores open on the Sabbath through the sale of the store to one of their non-Jewish employees. Indeed, some people who are concerned about the money that they are losing on the Sabbath are asking me to permit their stores to remain open just as this rabbi has done. The Sabbath is thereby violated even by those who consider themselves religious and the essence of the Sabbath will be forgotten.[470]

Rabbi Jaffe continued to explain that he had written this volume to alert the Jewish community to the defective nature of Rabbi Rosenfeld's arguments.

In this introduction, Rabbi Jaffe made several claims against the American Orthodox community. First, he argued that they were always seeking leniencies and

[470] *Shoel Ka-Inyan*, 1.

would, therefore, "hang onto the coattails" of rabbis such as Rabbi Rosenfeld. Furthermore, he was concerned that the St. Louis *eruv* would start a wave of *eruvin* building in North America, all built based on the incorrect leniencies expressed by Rabbi Rosenfeld. In these arguments, Rabbi Jaffe combined a criticism of the American Orthodox community with a desire to save it from Sabbath violation.

Rabbi Jaffe also included an introduction to *Teshuvah Ka-Halakhah*. In this introduction, Rabbi Jaffe elaborated on his view concerning the status of the *eruv* and the general Jewish religious climate in America:

> And he added a sin upon his sin by publishing a volume permitting carrying on the Sabbath entitled *Tikvat Zekhariah* (The Hope of *Zekhariah*) in which he hoped that the people would listen to his suggestion. I will tell the truth to the rabbis and scholars. Had he had tried to permit this act and published a book allowing it in Europe, a place where no serpents exist nor rabbis who are not scholars, I would not have bothered to publish my work against him for who would have listened to him? However, in America where we have been exiled to a place of "evil waters," where people wait with open eyes for rabbis to permit activities and praise the words of those who are lenient, the risk is great. Most of the people here are not scholars and are involved in the necessities of the day…The rabbi who has given permission carries on the Sabbath in public and he has instructed one of the righteous slaughters to carry so that people will learn that it is permissible.[471]

Once again, Rabbi Jaffe was critical of the American Orthodox community comparing it unfavorably with the Orthodox community in Eastern Europe. In addition, in Rabbi

[471] *Teshuvah Ka-Halakhah*, 10-11.

Jaffe's eyes, the fact that Rabbi Rosenfeld would require one of the religious officials of the community to rely on the *eruv* meant that this *eruv* was creating serious religious divisions within the community. If the slaughterer carried on the Sabbath in St. Louis, his reliability regarding producing kosher meat would be affected.

These introductions provide background to appreciate the disparate views of Rabbis Jaffe and Rosenfeld concerning American Orthodoxy at the time. For immigrant rabbis, the lack of observance and the desire for leniencies on the part of community presented the rabbis with a dilemma either to accommodate to or to continue to battle. However, in this specific instance, the fact that Rabbi Jaffe did not reject the benefits of building *eruvin* in America is instructive. He opposed the *eruv* of Rabbi Rosenfeld because he believed that it did not meet the necessary legal standards. Yet, he did not argue that an acceptable *eruv* would be inappropriate for the American Orthodox community in general. However, the view that *eruvin* should not be built in America was expressed by Rabbi Eliezer Grayewsky, the Jerusalem rabbi who published Rabbi Jaffe's volumes on the St. Louis *eruv*. He also wrote notes on Rabbi Jaffe's *Shoel Ka-Inyan* and *Teshuvah Ka-Halakhah*. At the conclusion of his notes, he wrote:

> All that Rabbi Shalom Elchanan wrote is correct…Yet, I do not know why the permitting rabbi entered this problematic area to permit this violation for which the punishment is stoning. Is it for the sake of the Sabbath violators who sit all Saturday in their stores and sell and write as if it is a weekday? Do they need the *eruv*? Is it for the sake of those who are Sabbath observers? It is a sin to permit these people to carry on the Sabbath with forced arguments and this will

> create a basis for a great breach throughout America. For if we follow his argument, we should permit carrying throughout the world due to the fact that the world is surrounded by the Atlantic Ocean.[472]

Rabbi Grayewsky argued that it was inappropriate to create an *eruv* to prevent a sin from those who purposely violated the Sabbath and that an *eruv* for those who observe the Sabbath must not be based on leniencies. Although it is possible that Rabbi Grayewsky did not properly understand the religious situation in America, his opposition to the building of an *eruv* in a situation where the *eruv* would prevent individuals who were otherwise Sabbath violators from violating the Sabbath stood in stark contrast even to Rabbi Jaffe who rejected Rabbi Rosenfeld's *eruv* but accepted the importance of community *eruvin* where constructed according to *halakhah*.

A final point of debate between Rabbis Jaffe and Rosenfeld centered on the way each of these rabbis viewed his rabbinic authority in the United States. Rabbi Rosenfeld wrote in the introduction to *Tikvat Zekhariah II*, "As I am a wanderer and few know me in this country, and people will definitely say, 'Who is this man who has come to make innovations that have never been practiced until now?'[473] Therefore, he decided to send his treatise to Rabbi Isaac Elchanan Spektor in Kovno, the great Lithuanian rabbinic authority, for approbation. Rabbi Spektor replied that it was difficult for him to enter a discussion concerning the streets of America with which he

[472] *Teshuvah Ka-Halakhah*, 30.
[473] *Tikvat Zekhariah II*, Introduction, 5.

was not familiar. Instead, he suggested that Rabbi Rosenfeld approach Rabbi Jacob Joseph, the Chief Rabbi of New York, for approbation.[474] Rabbi Joseph's approbation appears on the first page of *Tikvat Zekhariah II*.

Whereas Rabbi Rosenfeld wrote that he was sending his responsum to Rabbi Spektor for approval, Rabbi Jaffe took a different approach. Rabbi Jaffe concluded his introduction to *Shoel Ka-Inyan* explaining that, although, he had sent his responsum against the *eruv* to many rabbis in America, the supporters of Rabbi Rosenfeld claimed that the rabbis with whom Rabbi Jaffe consulted were not capable of challenging the arguments of Rabbi Rosenfeld, who was accepted as a great rabbinic scholar. Therefore, Rabbi Jaffe wrote, he decided to publish his own volume against the *eruv* and send the approbation to the rabbis in Jerusalem, whose "words are holy." If these rabbis would agree with him, then his argument would be accepted as definitive.[475]

In order to receive the approbation of the Jerusalem rabbis, Rabbi Jaffe sent a long letter to Rabbi Shmuel Salant, the Chief Rabbi of the Ashkenazic community in Jerusalem at the time,[476] asking for his approbation regarding Rabbi Jaffe's views on the *mikveh* and *eruv* in St. Louis. Regarding the *eruv*, Rabbi Jaffe wrote to Rabbi Salant, "[I am sending you] my responsum concerning the *eruv* and carrying on the

[474] Ibid., Introduction, II: 5-6.
[475] Ibid.
[476] For a short, yet interesting biography of Rabbi Salant, see his obituary in *The New York Times*, August 17, 1909, p. 7.

Sabbath that has been permitted by a new rabbi in the city. Already, the other rabbis in America have joined in opposing this *eruv*."[477] In his approbation, Rabbi Salant wrote:

> I am happy to know and to see that also in America there are rabbis who are Torah scholars. It would be fortunate that their numbers should increase in all cities in America and that the generation will listen to the voices of the rabbis to follow the path of Torah and commandments.[478]

Although Rabbi Salant's approbation does not directly address the issues of *mikveh* or *eruv*, it provides support and credibility for Rabbi Jaffe. In addition, Rabbi Jaffe sent a request for approbation to Rabbi Grayewsky of Jerusalem. Rabbi Jaffe claims that Rabbi Grayewsky had visited St. Louis and understood the layout of the city. Rabbi Grayewsky agreed with Rabbi Jaffe's assessment that an *eruv* could not be established in St. Louis.[479] Rabbi Jaffe believed that including these approbations from the Jerusalem rabbinate gave credibility to his view.[480]

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[477] *Shoel Ka-Inyan*, 37-44.
[478] Ibid., no page number. It is the first page following the title page.
[479] In *Teshuvah Ke-Halakhah*, 28, Rabbi Jaffe wrote that his friend Rabbi Grayewsky had been to St. Louis and knew the layout of the city. In *Shoel Ka-Inyan*, 45, Rabbi Grayewsky wrote that he knew the layout of the city but did not mention that he had visited. In his letter of Introduction to *Shoel Ka-Inyan*, Rabbi Grayewsky felt the need to justify his publication and writing of notes on a contemporaneous volume even though notes are usually only written on old books. He explained that he took an interest in this book due to the request of Rabbi Jaffe and the difficult situation of American Jewry. He also explained that Rabbi Jaffe had the book published in Jerusalem because it was less expensive than publishing it elsewhere. See *Shoel Ka-Inyan*, 5-10.
[480] When Rabbi Jaffe published *Teshuvah Ke-Halakhah* in 1896, he included another approbation from Rabbi Salant, co-signed by Rabbi Shneur Zalman Fradkin of Jerusalem, stating that telegraph poles could not be used to establish *eruv* boundaries

In *Teshuvah Ka-Halakhah,* Rabbi Jaffe seeks to strengthen his ties to the Jerusalem rabbinate while, at the same time, undermining Rabbi Rosenfeld's reliance on Rabbi Spektor. On the introductory page of *Teshuvah Ka-Halakhah,* Rabbi Jaffe explains that he showed both *Shoel Ka-Inyan* and *Tikvat Zekhariah II* to four rabbis in Israel who agreed with his arguments prohibiting carrying in St. Louis on the Sabbath. In addition to the letters written by Rabbi Salant and Rabbi Grayewsky, Rabbi Jaffe included letters written by Rabbi Naphtali Hertz HaLevi Vaidenboim of Jaffa and Rabbi Shaul Chaim Hurowitz of Jerusalem. Both of these letters addressed the issue of telegraph poles and wires as *eruv* boundaries and concluded that they could not be utilized, since they fell into the category of *tzurot ha-petah min ha-tzad*.[481]

In an attempt to undermine Rabbi Rosenfeld's reliance on Rabbi Spektor, Rabbi Jaffe added the following anecdote in his introductory remarks. He claimed that he was told by his friend Rabbi Grayewsky of Jerusalem that Rabbi Grayewsky had heard from the rabbinical judge of Jerusalem, Rabbi Chaim Yaakov Spira, that, when Rabbi Spira was a rabbi in Kovno, he assisted Rabbi Spektor, who had been asked by the Kovno community to erect an *eruv* using telegraph lines. He said that, after Rabbi Spektor was made aware of the fact that Rabbi Spira's grandfather, Rabbi Aryeh Leib Spira, the former rabbi of Kovno, had opposed the utilization of telegraph wires as *eruv* boundaries, Rabbi Spektor stopped building the *eruv*. Therefore, concluded Rabbi

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as they constituted *tzurot ha-petah min ha-tzad*. Rabbi Fradkin was a well-known rabbinic authority and author in Jerusalem.

[481] *Teshuvah Ka-Halakhah*, 2-8.

Jaffe, if Rabbi Rosenfeld continued to argue for the validity of his *eruv* against the decision of the rabbis of Jerusalem and what seems to be the view of Rabbi Spektor, he would be considered a *zaken mamre*, one who had rejected the official authority, and his punishment would be harsh.[482]

Both Rabbis Jaffe and Rosenfeld felt that their volumes needed approbations from rabbis whose authority would provide legitimacy to their respective positions. Rabbis Jaffe and Rosenfeld believed that these approbations must be from rabbis who lived in the rabbinic centers of Jerusalem and Lithuania. This decision to approach rabbis outside of the United States reflected their unease with their positions in the United States. Rabbi Jaffe referred to the fact that he did not have the authority to argue with Rabbi Rosenfeld, who was respected among American rabbis, whereas Rabbi Rosenfeld acknowledged that he was unknown in America. Rabbis Rosenfeld and Jaffe's ability to approach and to rely upon rabbinic authorities from Jerusalem and Kovno provided the necessary support for these two immigrant Orthodox American rabbis.[483]

Although Rabbis Rosenfeld and Jaffe seem to give more weight to the approbations from the leading rabbinic authorities in Lithuania and Jerusalem, each of

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[482] *Teshuvah Ka-Halakhah*, 1-2.

[483] For a discussion of approbation in rabbinic volumes written in America, see Menahem Blondheim, "Ha-Rabbanut ha-Ortodoksi Megaleh et Amerikah: Ha-Geografia shel ha-Ruah be-Mitavim shel Tikshoret," in Miri Eliav-Feldon, *Be-Ikvot Columbus: America 1492-1992* (Jerusalem, 1996), 483-510.

them also sought and received approbations from American rabbis. Rabbi Rosenfeld received approbations from Rabbi Shabsi Rosenberg of Brooklyn, Rabbi Joseph Komissarsky of Chicago, Rabbi Todros Yukel Tikton of Chicago, Rabbi Abraham Levinson of Baltimore, Rabbi Bernard Levinthal of Philadelphia and Rabbi Moshe Sivitz of Pittsburgh. He also received approbation from Rabbi Meir Feimer of Slutz.[484] Each one of these approbations praised Rabbi Rosenfeld for his initiative in creating the *eruv* and his knowledge of the rabbinic sources. None of them addressed the substantive issues in *Tikvat Zekhariah* and no rabbi claimed to have visited St. Louis to check the *eruv* description.

Rabbi Jaffe included letters of approbation from American rabbis at the beginning of *Teshuvah ka-Halakhah*. He included letters from Rabbi Joshua Seigal of New York, Rabbi Abraham Lesser of Chicago, Rabbi Chaim Widerwitz of New York and Rabbi Dov Baer Abramowitz of New York.[485] These approbations praise Rabbi Jaffe for his willingness to oppose the *eruv* in St. Louis but do not address the

[484] Rabbi Rosenberg's approbation appears on page 2 on *Tikvat Zekhriah*. The JNUL copy of *Tikvat Zekhariah* contains three unnumbered leaves following page 2. The first leaf contains the approbations of Rabbi Komissary, Rabbi Tiktin and Rabbi Levinson. The second leaf contains an approbation from Rabbi Feimer of Slutsk and the third leaf contains approbations from Rabbi Levinthal and Rabbi Sivitz. The copy in JTA contains one additional leaf after page 2 with approbations from Rabbis Komissary, Tiktin and Levinson. The copy in Agudas Chassidei Chabad Ohel Yosef Yitzchak Lubavitch does not contain any additional leaves after page 2. For a discussion of the different editions, see *Hebrew Printing in America* II: 974.

[485] Rabbi Seigel was the author of *Eruv Ve-Hoza'a* (New York, 1907), describing the *eruv* on the East Side of Manhattan. See chapter 6 for a discussion of this *eruv* and how Rabbi Seigel could oppose the St. Louis *eruv* while promoting the *eruv* on the East Side of Manhattan.

substantive issues. Moreover, Rabbi Abramowitz claimed that Rabbi Jacob Joseph was ill and could not have properly evaluated the situation in St. Louis.

Conclusion

The debate between Rabbis Jaffe and Rosenfeld is instructive in understanding the history of the creation of community *eruvin* in North America. First, as the first *eruv* in North America, it had the potential to provide a model for other American *eruvin*. Both Rabbis Jaffe and Rosenfeld understood the possibility that other cities could follow the lead of the St. Louis *eruv*. At the beginning of *Shoel Ka-Inyan*, Rabbi Jaffe wrote, "He [Rabbi Rosenfeld] said that it was permissible to carry in all cities in America."[486] Rabbi Jaffe was afraid that other communities would model their *eruv* on Rabbi Rosenfeld's lenient position regarding the St. Louis *eruv*. In addition, Rabbi Jaffe wrote that "all cities in America are constructed like this [St. Louis]."[487] If all cities were constructed in the same way, it is easy to understand Rabbi Jaffe's fear. Did Rabbi Rosenfeld intend that his initiative be copied in other American cities? Rabbi Rosenfeld wrote in the introduction to *Tikvat Zekhariah II*, "My soul would rejoice if other worthy people would attempt to find a way to remove this source of shame of sin from the people [and find a way to allow carrying on the Sabbath]".[488] The idea of following Rabbi Rosenfeld's initiative was reflected in one of the approbations given to *Tikvat Zekhariah* by Rabbi Todros Yukel Ticktin of Chicago in

[486] *Shoel Ka-Inyan*, 1.
[487] Ibid., 2.
[488] *Tikvat Zekhariah II*, Introduction, 5.

which he wrote that he hoped that rabbis in other cities would follow Rabbi Rosenfeld's example.[489]

The distinction of the St. Louis *eruv* was not only the fact that it was the first *eruv* in America. It was also the first city *eruv* that addressed the issue of whether an *eruv* could be created in a city that had a population in excess of 600,000. The earliest mention of the issue of 600,000 people in Eastern Europe, regarding the Odessa *eruv*, did not take place until 1899. Although the issue of using telegraph poles and river banks as *eruv* boundaries had been discussed in numerous cases in Europe, there was no precedent regarding an *eruv* in a city whose population exceeded 600,000. This issue arose in St. Louis and presented a wide range of issues, including the questions of how to properly determine the exact population of the city and whether people traveling in trolley cars were counted as part of the population. In addition, Rabbi Rosenfeld addressed the issue whether there was any way to construct an *eruv* around a city that does have a population that exceeds 600,000 people.

Ephraim Deinard, the author and polemicist, wrote, in 1913, about the *eruv* debate in St. Louis. He claimed that "The uncompromising rabbis who opposed the *eruv* placed the Jewish community of St. Louis in turmoil."[490] Deinard suggests that in addition to the halakhic battle that accompanied the creation of the St. Louis *eruv*, the

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[489] *Tikvat Zekhariah II*, JNUL copy.

[490] Ephraim Deinard, *Sifrut Yisrael B'Amerika* (Jaffa, 1913), II: 109, and Deinard, *Kohelet Amerika* (St. Louis, 1926), II: 147. Deinard referred to rabbis in the plural form to include those rabbis who had given approbations to Rabbi Jaffe's works.

Orthodox community was divided whether to rely on this *eruv*. Although he placed the blame for the controversy on Rabbi Jaffe and his supporters, the turmoil that he described was real. A small Jewish community in which some of its members carry on the Sabbath and others do not will undoubtedly experience friction and tension among both laymen and rabbis. In this matter as well, the St. Louis *eruv* provided an example of the friction that *eruv* battles can create.

Yet, although the St. Louis *eruv* controversy touched on the issues of the Orthodox Jewish community in America at the end the nineteenth century and the practical challenges that the rabbis faced in addressing the needs of this community, the fundamental controversy revolved around the relationship between the halakhic arguments that were made by Rabbis Rosenfeld and Jaffe and the realities of the city of St. Louis and its natural and man-made structures. In St. Louis, the rabbis argued not only about the halakhic status of the *eruv* but about whether the *eruv* boundaries really existed. In *Teshuvah Ka-Halakhah*, Rabbi Jaffe dismissed Rabbi Rosenfeld's *eruv* by arguing that that the boundaries were not as Rabbi Rosenfeld had described them. In the case of the rivers, Rabbi Jaffe claimed that that the River Des Peres was not really a river and therefore could never serve as an *eruv* boundary. In addition, Rabbi Jaffe claimed that the Mississippi River did not actually enclose the entire east side of St. Louis and, therefore, could not serve the function of an *eruv* boundary as Rabbi Rosenfeld described. Finally, were there artificial embankments as Rabbi

Rosenfeld claimed or were such embankments not found in America as Rabbi Jaffe argued?

It is impossible to determine which description of the St. Louis area is correct. The rabbis who wrote letters of approbations did not visit St. Louis to examine the boundaries. Even Rabbi Grayewsky, who purportedly once visited the city, lived at the time in Jerusalem and could not be considered an authority on the details of the city's topography. In light of the absence of evidence, the only alternative is to try to reconstruct the thinking of each of these rabbis as they approached the issue of the St. Louis *eruv*. Rabbi Rosenfeld explained that he believed that it was necessary to create an *eruv* around St. Louis to prevent Jews from violating the Sabbath. He received encouragement from Rabbi Jacob Joseph who had been referred by the premier rabbinic sage of the period, Rabbi Spektor of Kovno. Yet, as Rabbi Jaffe pointed out, it was not possible to build *tzurot ha-petah* in St. Louis at the time. Therefore, the *eruv* would have to be constructed from existing natural and man-made boundaries. Did Rabbi Rosenfeld actually survey the city and its outlying areas? Did he explore the rivers and walk along the telegraph poles? Did he know that the population of the city did not exceed 600,000? Or, did he decide that an *eruv* must be built in St. Louis and then determine the boundaries of the city in order to justify that decision.

Rabbi Jaffe clearly believed that Rabbi Rosenfeld had decided that an *eruv* must be created and fabricated the details concerning the structure of the boundaries in order to satisfy the requirements for the *eruv*. Rabbi Jaffe felt so strongly that Rabbi

Rosenfeld was mistaken that he wrote two volumes opposing the *eruv*, the first one focusing primarily on the halakhic issues while the second volume addressed the realities in a more direct fashion. How would Rabbi Rosenfeld respond to this criticism? We do not know, because Rabbi Jaffe got in the last word on this debate in his *Teshuvah Ka-Halakhah*. Yet, there is some evidence from contemporaneous drawing of St. Louis that at least some of the telegraph wires ran on top of the crossarms as Rabbi Rosenfeld claims and that there were raised embankments on the northern edge of the city.[491]

The Jewish community of St. Louis moved to the western part of the city in the 1920s and 1930s and was no longer enclosed by Rabbi Rosenfeld's *eruv* boundaries.[492] However, this first documented *eruv* in North America stood at a critical juncture in the development of city *eruvin*. Both Rabbis Rosenfeld and Jaffe used precedent in supporting their views regarding the St. Louis *eruv*. From their debate regarding the advisability of creating community *eruvin* to their disputes concerning the use of telegraph lines and river walls, the earlier halakhic discussion laid the groundwork for the debate in St. Louis. Finally, their dispute concerning the manner in which the 600,000 is calculated and the status of streets which had cars and

[491] St. Louis Graf Engraving Co., c1896 and Compton, Richard J., and Dry, Camille N., *Pictorial St. Louis, the Great Metropolis of the Mississippi Valley; A Topographical Survey Drawn in Perspective A.D. 1875*; Plate 80.
[492] For a history of the St. Louis Jewish community in the 1920s and 1930s and its move westward, see *Zion in the Valley*, II: 46-9.

trolleys travelling on them was based on halakhic precedent which was applied to situations that had not been the reality regarding earlier *eruvin*.

Yet, the importance of the St. Louis *eruv* in the history of city *eruvin* in North America can only be measured by the utilization of the material in the works of Rabbis Rosenfeld and Jaffe in the literature regarding other *eruvin* that would be created in North America. Rabbi Spektor had written that he could not offer a halakhic opinion regarding the streets of America with which he was not familiar. Yet, as the Jewish communities in America grew in the first part of the twentieth century American rabbis became familiar with the topography of American cities and the relevance of this material to the creation of city *eruvin*. Did they use this knowledge to create *eruvin* in other cities and, if so, did they rely on the precedent of the St.Louis *eruv*? The answer to this question will be explored in the coming chapters.

CHAPTER 5

The East Side of Manhattan *Eruv*

The creation of the *eruv* in New York City in 1905 and the opposition to its creation reflected the complex and diverse Jewish community of the Lower East Side at the beginning of the twentieth century. This chapter will explore the background of this community and the sources of the dispute concerning the *eruv* in an attempt to understand the halakhic debate that took place regarding this *eruv* and how this debate highlights the evolution of the creation of city *eruvin* in North America.

New York City, and especially the Lower East Side, played a critical role in the experience of immigrants to the United States. Of more than twenty-three million immigrants to the United States between 1880 and 1920, seventeen million came through the port of New York. No group outdid the Jews in this regard. By 1892, 75 percent of New York's Jews lived on the Lower East Side and the number reached its peak of 542,000 in 1910.[493]

The Jewish neighborhood of the Lower East Side extended from just north of Houston St., south to Monroe St., west to the Bowery and east to the East River. Even

[493] For a discussion of Jewish immigration to the United States prior to 1881, see Hasia R. Diner, *A Time for Gathering: The Second Migration 1820-1880* (Baltimore, 1992), 49-56 and the period following 1880, see Gerald Sorin, *A Time for Building: The Third Migration 1880-1920* (Baltimore, 1992), 69-108.

in this small area, the Jewish community was divided based on it various places of origin. The Hungarian Jews lived in the northern quarters of the Lower East Side. The Galician Jews lived to the south and the Romanians lived on the western tip of the neighborhood. The remainder of the area, from Grand St. south to Monroe St., was the home of the group referred to as the Russian Jews. These Jews arrived from Russian Poland, Lithuania, Byelorussia and the Ukraine. This conglomeration constituted the most numerous of all of the Jewish groups on the Lower East Side.[494]

Organized religious life on the Lower East Side predated the great wave of immigration of the last two decades of the nineteenth century. In 1852, the first Russian-American Jewish congregation, Beth Hamidrash, was organized on the Lower East Side. Abraham Joseph Ash, a rabbi from Grodno, Poland, was one of the founders of this congregation. In 1853, Rabbi Ash became rabbi of the congregation at the salary of $2 a week. In 1859, following a dispute with the *parnas* of the congregation, Rabbi Ash led a group of followers to form the new Beth Hamidrash Hagadol. In 1876 he took up the business of importing kosher wine from California

[494] Moses Rischin, *The Promised City: New York Jews, 1870-1914* (Cambridge MA, 1962), 76. An academic history of the Jews of the Lower East Side is yet to be written. Rischin's volume contains the most important material and set the stage for all subsequent work on the topic. See Hasia Diner, *Lower East Side Memories: A Jewish Place in America* (Princeton, N.J., 2000), p. 186, n. 47 for a discussion of the attempts to write a history of the Lower East Side.
Shaul Stampfer has examined the origins of these immigrants through a study of the *landsmanschaft* organizations in New York. See Shaul Stampfer, "The Geographic Background of East European Jewish Migration to the United States Before World War I," in *Migration Across Time and Nations: Population Mobility in Historical Contexts*, ed. Ira A. Glazier and Luigi De Rosa (NY, 1986), 220-230.

and in the spring of 1877 he resigned his rabbinic position. In the fall of 1879, because his business was failing, he resumed his rabbinic functions at a salary of $25 per month. [495]

Although the Orthodox community had grown in the years prior to 1881, the development of the Orthodox community of the Lower East Side really took shape in the 1880s. The selection process of a Chief Rabbi in New York during this decade highlights the struggle for structure in this community and provides important background to the understanding of the creation of the New York City *eruv*.[496] Rabbi Ash of Beth Hamidrash Hagadol died in the spring of 1887 and a search began almost immediately for a Chief Rabbi of New York. A search committee was formed, announcements were placed in Jewish periodicals in Russia and eight Eastern European rabbis were asked for their recommendations. In these request letters, the rabbinic leaders of Eastern Europe were advised by the search committee:

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[495] Judah D. Eisenstein, "The History of the First Russian-American Jewish Congregation," *Publications of the American Jewish Historical Society* 9 (1901): 64-71 and Moshe D. Sherman, *Orthodox Judaism in America: A Biographical Dictionary and Sourcebook* (Westport, CT., 1996), 20-21.

[496] The classic treatment of this episode in New York Jewish history was presented by Abraham Karp in "New York Chooses a Chief Rabbi," *Publications of the American Jewish Historical Society* 44:3 (1955): 129-98 reprinted in Abraham J. Karp, *Jewish Continuity in America: Creative Survival in a Free Society* (Tuscaloosa, 1998), 145-90.(All references will be to the original and more complete article.) More recently, in 1996, Kimmy Caplan has provided some additional research on this topic based on a study of contemporaneous reports in the Jewish press and a study of the sermons of Rabbi Jacob Joseph. See Kimmy Caplan, "Rabbi Jacob Joseph, New York's Chief Rabbi: New Perspectives," *Hebrew Union College Annual* 67 (1996): Hebrew section. 1-43.

> After due deliberation we decided that it was not advisable that we choose a rabbi for ourselves alone and have each congregation elect a rabbi to serve that congregation alone. This is not advisable nor beneficial, for a number of reasons. First, each congregation would be concerned with its own welfare and not that of Judaism. Second, and this is most important, many improvements must be undertaken to raise the standard of Judaism in our own country, and if the Orthodox congregations do not unite, then there is no hope for the preservation and upbuilding of Judaism in our city.[497]

After several abortive attempts to find a Chief Rabbi for New York, a letter was sent to Rabbi Jacob Joseph of Vilna containing an urgent, almost desperate plea, asking him to assume the position.[498] He did not hesitate to accept, but insisted on a salary befitting the position and a six-year contract. Rabbi Joseph was at the time a community preacher in Vilna and one of its *dayyanim* (members of the rabbinic court). Vilna had not had a Chief Rabbi for over a century and a half and Rabbi Joseph was one of the rabbinic leaders of the city. He had studied in the Volozhin Yeshivah and

[497] This letter is found in J. D. Eisenstein, "History of the Association of American Orthodox Hebrew Congregations," *Ner Ha-Maaravi*, (I:11 1897): 9.

[498] The other candidate who was in serious contention for the position was Rabbi Zvi Hirsch Rabinovich, the son of Rabbi Isaac Elchanan Spektor, who had changed his name to protect himself from creditors. According to Karp, the representatives of the New York community did not appreciate the fact that Rabbi Zvi Hirsch was being forced upon them. In addition, they discovered that he was seriously in debt, that his wife had gone insane and that he had separated from her in a manner that led to criticism. (See Karp, 139-43). Caplan presented a different picture, quoting from a biography of Rabbi Spektor in which the biographer argued that the supporters of the *mussar* movement in Eastern Europe had been successful in raising large sums of money from the American Jews. As Spektor was an opponent of this movement, they were afraid that if his son became the Chief Rabbi, they would lose their support. So they exerted their pressure to make sure that one of the rabbis who supported the *mussar* movement would get the position. (See Caplan, 9-10).

had held several rabbinic posts before moving to Vilna. As an outstanding student, he had acquired the title *harif*, meaning sharp, and he had a reputation of being a charismatic public speaker.[499]

Rabbi Jacob Joseph arrived in America in July, 1888 and immediately the debate began about the role of the Chief Rabbi and his competence to fill that role. A correspondent of the *American Israelite*, the major English language Jewish newspaper of the period, had already asked in 1887, "What is the Chief Rabbi to do?" Some New York Jews questioned the salary that was being paid to Rabbi Joseph and others wondered how a rabbi who spoke only Yiddish could be a fitting representative of the Jewish community to the outside world. Rabbi Joseph delivered his first sermon on Sabbath afternoon, July 20, 1888. Beth Hamidrash Hagadol was filled and police were alerted to control the overflow crowd. His first appearance was widely acclaimed and he won over even his harshest critics. The editorial in the *American Hebrew*, the English language Jewish newspaper published by the American Hebrew Publishing Company, describing the event was entitled "An Agreeable Surprise."[500]

One of the problems that faced Rabbi Joseph as he began his tenure in New York was his title as the Chief Rabbi, or as he was called in Hebrew, *Rav ha-Kollel*. Despite the fact that this title had been used for centuries throughout the Jewish world to refer to chief rabbis of towns or provinces, his opponents in New York were quick

[499] Karp, 44-45 and Caplan, 4-9.
[500] Karp, 161.

to point out that "even Rashi was not privileged to be called the *Rav ha-Kollel*." Although the official title gave Rabbi Joseph the authority to unify the eastern European Orthodox community of New York under his leadership, the opposition to this title sought to undermine his position and his authority in the community.[501]

Rabbi Jacob Joseph's first order of business was to address the abuses in the area of kosher meat supervision. Rabbi Ash had suffered many indignities during his rabbinate from butchers who flouted his authority and attacked him personally. It was not uncommon for fistfights to break out among competing butchers and both the religious standards of kosher meat and the ordinances of the Board of Health were often disregarded. The new Chief Rabbi determined that the sole authority for the supervision of kosher meat must lie with his office. He felt that this would curtail the anarchy that reigned in this vital area. Rabbi Joseph believed that the cost of the supervision should be borne by the communal religious agency, the Association of American Hebrew Congregations. However, in order to pay the rabbinic supervsiors, he was forced to accept the imposition of a one-cent tax for the metal tag attached to each chicken. At that time, meat was consumed by all people, whereas poultry was considered a delicacy for the wealthy. Rabbi Joseph believed that it would be fair to levy the tax only on those people who purchased poultry.

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[501] Caplan 24-27. Caplan explained that there has yet to be a conclusive study of the term *Rav Ha-Kollel* and its use in American cities. Whereas in St. Louis, it was used as a title of relative importance vis a vis the other rabbis, in New York it reflected the fact that Rabbi Joseph was the rabbi of the entire Russian-Lithuanian Jewish community.

The new tax was announced through a circular in Yiddish followed by an English translation on September 18, 1888. Opposition to the tax began immediately upon the circulation of the announcement. Housewives protested the extra charge. The butchers resented any outside control of their business and the other Orthodox rabbis who performed their own kosher supervision saw a source of income being taken away from them.[502]

The attempt of the Chief Rabbi to organize the community's kosher supervision under one authority ultimately led to a further division within the community. From the beginning of his tenure in New York, Rabbi Joseph had envisioned a staff of rabbinic assistants. In April, 1888 an announcement was circulated to the congregations asking for "assistant rabbis to form with the Chief Rabbi a *beit din* thus to give proper attention to religious and judicial requirements of a Jewish community." In June, 1888, Rabbi Joshua Seigel, known as the Sherpser Rav, was offered the position as head of Rabbi Joseph's judicial court. Rabbi Seigel was a rabbi of vast learning and had been in New York since 1884. Therefore, he felt that the position of subservience to the Chief Rabbi was beneath his dignity and he declined. Rabbi Seigel was one of the rabbinic leaders of the Polish community on the Lower East Side. Although initially there had been little difference between the Polish and Lithuanian communities, the mass influx of Eastern European Jews in the 1880s, consisting largely of those from the northwest portion of the Pale of Settlement, but

[502] Karp, 163-66.

who considered themselves Russians or Lithuanians, created an atmosphere in which the Polish Jews considered themselves a neglected minority on the Lower East Side. Indeed, the Polish Jews felt that the search committee had explored only Lithuanian candidates for Chief Rabbi and therefore Rabbi Joseph was the Chief Rabbi only of the Lithuanian Jews.[503]

In July, 1888 this tension resulted in a split in the Orthodox community on the Lower East Side when Rabbi Seigel was declared Chief Rabbi of over 20 Galician and Polish congregations which were named the "Congregations of Israel, Men of Poland and Austria." The major activity of this new "Chief Rabbi" was likewise in the area of kosher supervision, and Rabbi Seigel had the advantage that most of the butchers were Polish Jews. The split within the community continued and the authority of Chief Rabbi Jacob Joseph was never again accepted by the entire community. Rabbi Joseph fell ill, was confined to his bed in 1895 and died on July 29, 1902.[504]

The attempt to appoint Rabbi Seigel as the head of Rabbi Joseph's rabbinical court and his subsequent split from the Chief Rabbi were significant events in the evolution of the Orthodox community on the Lower East Side. First, they reflected the fact that Rabbi Joseph's authority was only accepted by the Lithuanian community. Karp claims that Rabbi Joseph's effort to appoint Rabbi Seigel as the head of his rabbinical court was an attempt to win the favor of the Polish Jewish community on

[503] Ibid,, 173-74.
[504] Ibid., 174-180.

the Lower East Side. Whether or not this was true, Rabbi Joseph effort to prevent rival groups can be seen from his reaction to the report that the Galician Jews on the Lower East Side in 1889 had chosen Rabbi Moshe Rappaport, a Galician rabbi, as their *Rav ha-Kollel*, and invited him to come to New York to serve their community. Rabbi Joseph wrote a sharp letter to Rabbi Rappaport in which he urged the latter not to come to New York and undermine his position and livelihood.[505] In the end, the appointment of Rabbi Joseph as the *Rav ha-Kollel* in New York backfired by giving an opportunity to other rabbis and other communities to appropriate the title for their own purposes.

The split between Rabbi Seigel and the Lithuanian rabbinic community intensified following Rabbi Joseph's death. In February, 1902, several rabbis met in the home of Rabbi Moses Z. Margolies, a Lithuanian rabbinic scholar who immigrated to the United States in 1889 and became rabbi of Congregation Adath Israel in Boston.[506] They decided to invite leading American Orthodox rabbis to New York in July, 1902 to establish a rabbinic organization. The meeting was set for July 29, 1902. Coincidentally, when the rabbis arrived, they heard that Rabbi Jacob Joseph had died that day. The meeting was postponed until after the funeral and, after several days of meetings, 59 rabbis representing communities throughout the United States and

[505] Caplan, 14.
[506] For a biography of Rabbi Margolies, see Sherman, 143-44.

Canada founded the rabbinic organization called the *Agudath ha-Rabbonim*.[507] The purpose of this organization was to help Jewish immigrants who had strayed from religious practice to return to traditional observance. Their original charter called for the strengthening of the education system, improving the observance of the laws of the Sabbath, stricter regulation of the laws of kashruth and promoting careful observance of the rituals of family purity.[508] Membership in this organization was limited to "those who had been ordained by the prominent rabbis in Europe and who serve as rabbis in Orthodox congregations in the United States and Canada."[509]

Rabbi Seigel's name did not appear on the list of members of the *Agudath ha-Rabbonim*. Ben Zion Eisenstadt, a rabbi who immigrated to the United States from Kletzk, Belorussia, and served as a rabbi in Brooklyn and later became known as the author of volumes focusing on the biographies of rabbinic leaders, listed in his volume *Dorot ha-Aharonim* the members of the *Agudath ha-Rabbonim* and then listed those rabbis who opposed this organization and did not join. Rabbi Seigel's name appeared among the opposition.[510] It is not clear why Rabbi Seigel's opposed this organization. The other rabbis on the list of opponents included both Lithuanian and Polish rabbis, so his Polish background did not seem to have been the reason for his decision not to

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[507] The history of the founding of the *Agudath ha-Rabbonim* can be found in *Sefer ha-Yovel shel Agudat ha-Rabbonim ha-Ortodoksim de-Artzut ha-Brit ve-Kanadah* (New York, 1928), 13-23. The importance of this rabbinic organization in the history of American Orthodoxy is described in Jeffrey S. Gurock, *American Jewish Orthodoxy in Historical Perspective* (Hoboken, NJ, 1996), 7-10.
[508] Ibid., 24-28.
[509] *Sefer ha-Yovel*, 21.
[510] Ben Zion Eisenstadt, *Dorot ha-Aharonim* (NY, 1913) 1-6.

join. One of the other rabbis on the list of those who did not join the organization was Rabbi Chaim Yaakov Widerwitz. Rabbi Widewitz received ordination from the Lubavitcher Rebbe and served as the rabbi of the Hasidic community in Moscow for sixteen years before immigrating to the United States. In New York, he was the rabbi of a consortium of synagogues that catered largely to the Hasidic community on the Lower East Side. He was involved in several disputes with the Chief Rabbi and his supporters concerning Rabbi Widerwitz's right to grant private supervision to butchers. In 1896 this controversy led the Chief Rabbi's followers to place a ban on meat that was supervised by Rabbi Widerwitz.[511] Rabbi Seigel and Rabbi Widerwitz may well have viewed the *Agudath ha-Rabbonim* as a continuation of the authority of the Chief Rabbi and therefore chose not to participate.

Rabbi Joshua Seigel, who assumed the title "Chief Rabbi of Congregations of Israel, Men of Poland and Austria," was the rabbi who created the first *eruv* in New York. Rabbi Seigel, known as the Sherpser Rav, had come to New York from Poland in 1882.[512] He was born in 1846 in Kitzburg, Poland, a small town near the Prussian border, which was under the control of the Russian government. As a young man, he studied under Rabbi Leibel Charif of Plotzk and Rabbi Yehoshua of Kutna, who

[511] Sherman, 216-17.
[512] Sherman, 193, claimed that Rabbi Seigel immigrated in 1884. Yosef Goldman suggested that he immigrated in 1875. However, the Twelfth Census of the United States of 1900 lists the immigration date of Joshua Seigel as 1882. This is significant for the longer that Rabbi Seigel served in New York prior to the arrival of Rabbi Joseph, the stronger his claim that he should not be subservient to the new chief rabbi. See *Hebrew Publishing in America*, II: 998, which mentions 1875 as the possible year of his immigration to America.

granted him rabbinical ordination. He inherited his father's rabbinical position in the town of Sherps, Poland, but was not accepted by the Hasidic sector of that community. Due to these conflicts and the difficult economic conditions that Eastern European rabbis of that period faced, Rabbi Seigel immigrated to the United States in 1882. He was appointed rabbi of a small Polish synagogue on the Lower East Side consisting of a divided community of Hasidic and non-Hasidic families, which provided him with a meager salary. He supplemented his income by giving kosher supervision to butchers in the area. In 1892, he was appointed the *Rav ha-Kollel* of twenty Polish congregations on the Lower East Side. [513] His leadership position of the Polish Jewish community in America was also respected by the rabbis who were still living in Poland. In a letter sent in the summer of 1908, Rabbi Moshe Nahum Yerusalimsky, from the small town of Kamenka in the Kiev province, asked Rabbi Seigel for assistance in procuring a *get* for a woman in Poland whose husband had immigrated to America and left her without a *get*.[514]

In his 1914 volume of responsa, *Oznei Yehoshua*, Rabbi Seigel described the challenges that he and other European-trained rabbis encountered in the United States. He writes:

> It has been over twenty years since I have arrived here in the United States,a land which was desolate without Torah but filled with those who were

[513] Sherman, 193-4.
[514] Eli Lederhendler, *Jewish Responses to Modernity: New Voices in America and Eastern Europe* (New York, 1994), 97-99.

> concerned with their employment. A new picture emerged for me in which new questions that would never have been brought to rabbis in the land of my birth. I realized that it was not for naught that I came to this country and maybe God placed me here to resolve these new issues.[515]

In this paragraph, Rabbi Seigel set the stage for addressing issues such as the creation of an *eruv* in Manhattan.[516]

The earliest reference to the creation of the *eruv* in Manhattan is found in Rabbi Seigel's *Oznei Yehoshua*.[517] In an undated responsum, Rabbi Seigel addressed

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[515] *Oznei Yehoshua I*, (Jerusalem, 1914), Introduction.

[516] For a discussion of the views of eastern European rabbis on their roles as rabbis in the United States, see Menahem Blondheim, "Ha-Rabbanut ha-Ortodoksi Megaleh et Amerikah: Ha-Geografia shel ha-Ruah be-Mitavim shel Tikshoret," in Miri Eliav-Feldon, *Be-Ikvot Kolumbus: Amerika 1492-1992*, (Jerusalem, 1996), 483-510.

[517] The earliest reference to the prohibition against carrying in Manhattan is found in a notice in *The Jewish Gazette,* August, 19, 1881, entitled, "An Importance Announcement to Prevent Religious Violation." In that notice, Rabbi Abraham Ash of Beth Hamidrash Hagadol, wrote that, several weeks earlier a religious teacher in New York wrote to Rabbi Spektor in Kovno and received permission from Rabbi Spektor for Jews in New York to travel on the elevated trains on the Sabbath. Rabbi Ash writes that Rabbi Spektor sent him a letter describing the request and Rabbi Spektor's response. In that letter, Rabbi Spektor explained that this religious teacher had told him that if travel on the trains was not permitted on the Sabbath, Jews would cease to be observant. In addition, this teacher had informed Rabbi Spektor that Rabbi Saul Nathanson of Lvov had permitted carrying in New York on the Sabbath. Therefore, Rabbi Ash explains, Rabbi Spektor had advised the Jews of New York to purchase their subway tokens prior to the Sabbath and not to travel outside of the confines of the city. In addition, Rabbi Spektor wrote that such travel was only permitted for the sake of a *mitzvah*. Rabbi Ash concludes the notice informing the readership of the newspaper that now that Rabbi Spektor has been informed that Jews will not abandon observance due to this prohibition and that carrying was not permitted in New York on the Sabbath, that Rabbi Spektor withdrew his permissive ruling. Rabbi Judah David Eisenstein records that around the year 1878, there was a dispute in New York City whether travel was permitted on the elevated trains on the Sabbath. Eisenstein writes that Rabbi Ash prohibited such travel because of *marit ayin* and because it appeared like a weekday activity. However, for the sake of a communal need or a *mitzvah*,

the question whether Manhattan was considered a *reshut ha-rabbim*, thereby precluding the possibility of creating an *eruv* around Manhattan without enclosing the borough with walls with doors that could be opened and closed. Although Rabbi Seigel concluded that Manhattan was not a *reshut ha-rabbim*, he raised several other issues that precluded the creation of an *eruv* in Manhattan at that time. He concluded, "We look forward to the time when the wealthy Jews will create an eruv here like in all cities in Israel."[518]

In 1905[519], Rabbi Seigel wrote a subsequent treatment of the *eruv* entitled *Eruv Ve-Hoza'ah*, He began the volume as follows:

> Concerning the City of New York where we live, I have written a lengthy responsum several years ago exploring whether it is a public domain concerning the laws of the Sabbath. Now, religious Jews have approached me and suggested that maybe we have the possibility to allow carrying on the Sabbath at least on the east side of the city.[520]

His responsum explained the legal rationale for this *eruv* and he appended a number of rabbinic approbations to it. He concluded that an *eruv* was in place on the East Side of Manhattan and it was therefore permissible to carry on the Sabbath on the East Side of Manhattan.

Rabbi Ash permitted such travel privately (It is not clear how one would travel on trains privately). See J. D. Eisenstein, *Otzar Zikhronotai* (New York, 1929), 352.

[518] *Oznei Yehushua*, I:180.

[519] Joshua Seigel, *Eruv Ve-Hotza'ah* (NY, 1907), 1. While *Eruv Ve-Hotza'ah* is published in 1907, the responsum is dated September 5, 1905.

[520] *Eruv Ve-Hotza'ah*, 1

There were several rabbis who opposed Rabbi Seigel's *eruv*. The first one who wrote in opposition was Rabbi Yehudah David Bernstein. Rabbi Bernstein was born into a rabbinic family in Kovno, Lithuania, and attended the Slobodka Yeshiva. He also excelled in mathematics and engineering, which he studied on his own. Rabbi Bernstein immigrated to the United States in 1894 and settled in New York. Not wanting to become a community rabbi, he was a businessman for a short while before he assumed the position of kashruth supervisor at a local winery. He helped found the Rabbi Isaac Elchanan Yeshiva and was one of its first Talmud instructors. He also served as an administrative assistant at the yeshiva. As a member of the *Agudath ha-Rabbonim*, he was instrumental in soliciting support for the new yeshiva.[521] In 1910, Rabbi Bernstein published *Hilkhata Rabta Le-Shabbata*, a thirty page responsum, rejecting Rabbi Seigel's arguments and claiming that Jewish law did not permit the creation of an *eruv* on the Lower East Side.[522]

The second responsum opposing the *eruv* was written by Rabbi Aharon Gordon. Rabbi Gordon was born in Miadziol, in the province of Vilnius, in 1845. Following his rabbinical ordination, he served as a rabbi in Vishnevo. He immigrated to the United States in 1890 and became a rabbi in Rochester, New York. He moved to New York City in 1900 and led a rabbinical court on the Lower East Side. Rabbi Gordon was one of the early members of the *Agudath ha-Rabbonim* and headed its

[521] Sherman, 30-31.
[522] *Hilkhata Rabbta Le-Shabbata* (Brooklyn, NY, 1910). The responsum is dated May 29, 1910.

committee on family purity.[523] The date of his responsum is not known but Rabbi Gordon explained at the beginning of his work that he was responding to Rabbi Seigel's volume, *Eruv Ve-Hoza'ah*, which was published in 1907. He stated that New York rabbis had published notices in the local Jewish newspapers that it was prohibited to carry in New York.[524] However, he said, the public had chosen to follow the more lenient position, even though it was based on lies.[525]

The last of the responsa opposing the *eruv* was written by Rabbi Azriel Herman. Rabbi Herman was born in Svirzh, Galicia, in 1859, grew up in Galicia and received his rabbinical ordination at the age of eighteen from, among other rabbis, Rabbi Sholom Mordekhai of Brezhen. He arrived in America in 1891 and served as a rabbi on the Lower East Side until 1917 when he moved to Brownsville, Brooklyn. He served as a rabbi in Brownsville until his death in 1938. He was a member of the *Agudath ha-Rabbonim* and, according to his grandchildren, he was a colleague and friend of Rabbi Sholom Elchanan Jaffe, who was the fierce opponent of the St. Louis

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[523] *Hebrew Printing in America*, II: 552-53.

[524] The alleged notices cannot be found in the Jewish press of this period. Although there were a number of papers that were published during this time, the *Morgen Zhurnal* is no longer extant from the year 1905, the year in which the *eruv* was created. It is noteworthy that the *eruv* controversies were not discussed in the Jewish press in America or in Eastern Europe, with few-if any-references in, for example, Cracow or Odessa to the disputes that divided the entire Orthodox community in those cities.

[525] Rabbi Aharon Gordon, "Teshuvah be-Niggud le-Hazaah le-Tikkun Eruvin Be-Helek Mi-Mizrah New York, " in *Kol Zvi*, ed. Ari Zahtz and Michoel Zylberman Vol. 7 (2005) New York, 37-48. This reprint is based on Ms. MS1300A in the Mendel Gottesman Library of Yeshiva University.

eruv.[526] In the introduction to his responsum dated March 24, 1927, he wrote, "It has been over twenty years since this small volume filled with material was published by Rabbi Yehoshua Seigel that permitted carrying in this neighborhood."[527] Rabbi Herman claimed that Rabbi Seigel's leniency had no basis in Jewish law and, therefore, it was forbidden to carry on the Sabbath in the area that Rabbi Seigel had claimed was surrounded by the *eruv*.

Given the multiple views concerning the creation of the *eruv*, this analysis will address each halakhic issue as it was discussed by each of the rabbis.

Reshut Ha-Rabbim

Rabbi Seigel begins his responum in *Oznei Yehoshua* with the following question that was asked of him: "Our city, New York, does it have the status of a *reshut ha-rabbim*? It has a population of close to 2 million and a large river that is similar to an ocean surrounds it with ships that travel on the river. On three sides the river is close to the city but on the fourth side (the west side) half of the river is close to the city but half of the river is several miles from the city [houses] … We would

[526] *Sefer Mayyim Hayyim* in *Kovetz Shut be-Inyanei Eruvin be-Artzut ha-Brit* (n.p., n.d.), Introduction written by the grandchildren of Rabbi Herman, 1953. An abbreviated version of *Sefer Mayyim Hayyim* is found in *Kol Zvi*, 49-66. (All page references will be to the complete version of the work.)
[527] *Sefer Mayyim Hayyim*, Introduction, n.p.

like to know whether the city has the status of a *reshut ha-rabbim* or another type of domain."[528]

For the first time in the history of city *eruvin*, a rabbi addressed the possibility of creating an *eruv* around a city that definitely had a population that exceeded 600,000. Rabbi Seigel proceeds to analyze this issue in a very lengthy, undated responsum. Because Manhattan had streets that were wider than sixteen *amot* and had a population that exceeded 600,000, Rabbi Seigel could not easily define Manhattan as anything other than a *reshut ha-rabbim*. Therefore, he took several different approaches to explain how it would be possible to create an *eruv* in Manhattan in spite of its status as a *reshut ha-rabbim*. First, he argued that the river walls create *eruv* boundaries that are equivalent to walls and would adequately enclose even a *reshut ha-rabbim*. The problem that he addresses relates to the issue of *ati rabbim u-mevatlei mehitzah*---the fact that people passing over the rivers negate the river walls as *eruv* boundaries. *Tosafot* argued that even according to the Sages who reject this principle, they argue that only a man-made boundary cannot be negated by the passage of people. However, a natural *eruv* boundary can be negated if people traveled over the

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[528] *Oznei Yehoshua*, I: 163. The actual population of Manhattan in 1900 was 1,850,093. See http://www.demographia.com/db-nyc-ward1800.htm (viewed 2/6/10). Rabbi Seigel claimed that the population of Manhattan exceeded three million. (*Oznei Yehoshua*, I: 180).

river.[529] Since people cross the rivers around New York in boats and bridges, Rabbi Seigel suggested a novel interpretation to validate the New York *eruv*. He explained that, according to *Tosafot*, the natural *eruv* boundary would only cause a problem if crossing it was simple.[530] However, since it is impossible due to the steep incline of the rivers to even enter the water, *Tosafot* would agree that the people crossing the rivers around Manhattan would not negate the *eruv*. In addition, Rabbi Seigel argues that people entering the boats do not negate the *eruv* boundary since the *gemara* says that a ship on the water is considered to be stationary vis-a-vis the water.[531] Therefore, he explains that the people moving from the land to the ship are merely crossing from one stationary place to another in which case they would not negate the *eruv* boundary. Finally, Rabbi Seigel quotes the *Magen Avraham* who explains that the entire issue of *ati rabbim u-mevtlei mehitzah* only applies if 600,000 people pass over the eruv boundaries each day.[532]

Rabbi Seigel introduced another argument to justify the creation of an *eruv* around Manhattan. Rabbi Shmuel ben Meir (*Rashbam*), the grandson of Rashi and one of the Tosafists, defined a *reshut ha-rabbim* as follows: "The camp of the Israelites was like a *hazer* of partners because only the camp of the Levites had the

[529] *Tosafot Eruvin* 22b, s.v. *dilma*.
[530] *Tosafot Eruvin* 22b, s.v. *Yehoshua*.
[531] *Baba Metzia* 9b.
[532] *Magen Avraham, O.H.,* 363:40. Rabbi Seigel discusses this issue in *Oznei Yehoshua* I: 172-75.

status of a *reshut ha-rabbim*."[533] Rabbi Seigel understands this statement as establishing a different criterion for the creation of a *reshut ha-rabbim*. According to *Rashbam*, a *reshut ha-rabbim* is an area where 600,000 people congregate at one time, just as the Jews congregated in the Levite camp in the desert. The fact that 600,000 live in one area would not constitute a *reshut ha-rabbim* unless there was one place where they all gather at the same time. Based on this explanation of the *Rashbam*, Rabbi Seigel concluded that no city could be considered a *reshut ha-rabbim* even though there were cities whose population exceeded 600,000, since none has a central place where 600,000 gathered. In New York, Rabbi Seigel acknowledged that common wisdom was that 600,000 people gathered on Broadway at one time, thereby establishing Manhattan as a *reshut ha-rabbim* even according to *Rashbam*. However, Rabbi Seigel points out that Broadway was only a large street in name, but not in fact, because in many places it is no more than a large alleyway, and, therefore, he concludes that 600,000 never congregate on Broadway at one time. Thus, according to Rabbi Seigel's understanding of the *Rashbam*, Manhattan did not have the status of a *reshut ha-rabbim* even though its population far exceeded 600,000.[534]

Although Rabbi Seigel went to great lengths to justify the creation of an *eruv* in Manhattan, he nevertheless concluded his responsum explaining that since the rivers were far away from the houses in the City, there was a need to build *tzurot ha-*

[533] *Rashbam*, *Baba Batra* 60a, s.v. *vayar*.
[534] Ibid., I: 179-80.

petach between the river and the houses[535] and since "this is something that is all but impossible," it was not permitted to carry in Manhattan. Finally, he wrote, "We eagerly await the moment when God will place it in the hearts of the wealthy people of New York to create an *eruv* like those in all other Jewish cities ...Who knows if we will ever have the ability to build such *eruv* walls here if God forbid the redemption is delayed?"[536]

In *Eruv Ve-Hotza'ah*, Rabbi Seigel did not address the issue of *reshut ha-rabbim*. The reason for this omission, he explained, was because, "Concerning the city of New York where we live, several years ago I wrote a responsum defining whether it is a *reshut ha-rabbim* or not … Now, religious people have approached me and asked whether I could permit carrying on the Sabbath at least in the East Side of the city. Their argument was that the water surrounded the East Side on three sides … and on the fourth side there is an unequalled *tzurat ha-petah* created by the train track which runs from South Ferry in the south to the Harlem River in the north without any interruption."[537]

Rabbi Seigel wrote that there were fewer than 600,000 people within this East Side borders and, therefore, the issue of *reshut ha-rabbim* was not relevant. However,

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[535] The need for a *tzurat ha-petah* in such a situation is a matter of dispute. See Rabbi Seigel's discussion on p. 180 and *Sheelot U-Teshuvot Hatam Sofer*, I: 89, who argued that since these *tzurot ha-petah* are merely to create the impression that the inhabited area is enclosed, one can be lenient if they cannot be constructed.
[536] *Oznei Yehoshua*, I: 180.
[537] *Eruv Ve-Hotza'ah*, 1.

he did once again address the issue whether public travel over the *eruv* boundaries nullifies the *eruv*. He quoted the opinion of the *Magen Avraham* who argues that an *eruv* boundary would only be negated if 600,000 people were to pass over the boundary on any given day.[538] Rabbi Seigel concluded that since that number was never exceeded in respect to the area surrounded by the East Side *eruv*, this *eruv* was valid and cannot be negated.[539] Rabbi Seigel acknowledged that this position seemed to be contradicted by Hakham Ashkenazi, who argued that England is not considered a *reshut ha-yahid* even though it is surrounded by water, since people travel over the *eruv* boundaries each day.[540] Hakham Ashkenazi did not quote the opinion of the *Magen Avraham*. However, Rabbi Seigel explains that Hakham Ashkenazi only negated the *eruv* around England because he believed that 600,000 passed over the borders of England on any one day. However, wrote Rabbi Seigel, Hakham Ashkenazi would agree that it was permissible to carry on the Sabbath on the East Side of Manhattan, because fewer than 600,000 passed over the *eruv* boundaries each day. Rabbi Seigel concluded this section of his responsum by explaining that the East Side of Manhattan has the same status as The Hague, in which Hakham Ashkenzai allowed the creation of an *eruv* because fewer than 600,000 crossed the *eruv* boundaries.[541]

In the approbations that are included at the end of *Eruv Ve-Hotza'ah*, Rabbi Mordekhai Shwadron of Brezhin and Rabbi Aryeh Leibush Horowitz point out that

[538] *Magen Avraham, O.H.*, 363: 40
[539] *Eruv Ve-Hotza'ah*, 12-13.
[540] *Hakham Zevi*, no. 37.
[541] *Hakham Zevi*, no. 5 and *Eruv Ve-Hotza'ah*, 14-19.

the author of the *Or Zarua* argues with the *Magen Avraham* and explains that even if fewer than 600,000 passed over the *eruv* boundaries each day would invalidate the *eruv*.[542] Nevertheless, both Rabbi Shwadron and Rabbi Horowitz explain that the view of the *Or Zarua* does not render the *eruv* unacceptable, because there are many rabbinic authorities who agree with the lenient position of the *Magen Avraham*.[543]

Rabbi Bernstein addresses the question whether Manhattan was a *reshut ha-rabbim* in his volume, *Hilkhata Rabbta Le-Shabbata*. He wrote that Manhattan was a *reshut ha-rabbim* according to all authorities, because its streets were sixteen *amot* wide and its population exceeded 600,000. He discusses two considerations regarding the use of the rivers as *eruv* boundaries. First, he argues that Manhattan was faced with the problem of public travel over the *eruv* boundaries. He rejects Rabbi Seigel's suggestion, though he did not mention him by name, that since the *eruv* boundaries were made up of rivers that people could not easily cross, crossing the boundaries would not invalidate the *eruv*. Rabbi Bernstein argues that every day thousands of people cross into Manhattan via the boats and more than 600,000 cross into Manhattan through the tunnels thereby negating the *eruv* boundaries. Furthermore, he explained that the fact that the streets were elevated from the river wall did not suffice to create an acceptable *eruv* boundary for the following reason: The purpose of *eruv* boundaries, according to Rabbi Bernstein, was to prevent passage in and out of the city. Piers were not acceptable *eruv* boundaries because they facilitated docking of the

[542] *Or Zarua*, *Hilkhot Eruvin*, no. 129.
[543] *Eruv Ve-Hotza'ah*, 28-30 and 33-49.

ships and made embarking and disembarking from the boats more accessible. Therefore, these piers could not be considered *eruv* walls. Finally, he argues that the bridges negate the *eruv* boundaries because they open into the other boroughs which have populations or at least occasional visits by more than 600,000 people in one day.[544]

Rabbi Gordon also addressed the question whether Manhattan was considered a *reshut ha-rabbim*. He wrote, "You should know that New York City is the second largest city in the world after London, England, exceeding four million people."[545] He did not elaborate further on the issue of whether the East Side of Manhattan constituted a *reshut ha-rabbim*.

Rabbi Herman wrote at length regarding Rabbi Seigel's analysis of the status of the East Side of Manhattan. First, he explains that Rabbi Seigel's claim that the East Side of Manhattan does not constitute a *reshut ha-rabbim*, because its population does not exceed 600,000, is incorrect. Rabbi Herman quotes the opinion of *Ritba* that as long as 600,000 congregate in an area even though they do not live there, the area is a *reshut ha-rabbim*.[546] Rabbi Herman writes that because the many people who travel

[544] Bernstein, 14-17.
[545] Gordon, *Kol Zvi*, 38.
[546] *Ritba*, *Eruvin* 59a, s.v. *matnitin*.

into Manhattan each day for work, the number of people on the East Side of Manhattan each day far exceeds 600,000.[547]

Furthermore, he questions Rabbi Seigel's reliance on the opinion of Hakham Ashkenazi. Hakham Ashkenazi argued that an *eruv* could not be created around England but could be created around The Hague. Rabbi Seigel explained the difference as follows: England has 600,000 passing over its borders whereas The Hague does not have that many people passing over the *eruv* boundaries. Manhattan, Rabbi Seigel argued, was similar to The Hague because fewer than 600,000 pass over the river around New York each day. Rabbi Herman points out that Hakham Ashkenazi did not mention the criterion of 600,000 persons in his responsum about the possibility of creating an *eruv* around England. Rabbi Herman suggests that, according to Hakham Ashkenazi, an *eruv* could not be created around England simply because the *eruv* border was natural and therefore any traffic would negate the *eruv*. Therefore, the *eruv* around the East Side of Manhattan would be invalid because of the fact that people who pass over the rivers, even though their number did not exceed 600,000. Rabbi Herman explains that Hakham Ashkenazi allowed the creation of an *eruv* in The Hague since the ditch that enclosed the city was man-made and, therefore, traffic did not negate this *eruv* boundary. This was not the case with the boundaries that surrounded the East Side of Manhattan.[548]

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[547] *Sefer Mayyim Rabbim*, 48-9.
[548] Ibid., 47-8.

In summary, Rabbi Herman believed that any traffic negates natural *eruv* thereby dismissing the possibility of creating an *eruv* to enclose the East Side of Manhattan.

Rivers as Eruv Boundaries

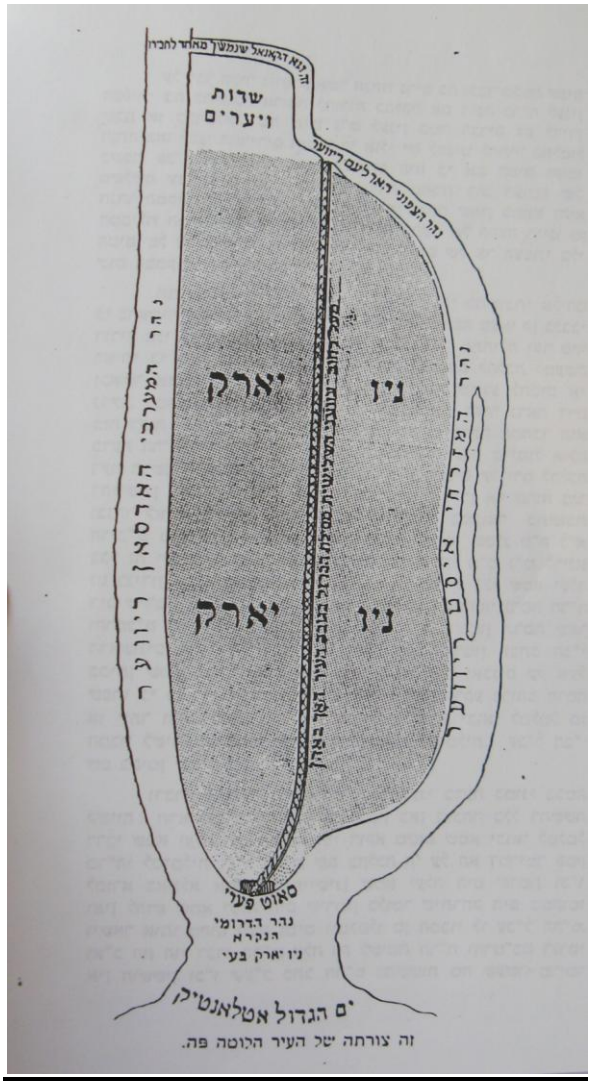

Fig. 2 – Rabbi Seigel's Map of New York City, *Eruv ve-Hotza'ah*, p. 2

Rabbi Seigel included in his volume *Eruv Ve-Hoza'ah* a lengthy discussion as to whether the rivers surrounding the East Side of Manhattan could serve as *eruv* boundaries. According to Rabbi Seigel, the *eruv* consisted of the East River and the Harlem River on the east and north sides, New York Bay as the boundary on the south side and the Third Avenue Elevated (known as the Third Avenue El) train track as a boundary that connected South Ferry with the Harlem River at 155th Street on the west side. First, Rabbi Seigel discusses the concern that the waterways may build up sediment which would negate the *eruv* boundaries. Rabbi Seigel explains that according to Rabbi Isaac ben Sheshet and *Magen Avraham*, the risk of sediment build-up applies only to oceans and not rivers or other smaller bodies of water. Therefore, this was not a consideration regarding the East Side *eruv* which was surrounded by rivers and a bay.[549] Rabbi Seigel further explained that the entire consideration of whether the sea filled with sediment was only a problem if only one *eruv* boundary was created by the water since that would create a breach in the *eruv*. However, in the case of Manhattan, since the Third Avenue El tracks crossed the river on the northern border of the *eruv* and terminated the water on the southern border, even if the build-up of sediment invalidates the *eruv* boundaries created by the water lines, the East Side of Manhattan remains completely within the *mehitzot* created by the Third Avenue El tracks.[550]

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[549] See Rivash, no. 405 and *Magen Avraham, OH,* 363: 31 which is discussed by Seigel in *Eruv Ve-Hotza'ah*. 1.
[550] *Eruv Ve-Hotza'ah*, 6-7.

The fact that the East Side of Manhattan was completely enclosed by the Third Avenue El tracks also solved the problem that the rivers were further than ten *amot* from the houses. Rabbi Seigel explained, as Rabbi Rosenfeld had argued regarding the St. Louis *eruv* (although Rabbi Seigel does not mention Rabbi Rosenfeld), that the only time a breach of ten *amot* invalidates the *eruv* is a situation in which the *eruv* wall is created through a combination of the river and the walls of the homes. However, in the case of the East Side of Manhattan, inasmuch as the entire area is enclosed by the Third Avenue El tracks, the distance of the water from the houses is irrelevant.[551]

Finally, the requirement that the *eruv* boundaries had to be built specifically to enclose the people living in the city was also solved by the fact that the Third Avenue El tracks were built for this purpose.[552] Rabbi Seigel returned to the discussion of the *eruv* in The Hague and wrote that since the rabbis at the end of the seventeenth century allowed carrying in The Hague even though the *eruv* boundaries were created by rivers that predated the building of the houses in the city, this issue did not concern them. He concluded that there must have been some structure that was built later that resolved this issue and the East Side of New York had the same status as The Hague.[553] He concluded this portion of his work writing: "It is permissible to carry in the entire part of the city east of the elevated train tracks."[554]

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[551] Ibid., 10-11.
[552] Ibid., 12-13.
[553] Ibid., 22-23.
[554] Ibid., 13.

Rabbi Bernstein addressed the issue of whether the rivers could create *eruv* boundaries in a short remark in the middle of his work *Hilkhata Rabbta Le-Shabbata*. He wrote, "The permitting rabbi argued that since New York was surrounded by rivers, there was no fear of sediment build-up. However, this is an error because the sea surrounds these rivers." He purports to prove this by asserting that the rivers that enclose New York are filled with salt water and, thereby, extensions of the ocean. Therefore, explained Rabbi Bernstein, the status of New York City was as if it were surrounded by seas, in which case the risk of sediment build-up would invalidate the *eruv* even according to *Magen Avraham*, who would argued that sediment build-up was only a concern in oceans and not in rivers.[555]

Rabbi Herman presents a lengthy analysis of whether the build-up of sediment invalidated the *eruv*. He concludes that Rabbi Seigel took for granted that all opinions agreed that this issue did not apply to rivers. However, Rabbi Herman quotes the opinion of the Vilna Gaon that the problem of sediment build-up is that sediment will cause the *eruv* boundary to lose its necessary slope, thus invalidating the water as an *eruv*. This problem applies both to oceans and to rivers.[556]

However, at the conclusion of his discussion of this topic, Rabbi Herman claimed that in the case of the East Side *eruv*, the fear of sediment build-up was not a consideration for the following two reasons: First, since most of the medieval rabbinic

[555] *Magen Avraham*, 363:31 and Bernstein, 26-27.
[556] *Biur Ha-Gra O.H.* 363 and Herman, 7 and 26.

authorities explained that sediment build-up was not a problem with respect to the rivers and on the East Side of Manhattan this consideration is only a rabbinic one since this area is not a *reshut ha-rabbim*, one can rely on these lenient opinions and permit carrying on the Sabbath in this area. Second, the only time that sediment build-up is a problem is in a situation where the pier does not rise over the water by more than ten *tefahim*. However, in Manhattan, where the piers were significantly higher than the water, the fear of sediment build-up could be ignored since the *eruv* boundary is created by the pier and not the river itself.[557]

[557] Ibid., 26.

Elevated Train Tracks as *Eruv* Boundaries

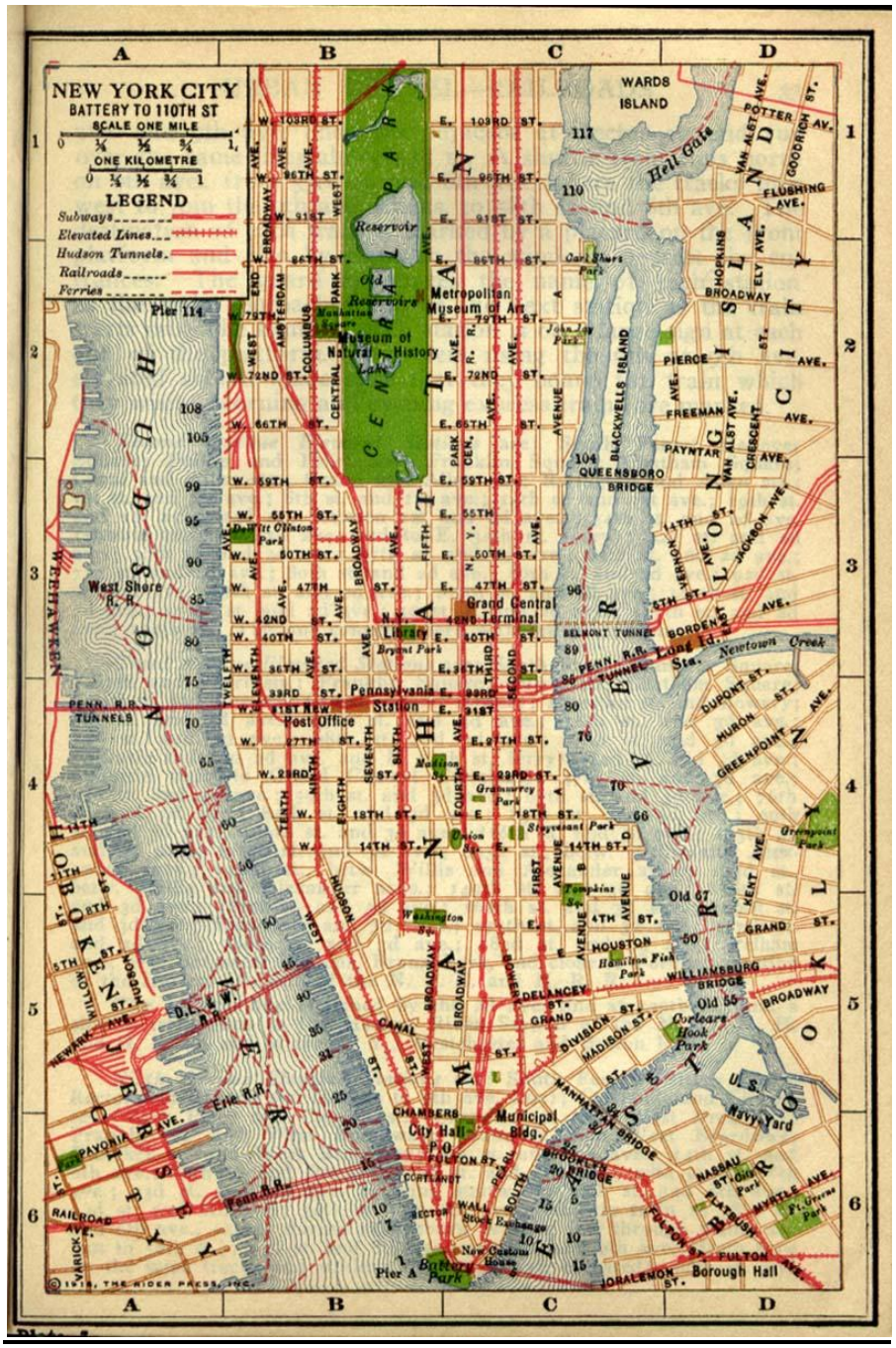

Fig. 3 - Rider's New York City, Henry Holt and Company, 1916

The Third Avenue El was the second line of the elevated railway system in New York City. The first line, which ran up Ninth Avenue, was built in 1876. This line began at South Ferry on the southern tip of Manhattan Island and continued up the Bowery to Third Avenue all the way to the Harlem River at 155th St., was added in 1878. In 1886, the Third Ave. El was extended across the East River into the Annexed District, which was later known as The Bronx.[558] These train tracks served as the western boundary of the *eruv* and enclosed the area of the Jewish Lower East Side which was situated to the east of these train tracks.[559] Rabbi Seigel addressed the El as a boundary only in response to the specific question that was asked of him concerning the creation of this *eruv*. He wrote that religious people asked him if an *eruv* could be established on the East Side of Manhattan. He continued the description of the question, "On the fourth side there is an unequalled *tzurat hapetah* which is the train tracks which run above the city from one end to the other. They extend from the water on the south side at South Ferry until the water on the north side without any interruption until 'Harlem'."[560]

Rabbi Bernstein rejected the use of the Third Avenue El tracks as *eruv* boundaries for the following reasons: First, he argued that iron beams were connected to the sides of the girders and that was not acceptable as *eruv* boundaries because they constituted a *tzurat ha-petah min ha-tzad.* He explained that the wooden frames of the

[558] For the history of the Third Ave. El, see Lawrence Stetler, *By the El: Third Avenue and its El at Mid-Century* (Flushing, NY, 1995), 9.
[559] See the map of Jewish residences on the Lower East Side in Rischin, 77.
[560] *Eruv Ve-Hotza'ah*, 1.

tracks were also not acceptable as *eruv* boundaries as there was significant distance between the girders and the wooden frame. Furthermore, he claimed that even if the Third Avenue El tracks created an acceptable *eruv* boundary, since thousands of people both ascended and descended the steps of every station each day and even more people passed underneath the Third Avenue train tracks, such people created a breach in the *eruv* boundary, based on the principle of *ati rabbim u-mevatlei mehitzah*. For these reasons, Rabbi Bernstein argued that the El could not serve as an *eruv* boundary.[561]

Rabbi Gordon rejected the use of the Third Avenue El train tracks as e*ruv* boundaries for the following reasons. He argued that the underground subway that ran throughout the city crossed under the Third Avenue El train tracks in several locations and, therefore, passengers in the subway invalidated the Third Avenue El train tracks as a boundary, based on the principle of *ati rabbim u-mevatlei mehitzah*. This was a novel use of the principle because this rule is used to invalidate *eruv* boundary that are crossed over-not under-by people. In this case, he said, the Third Avenue El train tracks is invalidated because people cross under them. Furthermore, he wrote that these train tracks did not appear to have been created for the sake of *tzurot ha-petah* and therefore they were not valid. Rabbi Gordon brings a proof from the laws of *succah* where the *Magen Avraham* argues that branches of a vine that reach the *skhakh*

[561] Bernstein, 22-23.

are not valid *succah* walls because they were not created for the purpose of becoming *succah* walls.[562]

Rabbi Herman did not address the Third Avenue El train tracks in his responsum.

Bridges

The bridges that connect Manhattan to the other boroughs created several issues regarding the *eruv* on the East Side of Manhattan. Rabbi Seigel, in his responsum in *Oznei Yehoshua*, addresses the bridges that connected Manhattan to the other boroughs and considers whether these bridges transform Manhattan into a *reshut ha-rabbim* because they are *mefulash*, meaning that they one straight path from one end of the city to the other end. He concludes, based on Rashi's view in *Eruvin* 6a, that, in order to create a *reshut ha-rabbim*, the bridges must be aligned in a straight line so that one can travel from one end of the city to the other without changing directions.[563] Since the bridges in Manhattan are not aligned in this fashion, Manhattan is not considered *mefulash* and would not have the status of a *reshut ha-rabbim*.[564]

In *Eruv Ve-Hotza'ah*, Rabbi Seigel quotes Rabbi Ezekiel Landau, who raised the issue that the bridges create a breach in the *eruv* boundary. Rabbi Landau argued

[562] *Magen Avraham, O.H.* 730: 2 and Gordon, *Kol Zvi*, 43.
[563] Rashi *Eruvin* 6a, s.v. *torato*.
[564] *Oznei Yehoshua*, I:180.

that a *tzurat ha-petah* must be built on every bridge to avoid this problem.[565] Rabbi Seigel explains that all the bridges in Manhattan are built with a frame on the two ends of the bridges that serve as *tzurot ha-petah*. Therefore, the bridges in Manhattan do not create a breach in the *eruv*.[566]

Rabbi Bernstein, on the hand, claims that the bridges do interrupt the *eruv*. He wrote, "I didn't even need to write this, except that I have heard that some people are mistaken on this matter."[567] He explains that since the bridges slope into Manhattan on a very gradual angle, they are not considered walls and do not constitute acceptable *eruv* boundaries. Therefore, they created breaks in the *eruv* which rendered the entire *eruv* invalid.[568]

Rabbi Gordon also invalidates the *eruv* because of the bridges that connect Manhattan with Brooklyn. He explains that, although there were structures that resembled *tzurot ha-petah* in the middle of the bridges, since the crowns of the bridges were far from the houses in Manhattan, they did not serve as *tzurot ha-petah*. In addition, since there were more than 600,000 who traversed the bridges each day in subways, buggies and other vehicles and on foot, this traffic would create a break in the *eruv* based on the principle of *ati rabbim u-mevatlei mehitzah*.[569]

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[565] *Nodah Bi-Yehudah, Mahadurah Tinyana, O.H.*, no. 42.
[566] *Eruv Ve-Hotza'ah*, 22.
[567] Bernstein, 19.
[568] Ibid.
[569] Gordon, *Kol Zvi*, 44.

Rabbi Herman addresses Rabbi Seigel's reliance on the view of Rabbi Landau who claimed that bridges did not invalidate the *eruv* as long as there was a valid *tzurat ha-petah* at the entrance to each bridge. Rabbi Herman explained that the bridges in the time of Rabbi Landaudirectly abutted the rive bank. Therefore, since the bridge interrupted the *eruv* boundary at its inception, the bridge created a breach in the *eruv* that required a *tzurat ha-petah*. However, in New York, the bridge foundation began inland and by the time the bridges reach the waterway, they rise high above the river wall. Therefore, these bridges do not create a break in the *eruv* since the *eruv* boundary is created by the river wall itself and is not interrupted by the bridge that rises well above it.[570]

Parks Within the *Eruv*

The *Shulhan Arukh* writes that, in a situation where, within the *eruv*, there is a garden or park filled with trees and plants, which is larger than five thousand square *amot* and that is not suitable for human habitation, if that garden or park was not enclosed within its own walls, the area invalidated the entire *eruv*. This is due to the fact that, because the owners of the garden or park do not want people to traverse it and destroy the vegetation, this area is not considered part of the common space required in the creation of an *eruv*. The only way to validate an *eruv* in which such an

[570] Herman, 55.

area exists, is to totally enclose this smaller area.[571] Rabbi Seigel addresses the fact that there were gardens and parks on the East Side of Manhattan that, by the standards set by the *Shulhan Arukh*, would invalidate the entire *eruv*. He concludes, however, that these areas did not create a problem for the following reasons: First, many of these gardens or parks were surrounded by walls or gates so they were separated from the larger area and did not invalidate the entire *eruv*. Second, since there were buildings built in each of these parks or gardens as rest areas, therefore, the gardens and parks are considered fit for human habitation and would not invalidate the *eruv*.[572]

Rabbi Gordon agrees with Rabbi Seigel that each of the parks was enclosed by gates. Yet, he writes, the openings of each entranceway to the garden or park were wide (he claims that he saw one gate whose opening was fifteen feet.) and, since none of the gates had a *tzurat ha-petah*, these areas were not properly sealed off from the larger area since the gates were rarely closed and the *eruv* was invalid. Finally, he explains that because there was a large park in the center of the City (Central Park) that was open in all directions and did contain and rest areas that would deem it fit for human habitation the *eruv* was invalid.[573]

Rabbis Bernstein and Herman do not address the problem of the gardens and parks.

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[571] *Shulhan Arukh*, *O.H.*, 358:9. See Bechhofer, 96-98 for a discussion whether the ability to walk in the field or park would render this area fit for human habitation.
[572] *Eruv Ve-Hotza'ah*, 23-24.
[573] Gordon, *Kol Zvi*, 46. It is clear to what park Gordon is referring because Central Park was not included in this *eruv*.

Leasing the Area

Rabbi Seigel discussed, in *Eruv Ve-Hoza'ah*, whether the Jews would be able to achieve the lease of the city through a city official. He began by quoted the responsum of Rabbi Isaac ben Sheshet, who claimed that a Jew could lease the area from the governmental head of the city or his representative. Inasmuch as this authority had the right to prohibit people from traveling on certain streets, he had the authority to lease the area to the Jewish community.[574] Rabbi Seigel applied this reasoning to the situation in New York City. He explained that the city may be leased from a city official, since that city official has the authority to close the street to traffic at his will. He provided an example of this phenomenon from his own experience where the Mayor posted armed soldiers in the streets of Brooklyn during a strike. The presence of the soldiers altered the usual traffic through the streets. In addition, he suggested that the area could be leased from a policeman who also had the authority to control the flow of traffic on the street. Even though the term of the City official could end in the middle of the term of the lease, the *Shulhan Arukh* argued that, even in such a case the lease is not cancelled.[575] Furthermore, in New York City, where the elected officials were only elected for two- year terms, even according to Hakham Ashkenazi, who did not permit the lease to extend beyond the term of the city official,[576] the area could be leased from the local policemen since they were not elected for a fixed

[574] *Sheelot U-Teshuvot Rivash*, no. 427.
[575] *Shulhan Arukh*, *O.H.*, 382:14.
[576] *Sheelot U-Teshuvot Hakham Tzvi*, no. 6.

term.[577] Rabbi Seigel concluded his responsum as follows: "So we did in practice to lease the city from the representative of the governmental official for the duration of ten years. We make an *eruvei hazerot* every Friday and we carry on the Sabbath in the enclosed area."[578]

Rabbi Gordon argued that in America the Jews could not lease the city even from the local police who protect the local streets and neighborhoods. He concluded that the United States was unlike other countries in which leadership was "passed from father to son." Rather, in a democracy, where the leaders are chosen by elections, the mayor and even the President of the United States do not have the right to enter private homes without permission. He quotes as a precedent for this opinion the view of Rabbi Shalom Elchanan Jaffe when he opposed the *eruv* in St. Louis who also distinguished between the democracy of the United States and the hereditary governance in other countries. Finally, he quoted the opinion of Hakham Ashkenzi that was mentioned by Rabbi Seigel, in which Rabbi Ashkenazi claimed that the lease was only valid as long as the person from whom it was leased remained in office. Since the national and city leadership changed every four years, the lease would not be valid upon the expiration of the official's term.[579]

Rabbi Gordon addresses the issue whether leasing the city eliminates the problem of non-observant Jews living within the *eruv*. Rabbi Gordon concludes that

[577] *Eruv Ve-Hotza'ah*, 25.
[578] Ibid., 26.
[579] Gordon, *Kol Zvi*, 46-48.

even according to those authorities who permitted leasing from non-observant Jews, this lease was only valid if it was done from the Jews themselves. Leasing from a Jew was not valid via his *sekhiro u-lekito* or from the governmental official. Therefore, in New York, where there were many non-observant Jews, leasing from the governmental official would not obviate the fact that the non-observant Jews in the city invalidated the *eruv*.[580]

Rabbis Bernstein and Herman do not address this issue.

Approbations

Rabbi Seigel appended to his work approbations from four Polish rabbinic authorities who supported his view that an *eruv* could be created on the East Side of Manhattan: Rabbi Shalom Mordekhai Schwadron of Brezhen, Rabbi Aryeh Leibush Horowitz of Stanislav, Rabbi Moshe Meizlish of Premishla and Rabbi Moshe Nachum Yerushalimsky of Kiletz.[581]

The first approbation was written by Rabbi Shalom Mordekhai Schwadron of Brezhen, known by the acronym, Maharsham, one of the foremost rabbinic authorities in Galicia, whose decisions were accepted by both Hasidic and Lithuanian rabbis.[582] This approbation consisted of two separate letters. In the first letter, dated July 12,

[580] Ibid., 47-48.
[581] *Eruv Ve-Hotza'ah*, 31-54.
[582] For a biography of Rabbi Schwadron, see Meir Wunder, *Meorei Galicia: Encyclopedia Le-Hakhmei Galitzia* (Jerusalem, 1997), V: 14-38.

1906, Rabbi Schwadron expressed reservations about the *eruv*, since he understood that the Third Avenue El train tracks reached from the southern tip of Manhattan to the northern tip. This created a problem in a situation where the river would develop sediment so that there would be a gap between the end of the train tracks and the point in the river which had the depth to create the *eruv* wall. Therefore, he concluded, "In the end, there is room to allow carrying in the East Side of New York. However, a religiously stringent person who is able to avoid carrying is to be praised. However, in a case of an emergency, there is reason to be lenient and the rabbi has decided properly."[583]

In the introduction to the next letter from Rabbi Schwadron, dated January 14, 1907, Rabbi Seigel added a comment in parentheses in which he explained that Rabbi Schwadron had not properly understood the situation in Manhattan. In truth, the Third Avenue El train tracks crossed the Harlem River at 155th Street. and, in the south, the tracks of the Third Avenue El reached the water line at which point the river wall created the necessary *eruv* boundary. In this second letter, Rabbi Schwadron explained that he had received this letter of clarification from Rabbi Seigel and therefore he believed that the *eruv* was acceptable even in a case that was not an emergency and, therefore, even religiously stringent people could rely on the *eruv*.

In his approbation, Rabbi Schwadron clarified certain matters regarding city *eruvin* that were utilized by later rabbinic authorities. First, he explained that since the

[583] *Eruv Ve-Hotza'ah*, 28-30.

issue of sediment build-up is only a rabbinic concern, the *halakhah* follows the lenient opinion of *Magen Avraham* that sediment build-up is not a concern in rivers and that, therefore, the rivers that enclose the East Side of Manhattan would be considered acceptable *eruv* boundaries. Furthermore, Rabbi Schwadron records the opinion of the *Or Zarua*[584] who quotes the author of the Geonic work, *Halakhot Gedolot*, in which the *Halakhot Gedolot* states that a city that is surrounded by a river is considered enclosed regarding the laws of *eruvin*.[585] Rabbi Schwadron concluded that since *Or Zarua* quotes this opinion without any limitations, an island such as Manhattan that is enclosed by rivers is considered enclosed and there is no risk of sediment build-up and there is no need for man-made river walls since they are not mentioned by the *Halakhot Gedolot*. In addition, Rabbi Schwadron addressed the issue of whether the rivers need to be visible from the houses within the *eruv*. He quotes the opinion of *Ramban* that natural *eruv* boundaries such as rivers must be visible to the people within the *eruv*.[586] This would create a problem for Manhattan and most cities that are surrounded by rivers which are often far from the houses. However, Rabbi Schwadron explained that *Ramban* is limiting his comments to the case of the ocean which is not visible from anywhere in the city and cannot be reached on the Sabbath. However, argued Rabbi Schwadron, in a city where the rivers are visible at least to the people living nearby and the rivers can be reached on the Sabbath, even *Ramban* would agree

[584] *Or Zarua, Hilkhot Eruvin*, no. 164.
[585] *Halakhot Gedolot* (Jerusalem, 1972), 260.
[586] *Hiddushei Ha-Ramban, Eruvin* 59a, s.v. *u-mihu*.

that the rivers serve as acceptable *eruv* boundaries.[587] His approbation to Rabbi Seigel's work established the credibility of *Eruv Ve-Hoza'ah* within the rabbinic community of Eastern Europe and the United States.

Rabbi Bernstein addresses Rabbi Schwadron's approbation in the introduction to his work. He writes, "I wrote my work, yet, I was confused how to proceed for the act of Satan has successfully misled the great Torah sage Rabbi Shalom Mordekhai and he [Rabbi Seigel] received from him an approbation. However, after he [Rabbi Schwadron] explored the matter carefully, he changed his mind and decided to oppose the *eruv*. Now, that he has changed his mind, I can publish my work."[588] Rabbi Bernstein does not quote Rabbi Schwadron's purported retraction of the approbation.

In the introduction to Rabbi Herman's work, his grandchildren explained that Rabbi Herman was so distraught over the fact that Rabbi Seigel had received such prominent approbations for an opinion that Rabbi Herman considered to be erroneous, that he corresponded with Rabbi Schwadron, from whom he had received his rabbinical ordination, and then traveled to Poland for six months to prove to the rabbis who had given these approbations that the *eruv* of Rabbi Seigel was based on faulty logic. According to his grandchildren, only when these rabbis expressed agreement with Rabbi Herman, did he return to New York.[589] In his introduction to his work, Rabbi Herman writes, "It was difficult for me because Rabbi Seigel received

[587] Ibid., 29-31.
[588] Bernstein, 8.
[589] *Kovetz*, n.p.

approbations from European rabbinic authorities who did not properly understand the situation, as Rabbi Schwadron explained to me. Rabbi Schwadron gave me a letter that stated that he retracted his approbation. This letter has been in my possession for fifteen years."[590] This letter from Rabbi Schwadron was discovered in 2000.[591] In the letter, dated July 22, 1908, Rabbi Schwadron wrote:

> Concerning my response regarding the *eruv* in New York, at the time I believed Rabbi Yehoshua Seigel, who signed his name as the *Rav Ha-Kollel*, and all the diagrams of New York that he sent me. Later, I received letters from several rabbis which contradicted his diagrams and explained that he was not the *Rav Ha-Kollel* and that many rabbis oppose his *eruv*….Therefore, I fear God and I retract my approbation in which I allowed carrying in this one part of New York City."[592]

This attempt by the different rabbis to clarify the approbation of Rabbi Schwadron highlights two elements in the debate regarding the New York *eruv*. First, it points out that the Maharsham was accepted as the premier rabbinic authority in Galicia and his support or opposition was critical in all areas of Jewish law. Second, the dispute concerning this approbation and the fact that Rabbi Seigel sought the clarification from Rabbi Schwadron reflects the importance that the rabbis involved in

[590] *Kovetz*, n.p and *Kol Zvi*, 49.
[591] The anonymous editors of the *Kovetz Shut Be-Inyanei Eruvin Be-Artzot ha-Brit* printed a copy of the original letter. In the introduction to the letter, they wrote, "The letter was discovered in 2000 thanks to the will of God to fulfill the desire of this sainted rabbi [Rabbi Schwadron] who wanted to publicize the retraction of his approbation." *Kovetz Shut*, n.p.
[592] *Kol Zvi*, 50. This letter is also published in *Kovetz*, n.p.

this *eruv* debate placed on this approbation. Rabbi Seigel felt the need to respond to Maharsham and to seek a clarification supporting his *eruv*. Rabbi Bernstein felt restricted in his opposition to the *eruv* until he heard that Maharsham had indeed opposed the *eruv*. Finally, Rabbi Herman travelled to Poland in order to clarify the issue further and to receive this retraction from Maharsham. Although rabbinic approbations are always critical in rabbinic debate and they played an important role in the debate regarding the St. Louis *eruv*, Maharsham's approbation held an especially important place in the debate regarding the *eruv* on the East Side of Manhattan due to his stature in the Polish rabbinic world and among American rabbis at the beginning of the twentieth century who continued to feel subservient to the rabbinic authorities of Eastern Europe.

Social-Religious Context

Although the establishment of an *eruv* allows all members of the Jewish community to carry on the Sabbath, the group for which the *eruv* was initially intended played an important role in this debate.

Rabbi Seigel begins his responsum in *Oznei Yehoshua* quoting the question that was asked of him regarding whether Manhattan was considered a *reshut ha-rabbim*. He does not identify the questioner. At the end of the responsum, he hopes, "There will be a time in the future when the wealthy Jews will establish an *eruv* in Manhattan

just like there are *eruvin* in all cities where Jews live."[593] He does not elaborate on the role that the wealthy needed to play in the establishment of this City-wide *eruv* and it never came to fruition as Rabbi Seigel turned his attention to the East Side *eruv* that relied on natural boundaries.

At the beginning of *Eruv Ve-Hoza'ah*, Rabbi Seigel writes that, after he wrote the responsum in *Oznei Yehoshua*, the "God-fearing people approached him and asked if an *eruv* could be established at least on the eat side of the city."[594]

In his introduction to *Hilkhata Rabbta Le-Shabbata*, Rabbi Bernstein explains that he wrote his responsa to the *eruv* because "Unfortunately in New York there are God-fearing people who carry based on the *eruv* that was suggested by one of the rabbis here who relied on arguments that had no basis. Therefore, I decided to publish this work to remove this stumbling block from the people."[595]

Rabbi Gordon also addresses the constituents to which the *eruv* was directed. He writes:

> For whom did this rabbi work to permit this activity for which the punishment is stoning? If it is for the Sabbath violators who sit in their stores on the Sabbath selling and writing, smoking and extinguishing like on a weekday without any rabbinical dispensation, do they need an *eruv* as they are violating Biblical prohibitions…? And, if it for the sake of those for whom the spark of Judaism has not been extinguished from their hearts and they observe the

[593] *Oznei Yehoshua*, I:180.
[594] *Eruv Ve-Hotza'ah*, 1.
[595] Bernstein, 6 and see also Bernstein, 8 where he makes a similar point.

> Sabbath do we need to seek leniencies for them… for if so the laws and spirit of the Sabbath will be completely forgotten from the Jewish people?[596]

At the end of the responsum, he elaborates on his view of the two types of Jews in New York. He writes:

> Unfortunately, the epidemic has spread among the Jewish people especially in New York where Jews have removed the burden of the commandments….and they hate the observant Jews worse than the non-Jews hate them and they barely consider them people.[597]

Finally, at the conclusion of the responsum, Rabbi Gordon makes the following comment concerning New York's observant Jews: "The observant Jews among us never saw with their eyes that people would carry with an *eruv* even in small cities. Now they have come to the metropolis of New York that cannot even be described and here they find leniencies to allow them to violate the Sabbath."[598] Rabbi Gordon argues that these Jews were not familiar with *eruvin* in the small cities in Europe.

Rabbi Herman explains, in the introduction to his work, that "many of the Jews rely on this *eruv* and carry on the Sabbath in this area. Some even carry in other areas as they did not know how to distinguish and they believe that the *eruv* extended to all places in New York, Brooklyn and Brownsville."[599]

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[596] Gordon, *Kol Tzvi*, 42
[597] Ibid., 48.
[598] Ibid., 48.
[599] Herman, Introduction, n.p.

These introductions describe three different views concerning the rationale for the creation of the *eruv* and the reasons for opposing the *eruv*. Rabbi Seigel believed that since the question came from the "God-fearing Jews", it was a legitimate request and he sought to find a way to permit the *eruv*. Rabbis Bernstein and Herman believed that these same "God-fearing Jews" were being misled and it was for their sakes that these two rabbis wrote their works opposing the *eruv*. Rabbi Gordon took another approach towards these "God-fearing Jews". He argued that there was no reason to seek leniencies for these religious Jews, especially since they were familiar with *eruvin* in the cities in Eastern Europe. Rabbi Gordon claimed that even if one could find explanations to permit the *eruv* on the East Side of Manhattan, this was not the approach that Rabbi Seigel should take towards these religious Jews who should not be relying on such leniencies.

It is not clear whether Rabbi Seigel's decision to defend the creation of the New York *eruv* for the sake of the "God-fearing Jews" was based on the fact that these otherwise-religious Jews were carrying on the Sabbath or whether it was in order to enable them to better enjoy the Sabbath through the utilization of the *eruv*. Yet, unlike the *eruv* in St. Louis in which Rabbi Rosenfeld defended its creation based on the need to protect those Jews who were carrying on the Sabbath, Rabbi Seigel does not make any mention of Sabbath desecration as his reason for creating the *eruv*.

Conclusion

The *eruv* on the East Side of Manhattan represented the second documented city *eruv* in North America. Remarkably, Rabbi Seigel, the initiator of the New York *eruv* wrote a letter of approbation for Rabbi Jaffe's anti-*eruv* treatise in St. Louis. At least in Rabbi Seigel's mind, there was no contradiction between supporting the *eruv* in New York and opposing the *eruv* in St. Louis. Although Rabbi Seigel does not elaborate on his reasons for opposing the St. Louis *eruv*, the halakhic issues that laid the foundation for his support of the East Side *eruv* in Manhattan evidently did not satisfy him regarding the *eruv* in St. Louis. Regarding the St. Louis *eruv*, whereas Rabbis Rosenfeld and Jaffe argued about the halakhic categories underlying the dispute, their main argument revolved around whether the *eruv* boundaries described by Rabbi Rosenfeld really existed and whether St. Louis had a population that exceeded 600,000. In the case of the New York *eruv*, the physical boundaries were not open to dispute, as all of the rabbis agreed that the East Side of Manhattan was bounded by rivers and the elevated train tracks. The issue was whether these boundaries constituted acceptable *eruv* boundaries and this led to a classic halakhic debate between the rabbis based on the precedent of earlier city *eruvin* in Europe and St. Louis and the halakhic material that accompanied the discussion of *eruvin* throughout the centuries. Therefore, it is not surprising that Rabbi Seigel was a proponent of city *eruvin*, although he opposed the St. Louis *eruv* based on Rabbi Jaffe's rejection of Rabbi Rosenfeld's description of the boundaries of that *eruv*.

Furthermore, the halakhic issues that were addressed in St. Louis differed from the ones that were tackled regarding the New York *eruv*. In St. Louis, Rabbis Rosenfeld and Jaffe disagreed about the status of telegraph poles and wires as *eruv* boundaries. Although the rabbis who opposed the New York *eruv* mentioned the problem of *tzurat ha-petah min ha-tzad* vis-a-vis the Third Avenue El train tracks, Rabbi Seigel did not address this issue and took it for granted that the Third Avenue El train tracks were acceptable *eruv* boundaries. In addition, even though the acceptability of rivers as *eruv* boundaries was an issue in both *eruvin*, Rabbi Seigel's permissive ruling regarding the rivers in New York was based on the fact that three sides of the area were surrounded by rivers and the elevated train tracks enclosed the entire area, a situation that did not exist in St. Louis. Therefore, it is once again not surprising that Rabbi Seigel was able to oppose the St. Louis *eruv* and support the New York *eruv*.

As previously mentioned, the impetus for the creation of the *eruv* differed in these two cities. In St. Louis, Rabbi Rosenfeld described how he initiated the idea of the *eruv* in order to save people from violating the Sabbath laws. In the case of the New York *eruv* Rabbi Seigel did not identify the questioner in his first responsum and it is even possible that he addressed the question to himself. In his subsequent treatment of the issue in 1905, he identified the questioners who requested an *eruv* on the east side of Manhattan as the "*haredim*", the God-fearing people. Rabbi Seigel did not explain the reasoning of these religious people for requesting the creation of an

eruv. Yet, the fact that the St. Louis *eruv* was initiated by the rabbi and the New York *eruv* was purportedly initiated by the members of the community points to two models of Jewish communities during this period. In St. Louis, the rabbi took the halakhic initiative and the community followed his lead whereas in New York, at least in this instance, the community allegedly took the lead and the rabbi heeded their call and created the *eruv*.

Furthermore, this dispute in New York reflected a deepening rift among the Eastern European Orthodox community of the Lower East Side in the early decades of the twentieth century. When the *Agudath ha-Rabbonim* was created in 1902 upon the death of Chief Rabbi Jacob Joseph, it was founded by the supporters of the Chief Rabbi in an attempt to maintain the authority that he had sought to establish. Rabbi Seigel chose not to join the newly formed *Agudath ha-Rabbonim* as a result of his challenge of the Chief Rabbi's authority concerning kosher supervision. While this may have been coincidence, the publisher of Rabbi Seigel's responsa stated that, following the death of the Chief Rabbi, Rabbi Seigel had endured many hardships due to people who were jealous of his position pursuing him.[600] If this report is accurate, the split between the *Agudath ha-Rabbonim* and Rabbi Seigel was acrimonious and the members of the *Agudath ha-Rabbonim* continued to have a contentious relationship with him. The three rabbis who opposed the *eruv* were early leading members of the *Agudath ha-Rabbonim*. Although there is no mention of this tension

[600] *Oznei Yehoshua*, end of volume.

between the rabbis in their discussion of the New York *eruv*, the *eruv* controversy reflected the division between Rabbi Seigel and members of the Orthodox rabbinic establishment of the time.

The dispute between Rabbi Seigel and the *Agudath Ha-Rabbonim* was also reflected in the members of the community that relied on this *eruv*. Rabbi Herman wrote that the "God-fearing Jews" did not rely on the *eruv* whereas the "common Jews" did rely on the *eruv*. Rabbi Judah David Eisenstein, the early historian of Lower East Side Orthodox Jewry, painted a different picture of those who relied on the *eruv* and those who did not. In his volume *Otzar Zikhronotai*, published in 1930, he wrote in the entry for the obituary for Rabbi Seigel:

> The Hasidim who follow his word are about 2,000 people and they do not hesitate to carry their *talleisim*, *siddurim* and *humashim* to the synagogue. This is in spite of the fact that the *Misnagdim* complained and called out against them.[601]

Furthermore, in 1936, Rabbi Yosef Eliyahu Henkin, the rabbinic authority on the Lower East Side at the time, wrote, "There are many observant Jews and especially those Hasidim from Poland who carry here on the street on the Sabbath relying on the permission of Rabbi Joshua Seigel of Sherps."[602] Although Rabbi Seigel was not a Hasid, as the number of Hasidim in New York slowly grew in the first decades of the

[601] Judah David Eisenstein, *Otzar Zikhronotai* (New York, 1930), 118.
[602] *Luah Ha-Yovel shel Ezrat Torah* (Brooklyn, NY, 1936), 62 reprinted in *Edut le-Yisrael*, (NY, 1949), 151.

twentieth century, these Orthodox Jews tended to follow Rabbi Seigel, who represented the Polish and Galician community that was the place of origin of most of these Hasidim.[603] The *eruv* controversy, therefore, reflected not only different interpretations of the law. It also represented the split between two groups of Orthodox Jews on the Lower East Side, a split that appears to have been contentious, both as it related to its leadership and to their followers.

Although the *eruv* on the East Side of Manhattan plays a role in the history of the development of city *eruvin* and the precedents that the rabbis in this dispute utilize reflect a continuation of the tradition of relying on earlier *eruvin* to justify the creation of new ones, the evolution of the history of *eruvin* in North America requires further understanding. Independent of the curious irony that the initiator of the East Side *eruv* opposed the St. Louis *eruv*, the precedent of the St. Louis is quoted only once in the entire discussion regarding the *eruv* on the East Side of Manhattan. This one mention of *Shoel Ka-Inyan* by Rabbi Gordon is limited to Rabbi Jaffe's discussion of whether the government authorities in the American democracy have the status of *sekhiro u-*

[603] The exact number of Hasidim in New York at the beginning of the twentieth century is unknown. Eisenstein claimed that there were 2,000 Hasidim. In *The Jewish Communal Register of New York City 1917-1918*, Isaac Even claimed that the Hasidim were a small minority even at the end of World War I. However, he placed their number at 30,000 in New York. See Isaac Even, "Chassidism in the New World," in *The Jewish Communal Register of New York City 1917-1918* (New York, 1918), 341-46. For the history of Hasidism in North America prior to World War II, see Ira Robinson, "The First Hasidic Rabbis in North America," *American Jewish Archives* 44 (2) (1992): 501-517. And Ira Robinson, "Anshe Sfard: The Creation of the First Hasidic Congregations in North America: *American Jewish Archives* 62 (1-2) (2005): 53-66.

lekito to allow the Jewish community to lease the city from them. Rabbi Seigel was clearly familiar with the dispute regarding the St. Louis *eruv* and, among the opposition in New York, at least Rabbi Gordon was familiar with Rabbi Jaffe's work. Even if they believed that the details of the St. Louis *eruv* did not match the specifics of the East Side of Manhattan, there must have been some area in which the St. Louis would have served as a more reliable precedent than the *eruvin* of Central and Eastern Europe that they quote. Is it possible that, just as these rabbis relied on the opinions of the Polish rabbinic authority Maharsham, that they believed that the European *eruvin* served as more reliable halakhic precedents as they were discussed by the rabbinic sages of the earlier generations? Although much is left to conjecture, the study of subsequent North American *eruvin,* including the expansion of the East Side *eruv* to include the entire Borough of Manhattan will shed light on the role of Rabbi Seigel's *eruv* in the history of *eruvin* in North America.

CHAPTER 6

The Toronto *Eruv*

The Toronto *eruv* was created in 1921 by Rabbi Yehudah Leib Graubart, a recent immigrant from Poland. This *eruv* was the first *eruv* in North America that was not opposed by other rabbinic authorities. This chapter will explore the history of this *eruv* and analyze Rabbi Graubart's halakhic justification of the Toronto *eruv*. In addition, it will evaluate the reasons for the absence of dissenting rabbinic opinions regarding this *eruv*. What role did the Toronto *eruv* of 1921 play in the history of the evolution of community *eruvin* in North America in the first part of the twentieth century?

Although there were several thousand Jews in Canada by the 1870s, the Jewish communities of Canada underwent a significant transformation beginning with the mass migration from eastern European in the last two decades of the nineteenth century.[604] Between 1881 and 1901, Canada's Jewish population grew from 2,443 to 16,401, of which 9,300 were immigrants. It is clear from the 1891 Canadian census returns that a significant percentage of the immigrants resided previously for a time in

[604] For a review of the early history of the Jews in Canada, see Gerald Tulchinsky, *Taking Root: The Origins of the Canadian Jewish Community* (Hanover, NH, 1993), 8-60.
For an excellent study of the Jewish community in Toronto from its inception until 1937, see Stephen A. Speisman, *The Jews of Toronto: A History to 1937* (Toronto, 1979).
For the early history of the Jews in Toronto, see Speisman, 11-20.

the United States, Britain or Germany. It has not been established whether these immigrants moved directly to Canada from the American ports or whether they spent some time in America before moving north.[605] This increase in Jewish population during this period was reflected in the growth of the Jewish community of Toronto. In 1881, there were 534 Jews in Toronto. By 1891, that number almost tripled and by 1911 there were over 18,000 Jews in Toronto. The majority of these new immigrants were part of the Eastern European migration.[606]

[605] Tulchinsky, 109-110.
[606] Speisman, *Jews of Toronto*, 69-78 and Stephen A. Speisman, "St. John's Shtetl: The Ward in 1911," in *Gathering Place: Peoples and Neighbourhoods of Toronto, 1834-1945*, ed. R.F. Harney (Toronto, 1985): 108.

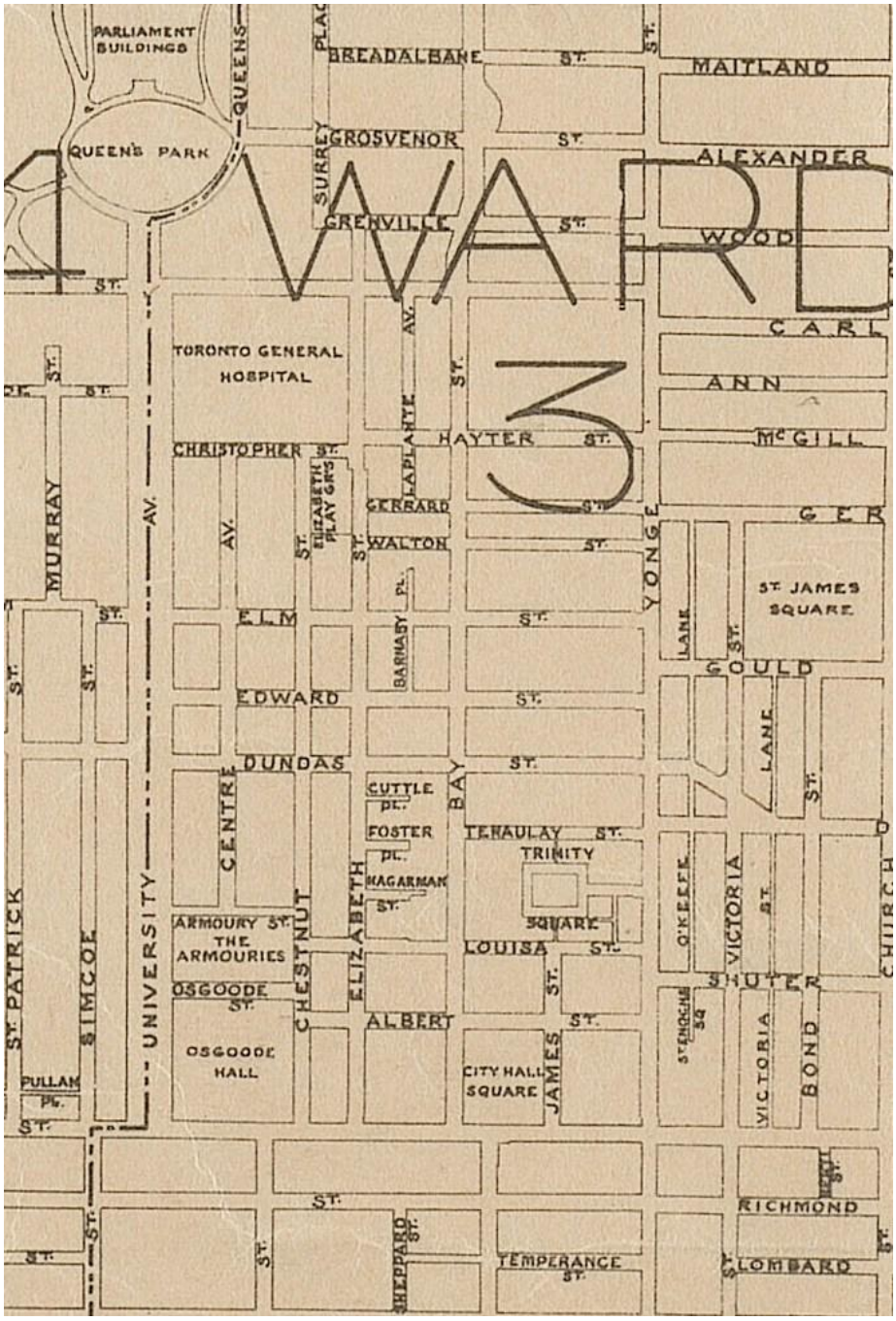

Fig. 4 - Plan of the City of Toronto, July 19, 1923 City of Toronto Archives, Series 725, File 17

Almost without exception, the Jewish immigrants to Toronto from Eastern Europe gravitated to St. John's Ward. "The Ward," as it was called, was a district bounded by Yonge Street, University Avenue, Queen and College Streets and was considered a slum from the beginning of its existence in the mid-nineteenth century. Most of these immigrants came with limited funds and many arrived without their families and had little choice but to find inexpensive housing near the commercial center of the city. Initially, most of these Jewish immigrants worked in clothing factories. However, over time some of them were able to open shops and factories that serviced the Jews of The Ward.[607]

The Ward was also the location of new synagogues that catered to these immigrants. In 1883, a group of recent immigrants, mostly Lithuanians, founded a new congregation, Goel Tzedec. This congregation was housed in a structure seating 1,200 people which was modeled after the Roman Catholic Cathedral of Westminster. In 1887, a group of Russian and Galician Jews seceded from Goel Tzedec and formed their own congregation, Chevra Tehillim. The following year the Galician Jews set up a synagogue of their own, Shomrai Shabboth Anshei Oistreich Minhag Sfard. By the beginning of World War I, there were over twenty small congregations, all

[607] Speisman, "St. John's Shtetl," 107-113.

representing *landsmanschften* and serving religious and social services for its members.[608]

Although the *landsmanschaften* congregations played an important in the Toronto Jewish community, there was no ordained rabbi in Toronto until, in 1899, the Galician synagogue, Shomrai Shabboth, hired a young Romanian rabbi, Joseph Weinreb, to serve as its spiritual leader. Although he was respected by the entire community, he was not accepted as the rabbi by the Russian and Lithuanian community which wanted a rabbi who had studied in one of the Lithuanian *yeshivot*. When Rabbi Jacob Gordon, a recently ordained rabbi from the yeshiva of Volozhin in Lithuania, arrived in Toronto in 1904 to collect funds for his school, he was immediately hired by the Russian and Lithuanian communities to serve as their rabbi. B.G. Sack, a historian of early Jewish life in Canada, described the Toronto Jewish community at the time of Rabbi Gordon's arrival as follows: "He found a warm and friendly atmosphere and a community devoted to traditional Jewish values."[609] By World War I, Rabbi Gordon was the rabbi of at least six Lithuanian and Russian congregations, with Goel Tzedec the largest among them.[610]

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[608] Speisman, "St. John's Shtetl," 113 and Speisman, *The Jews of Toronto*, 96-104. For the history of Chevra Tehillim, see *50 Years of History of the Beth Medrosh Hagadol Chevra Tehillim*, edited by S. Traub (Toronto, 1938).

[609] B.G. Sack, *Canadian Jews-Early in This Century* (National Archives Canadian Jewish Congress (Montreal, 1975), 38

[610] A biography of Rabbi Gordon can be found in Kimmy Caplan, "There is No Interest in Precious Stones in a Vegetable market: The Life and Sermons of Rabbi Jacob Gordon of Toronto," *Jewish History* 23 (2009): 149-155. Rabbi Gordon's

There were two other Orthodox rabbis in Toronto during this period. Rabbi Meyer Levy, a native of Russia, served as the rabbi of Shomrai Shabboth following a split in the congregation during which Rabbi Weinreb left Shomrai Shabboth and joined the new congregation. Rabbi Levy had immigrated to Detroit, but unable to secure an acceptable rabbinical position there, he became a merchant. Subsequently, Rabbi Levy also served a rabbi of the Romanian congregation, Adath Israel, and the Russian congregation, Shaarei Tzedec in Toronto.[611]

Rabbi Yudel Rosenberg served as rabbi of the Polish Jewish community in Toronto. One of Hasidic pioneers in North America, Rabbi Rosenberg, who called himself the Tarler Rebbe arrived in Toronto in 1913 and became rabbi of the Polish congregation, Beth Jacob. Nahman Shemen, a historian of the Toronto Orthodox Jewish community, reported that, according to one account, hundreds of people worshipped in Beth Jacob and participated in Hasidic ceremonies such as the rabbi's discourse at the Third Meal on Sabbath afternoon.[612] Dissatisfied with the Simcoe Street Talmud founded by Rabbi Gordon, Rabbi Rosenberg founded the Polish Talmud Torah which was soon renamed Etz Hayyim.[613] In 1918, the Jews of Toronto heard that Rabbi Rosenberg had been invited to serve as a rabbi in Detroit. In

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experiences in Toronto can be found in Rabbi Jacob Gordon, "Zikhronos fun a Torontoer Rav," *Centennial Jubilee Edition Commemorating the Centenary of Jewish Emancipation in Canada and the Twenty-fifth Anniversary of the Jewish Daily Eagle* (Montreal, 1932), 67, 78.

[611] Speisman, *Jews of Toronto*, 166.

[612] Nachman Shemen, "Orthodoxy in Toronto," (Yiddish) *Yiddisher Journal*, 1950, 10.

[613] Speisman, *Jews of Toronto*, 173-74.

response, the city's Polish Jewish community convened a mass meeting in which the Polish Jews agreed to unite into one congregation, Kehillat Yisrael, of which Rosenberg would be appointed rabbi. However, by 1919, he decided that he would have greater opportunities elsewhere and accepted a position in Montreal, the largest Jewish community in Canada at the time.[614]

As the Toronto Orthodox community continued to develop, there emerged a tendency towards religious laxity. Rabbi Gordon wrote that when he arrived in Toronto in 1905, the Sabbath was strictly observed in The Ward with Jewish factories closed every Saturday. Jewish workers often did not work on the Sabbath for their non-Jewish factory owner even though they risked losing their jobs. However, as early as 1904, one religious Jew moved his family outside of The Ward in order that his children not see other Jewish children violating the Sabbath.[615] When the Lyric Theatre opened in 1909, the *Yiddisher Journal* included a complaint that some Jewish women went to synagogue on Saturday morning and to the matinee in the afternoon.[616] By 1915, a few Jewish shops in the Ward even remained opened on the Sabbath.[617] Synagogue attendance also began to dwindle and Goel Tzedec had

[614] For a biography of Rabbi Rosenberg, see Ira Robinson, "Rabbi Yudel Rosenberg" in *Rabbis and Their Communities: Studies in the Eastern European Rabbinate in Montreal*, 1896-1930 (Calgary, 2007), 58-59 and Ira Robinson, *A Kabbalist in Montreal: The Life and Times of Rabbi Yudel Rosenberg* (forthcoming). See also Speisman, *Jews of Toronto*, 164-167.
[615] Gordon, "Zikhronos", 67
[616] *Yiddisher Journal*, June 18, 1909
[617] Shemen, "Orthodoxy in Toronto," 5.

difficulty assembling a *minyan* for weekday services. Even some bakeries and groceries, which had previously been strictly kosher, began to remain open on the Sabbath.[618]

The Polish Jews, who constituted the largest segment of the Orthodox community and felt a responsibility to address the problem of ritual observance among the Jewish community in Toronto, were without a rabbinic leader after Rabbi Yudel Rosenberg left Toronto in 1919. These Polish Jews sought a replacement who would both serve as the rabbi of the Polish community and would unify the Orthodox community of Toronto in an attempt to strengthen ritual observance and communal involvement. In 1920, a group of Polish Jews from Toronto invited Rabbi Yehudah Leib Graubart to become the head of the Polish Jewish community there. Uncertain about the prospects for Jewish life in Toronto, he resisted the offer. However, in the summer of 1920, Rabbi Graubart traveled to London to participate in a Mizrachi conference. When fighting broke out between Russia and Poland, he was unable to return to Poland and accepted the position in Toronto as head of the Polish Jewish community.[619]

Rabbi Graubart was born in 1862 in Sarinsk in the Slutz Province of Lithuania. His father, a Hasid and follower of Rabbi Israel Meir of Gur, was Rabbi Graubart's initial Talmud teacher. His father made sure that the young Graubart was acquainted

[618] Shemen, "Othodoxy in Toronto," 5 and Speisman, *Jews of Toronto*, 278-279.
[619] Shemen, "Orthodoxy in Toronto," 5.

with the teaching and practices of the Hassidim. However, Rabbi Yehudah Graubart also took an interest in Jewish philosophy and Modern Hebrew literature.

Graubart received his rabbinic ordination in 1882 from Rabbi Chaim Eliezer Wax of Kalisch. Poland and two years later received an additional letter of ordination from Rabbi Nathan Leipziger of Sarinsk. He subsequently served as community rabbi in several towns in Lithuania and Poland. In 1901, Rabbi Graubart became the rabbi in Stashov, Poland where he remained for the next twenty-five years. Here he gained a reputation as a great rabbinic scholar and as a fiery preacher often denouncing the secularists and Bundists. He also gained a reputation for establishing community boards throughout Poland to strengthen Jewish education and tradition. When World War I broke out, Rabbi Graubart was arrested with several other rabbis by the Russian authorities on suspicion of spying for Poland. Following his release from prison, he moved to Moscow where he witnessed the Bolshevik Revolution. Rabbi Graubart was instrumental in raising money for needy families, establishing prayer services and teaching children during this difficult period. Following World War I, Rabbi Graubart joined the Religious Zionism movement, Mizrachi, where he became one of its most important spokesmen. He served as the editor of the Mizrachi journal *Ha-Mizrachi* and published several articles encouraging European-Jewish youth to consider moving to Israel. [620]

[620] A lengthy biography of Rabbi Graubart can be found in Nachman Shemen, "Rabbenu Yehudah Leib Graubart," (Yiddish) in *Yovel-Buch, Talmud Torah Etz*

Rabbi Graubart seemed to be the perfect rabbi for the Toronto Polish community. Many of the Polish Jews in Toronto came from Stashov, where Rabbi Graubart had established a stellar reputation. In addition, the Toronto community believed that his involvement in creating communal organizations would serve him well in Toronto. Finally, the Jewish community of Toronto contained a strong Zionist contingent and Rabbi Graubart was respected for his leadership in Mizrachi. Rabbi Graubart seemed to understand the challenges that lay ahead in Toronto. In his autobiography, which mainly discussed his experiences during World War I, he added, at the conclusion, that, when he arrived in Toronto, the greatest problem facing the Jewish community there was "that any city that does not have one chief rabbi for the city will lead to having nine different communities all involved in strife and conflict."[621]

Rabbi Graubart's view that Toronto needed one chief rabbi caused tremendous friction within the Toronto Jewish community in the years following his arrival. Ever since Rabbi Gordon's arrival in Toronto in 1905, Rabbis Gordon and Weinreb had established a *Va'ad HaKashruth*, which regulated all ritual slaughtering and kosher meat sales in Toronto. The Polish community had felt left out of this *Va'ad* and upon

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Chaim, ed. By N. Shemen and L.J. Zuker, (Toronto, 1943), 13-45. A short biography can be found in Sherman, *Orthodox Judaism*, 81-83. See also Yitzchak Raphael, *Encyclopedia shel ha-Tzionut ha-Datit* (Jerusalem, 1958), 1:561-65. Much of Rabbi Graubart's experience in Europe is contained in his autobiographical recollections, *Sefer Zikaron* (Lodz, 1925).

[621] *Sefer Zikaron*, 205

Rabbi Graubart's arrival in Toronto, nine Polish congregations united into an independent kashruth organization. The United Polish Jewish Communities Khal Adath Israel resolved to recognize only Rabbi Graubart's authority in matters of kosher meat. A quiet battle ensued between the two kashruth organizations. However, by January, 1922, both sides realized that unity was needed and they met at Goel Tzedec to initiate a movement to merge their organizations.

The merging of these organizations was met with the opposition of Rabbi Graubart who claimed that, since he was invited to be the Chief Rabbi of Toronto, albeit only of the Polish community, his authority must reign supreme in all matters of kashruth. Although Rabbis Gordon and Weinreb were willing to acknowledge his scholarship, they were not willing to cede all authority to him. A battle ensued with each side placing pamphlets and leaflets throughout the community. In October, 1923, the Kehillah of Toronto was incorporated in order to establish one standard for all kashruth supervision. The Polish community was invited to participate in this new Kehillah and Rabbi Graubart agreed to join even though he refused to sign a formal contract. Once again, he insisted on being recognized as the Chief Rabbi and after a few months, the unity of the Kehillah disintegrated. [622]

While Rabbi Graubart was largely unsuccessful in his attempt to establish himself as the authority in matters of kashruth in Toronto, he was successful in two

[622] The episode of the battle involving the Kehillah and Rabbi Graubart is described and well-documented in Speisman, *Jews in Toronto*, 283-303

other areas in the building of the Jewish community there. Upon his arrival in Toronto, Rabbi Graubart immediately took a leadership role in Eitz Chaim, the Polish Talmud Torah that had been opened by Rabbi Rosenberg. While the language of instruction continued to be Yiddish, more Hebrew was introduced, in line with Rabbi Graubart's Zionist affiliation. In addition, Rabbi Graubart began an upper school, Yeshiva Shaarei Torah, in 1923.[623]

Rabbi Graubart also tackled the issue of Sabbath observance in Toronto. In April, 1922, he published a short pamphlet, in Yiddish and English, entitled *A Sabbath Letter*. He began the pamphlet speaking in the name of the Sabbath:

> I, Dame Sabbath, appeal to you. I am sufficiently known to and my lineage needs no introduction. I am as old as the Jew. I have ever played the greatest role and have occupied the greatest place in Jewish history. I am the crown of Judaism---God's cherished one---Israel's delight.[624]

He continued the letter criticizing both the Jewish employers for forcing Jews to work on the Sabbath and the Jewish employees for working on the Sabbath. He ridiculed the employer whom he wrote, "goes to the synagogue on the Sabbath day, is called up to the scroll of the Law, the Reader recites in his honor 'Whoever doeth work therein

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[623] For the history of Eitz Chaim, see *Yovel-Buch Eitz Chaim*, especially Shemen, Nachman and J.I. Wohlgelernter, "The Establishment and Development of Talmud Torah Eitz Chaim," (Yiddish) 127-186. For a reference to Yeshiva Shaarei Torah, see Shemen, "Orthodoxy in Toronto," *Yiddisher Journal* April 19, 1950.
[624] *A Sabbath Letter* (Toronto, 1922), 2.

shall be put to death'…He leaves the synagogue with a parting 'Gut Shabbos' and immediately winds his way to the forbidden labor that had so recently been denounced."[625] He also compared the situation of the Jews in Poland to their situation in America:

> You are indeed to be pitied, American Judaism. How lamently deplorable is your `status. You dwell in the happiest of lands, in an oasis surrounded by deserts of misery. You enjoy all rights; you suffer no restrictions and no foes harm you nor destroy your position, and yet you are ruining your own career…Of what avail then is your stable economic condition, when it is obtained at the expense of your spiritual life…[626]
>
> In the old country, in those dark and wretched regions where starvation rules, where one is lifelong engaged in the supreme struggle for a dry crust of bread, yet as in Warsaw, Lodz, Bialystock, Vilna---Shabbos is Shabbos as the Lord has ordained.[627]

Rabbi Graubart, however, does not conclude his letter with mere repudiation and rebuke. He makes several suggestions to rectify the problem and he became involved in helping the Jews of Toronto not have to work on the Sabbath. He writes that he approached the officers of the Cloak Makers' Union and proposed a plan to divide the Saturday work hours among the other days of the week. Rabbi Graubart claims that the union promised ratification of this policy as long as the employers agreed. Based on this promise, he calls to the Jewish employers, "So you see, it is up to you,

[625] Ibid., 3.
[626] Ibid., 5.
[627] Ibid., 6.

manufacturers. It is your move. Call a meeting and give this important question the full consideration to which it is entitled. Surely you will come to a decision---and to a favorable conclusion---that the Sabbath shall rest and your budget shall not suffer."[628]

Finally, Rabbi Graubart concludes his letter by placing additional pressure upon those who insisted on working on the Sabbath. He writes:

> Furthermore, I appeal to all congregations to guard our honor and aid in eradicating this evil public violation of the Sabbath. Let not those who employ Jews on the Sabbath day, and those who keep their stores open on this day, hold any office. They must not be presidents or trustees, nor should they participate in any committees.[629]

Rabbi Graubart followed this letter by posting notices throughout the community urging Jewish workers and manufacturers not to work on the Sabbath and he included lists of Sabbath observing shops.

Rabbi Graubart continued his vigilance for Sabbath observance. In 1924, he delivered a series of four lectures on the Sabbath in Kensington Market criticizing those people who were shopping in the stores on the Sabbath and those shopkeepers who kept their stores open on the Sabbath. Kensington Market, known at the time as the Jewish Market, was founded at the beginning of the twentieth century by Jewish immigrants. Many Jews had small shops in the market that sold food, goods or

[628] Ibid., 7.
[629] Ibid., 7-8

services such as tailoring.[630] He began his first sermon in Kensington Market pointing out the oddity of a rabbi delivering a sermon in the open market on the Sabbath.

> Who has ever heard of such a thing, a rabbi, head of a community, delivering a sermon outdoors… This is my intention that the assembled should ask such a question….Is the custom that your children do not put on *tefilin* and you and your wives purchase on the Sabbath. Is this custom an ancient one derived from the practices of Poznan, Hordona, Lublin and Cracow?... Had you maintained the traditions of your fathers and the practices of the past, the rabbi would also have maintained the tradition and not delivered a sermon in public.[631]

He continued and argued that "what is the purpose of rebuking the Sabbath violators in the synagogue where only the Sabbath observers are found?" [632]

Furthermore, he compared the situation of the Jews in Russia and Poland to the situation of the Jews in America. In Poland, during World War I, he argued, that the Polish government forced the Jews to keep their stores open on the Sabbath. In Russia, even following the war, the government forced the Jews to work on the Sabbath. In America, there is freedom not to work on the Sabbath. Yet, the Jews travel on the trolleys and purchase products from the stores.[633]

In the second sermon in Kensington Market, Rabbi Graubart reiterates the importance of observing the Sabbath and concludes, "The one who closes his business

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[630] Speisman, *Jews of Toronto*, 81-88.
[631] *Sefer Devarim ki-Khtavam* (Toronto, 1932), 197
[632] Ibid., 198
[633] Ibid., 199

on the Sabbath is worried about making a living…However, God will provide a blessing in all his endeavors and allow him to become wealthy."[634] In the third and fourth sermons he repeats the value of the Sabbath for all those who observe its laws. At the conclusion of the fourth sermon, he provides some insight into the nature of the Orthodox Jews in Toronto at the time:

> If these women who violate the Sabbath were not religious, I would have remained silent. However, they are observers of the commandments, they do not eat non-kosher meat, they maintain a Jewish home, the stoves and ovens are kosher, they purchase meat and fish for the Sabbath, they are careful to light the Sabbath candles and they observe the positive commandments of the Sabbath but violate its negative precepts.[635]

The Jews that Rabbi Graubart addressed were not assimilated Jews who had rejected the traditions of Judaism. They were, rather, observant Jews who had chosen to become lax in the observance of certain aspects of the Sabbath. It is for this reason, in his public addresses to all who stood around in Kensington Market, Rabbi Graubart concludes, that it was worthwhile for him to publicly rebuke the Sabbath violators.[636]

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[634] Ibid., 203
[635] Ibid., 208
[636] Speisman wrote that Rabbi Graubart urged a boycott of Jewish stores that remained open on the Sabbath and encouraged picketing of these establishments. He also claimed that Rabbi Grabaurt risked being assaulted. See Stephen Speisman, "Orthodox Rabbinate Updates Toronto Eruv," *Canadian Jewish News*, January 11, 1996, p. 3.

In addition to Rabbi Graubart's concern for the Sabbath observance of the broader Toronto Jewish community, he was also interested in assisting the Sabbath observer in his observance of the Sabbath. It is in that vein that Rabbi Graubart created an *eruv* in Toronto. In his collection of responsa, *Havalim Ba-Neimim*[637], he describes the request that led him to establish this *eruv*. He began the responsum, dated 5681 [1920-1921], with the following heading:

> I have been requested here in Toronto by many people who are also righteous people to find a way to establish that all the members of this city will be allowed to carry on the Sabbath. They said that I must find a way to "remove the stumbling block".[638]

The remainder of the lengthy responsum explained the halakhic rationale for the creation of this *eruv*. There was no opposition to Rabbi Graubart's *eruv*. Therefore, the analysis of the *eruv* will focus on Rabbi Graubart's explanation of the *eruv* boundaries and halakhic justification for the creation of the Toronto *eruv*.

Should One Create an Eruv?

Rabbi Graubart begins his *teshuva*h by quoting Rabbenu Asher's letter to the rabbi in Fredes in which Rabbi Graubart threatened to excommunicate him if he did

[637] These response were published as follows: volume 1, (Pietrokov, 1901), vol. 2 (Warsaw, 1910), vol. 3-4 (Lodz, 1929-34) and vol. 5 (n.p., 1939). They were reprinted in two volumes (Jerusalem, 1975). All page references will be to the 1975 reprinting of *Havalim Ba-Neimim*.
[638] *Havalim Ba-Neimim* III: 21.

not build an *eruv* in the city.[639] Furthermore, he cited Rabbi Moshe Sofer's letter to the rabbi in Wurzburg instructing him about the importance of constructing city *eruvin*. Finally, he quoted a responsum by Rabbi Hayyim Elazar Wachs, one of the great Polish rabbinic authorities in the second half of the nineteenth century and the rabbi who ordained abbi Graubart, who writes as follows: "In a city where the Sabbath violators and those who carry on the Sabbath are rampant, we must gather all the possible leniencies to allow for the creation of an *eruv* in the city." Rabbi Wachs supports his argument quoting Rabbi Moshe Sofer who was lenient regarding the construction of the *eruv* in Pressburg and Rabbi Wachs writes, "And, if Hatam Sofer was lenient in Pressburg in the early days which were better than our days, what can we say today?"[640] Rabbi Graubart concludes his introduction as follows: "It is obvious as it is written in the Jewish books that since the generation is sinful and carries even though it is forbidden; it is a *mitzvah* to save them from this prohibition."[641]

Borders of the *Eruv* and the Issue of Telephone Wires as *Eruv* Boundaries

Rabbi Graubart described the boundaries of the *eruv* as follows: The Don River and the surrounding hills in the east, the Humber River and the hills of High

[639] *She'elot U-Teshuvot Le-Rabbenu Asher* (Jerusalem, 1994), *Kellal* 21, no. 8:4.
[640] Rabbi Hayyim Elazar Wachs, *Sefer Nefesh Hayyah* (Pietrokov, 1876), *O.H.*, no. 25. The discussion of the Pressburg *eruv* can be found in *Hatam Sofer*, no. 89.
[641] *Havalim Ba-Neimim*, III: 21

Park in the west, Lake Ontario in the south and the telephone poles and wires that run the length of Bloor St. in the north created *eruv* boundaries around the Toronto Jewish community. The geographic location of Toronto allowed that three sides of the *eruv* were natural boundaries and only one side needed to be enclosed with man-made boundaries. Rabbi Graubart begins his responsum discussing the acceptability of these man-made *eruv* boundaries.[642]

Rabbi Graubart addresses the issue whether telephone poles and the wires that run between the poles can create an *eruv* boundary or whether they had the status of a *tzurat ha-petah min ha-tzad* which would disqualify these telephone poles and wires as *eruv* boundaries. He tackles this problem from several different angles. First, he quotes the view of Rabbi Jacob of Lissa who writes that if a hole is made in the vertical beam and the wire is tied to the beam at that point, this pole and wire constitute an acceptable *eruv* boundary.[643] Rabbi Malkiel Tzvi of Lomza explains that Rabbi Jacob of Lissa would validate this *eruv* boundary even if the vertical beam extends above the point where the wire has been inserted.[644] Rabbi Graubart is not satisfied with this explanation because this explanation would eliminate the category of *tzurat ha-petah min ha-tzad* which deems unacceptable any crossbar or wire that is not connected to the top of the vertical pole. Therefore, Rabbi Graubart distinguishes

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[642] Ibid., 21-22.
[643] Jacob of Lissa, *Sefer Mekor Hayyim im Magen ha-Elef al Hilkhot Pesah* (Warsaw, 1908), 217.
[644] *Divrei Malkiel*, III: 16.

between the construction of telegraph poles and wires in Eastern Europe and the construction of the telephone poles and wires in Toronto. He argues that the only situation in which a pole and cable is not acceptable as a *tzurat ha-petah* is a scenario in which the cable is bolted to the side of the pole. However, in the construction of telephone poles, the cable is connected to the top of a crossbar that protrudes from the main telephone pole. Therefore, this *tzurat ha-petah* would be acceptable as an *eruv* boundary since at the point of this crossbar, the vertical beam does not extend above the cable. He supports this distinction referring to a letter of approbation to his responsum written by Rabbi Shlomo Dov Kahane of Warsaw in which Rabbi Kahane was able, based on drawings sent to him by Rabbi Graubart, to distinguish between the telegraph poles in Warsaw and the telephone poles in Toronto. Rabbi Kahane concludes that although many halakhic authorities had disqualified the telegraph poles and wires in Eastern Europe as valid *eruv* boundaries, the telephone poles and wires in Toronto were valid *tzurot ha-petah* because the wires are connected to the top of the crossbar that protrudes from the vertical beam. Rabbi Kahane explains that he showed Rabbi Graubart's letter to several rabbis in Poland who agreed with the distinction between the situation in Eastern Europe and the one in Toronto.[645]

Rabbi Graubart makes an additional argument to justify the use of the

[645] *Havalim Ba-Neimim,* III: 21-22. Rabbi Kahane's letter is included in the approbation contained at the conclusion of Rabbi Graubart's responsum. See Ibid., III: 50. For a discussion of Rabbi Graubart's view on telephone poles and their use as *tzurot ha-petah,* see Bechhofer, 68-69.

telephone poles and wires in Toronto as acceptable *eruv* boundaries. He quotes the thirteenth century halakhic authority *Mordekhai ben Hillel* who writes that the only reason that a *tzurat ha-petah min ha-tzad* is not acceptable as an *eruv* boundary is due to the fact that people did not normally build doors in which the crossbar was not attached to the top of the vertical beam.[646] Based on this argument, Rabbi Graubart writes, that in the twentieth century where most doorways have windows above the door, there should be no reason to invalidate a crossbar or wire that is not attached to the top of the vertical bar.[647]

Rabbi Graubart concludes this section of the resposum and writes, "Concerning the law, the tradition is to allow for telegraph poles to serve as *eruv* boundaries…and this is the custom in Warsaw and in several other holy communities."[648]

However, Rabbi Graubart adds that in order to satisfy the rabbinic authorities who did not permit telegraph poles to serve as *eruv* boundaries and would not accept the distinction between telegraph poles of Eastern Europe and the telephone poles and wires of Toronto, he installed small poles next to the telephone poles at the two ends of the street. These poles did not have to be inserted at every telephone poles, explains Rabbi Graubart, as the *Gemara* does not mention a maximum length for a *tzurat ha-*

[646] *Mordekhai*, *Eruvin*, no. 478.
[647] *Havalim Ba-Neimim*, III: 25.
[648] *Havalim Ba-Neimim*, III: 26

petah. Therefore, the *tzurat ha-petah* was created, according to the authorities who required the insertion of these small poles, by the telephone poles at the end of each street and the wires that ran between them. Even though these poles did not reach the wires, the *Shulhan Arukh* writes that they serve as acceptable *tzurot ha-petach* as long as they are positioned directly underneath the crossbars.[649] He writes that this same advice was give to the Jewish community of Warsaw in order to allow them to rely on the telegraph poles as *eruv* boundaries. This seemingly minor action of inserting small poles in city streets was a major departure from the recorded tradition in both Eastern Europe and America where the rabbis were afraid that the civil authorities would never grant them permission to erect even small poles on city streets. Rabbi Ben Zion of Bilsk, the rabbinic scholar who is quoted as the source of the suggestion to install these small poles in Warsaw, wrote that the Jews of Warsaw had to be careful that these poles remain inconspicuous. Rabbi Graubart did not mention any opposition from local authorities regarding the insertion of these poles.[650]

Rabbi Graubart concludes his discussion of the use of telephone poles and wires as *tzurot ha-petah* addressing the fact that in several places the *eruv* boundary that was created by combining the *tzurot ha-petah* of the telephone poles and wires and the walls of the homes was interrupted by the sidewalks. In this case, Rabbi

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[649] *Shulhan Arukh*, 362: 11.

[650] *Havalim Ba-Neimim*, III: 26. See Ben Zion of Bilsk, *Shaarei Zion*, no. 3 Rabbi Ben Zion of Bilsk explains that these small poles were adequate to create *tzurot ha-petah* even in places where the telegraph wires did not run in a straight line such as around a street corner.

Moses Isserles writes that if people pass through the break in the *eruv*, even a breach of four *tefahim*, a foot-and-a-half, would invalidate the eruv.[651] Rabbi Graubart resolves this issue in a very interesting manner. Rabbi Isserles writes that our cities have the status of a *hazer* so the stringencies that apply to a hazer apply to our city *eruvin*.[652] Rabbi Graubart asks whether the leniencies of a *hazer*, namely that people passing through a breach in the walls of a *hazer* do not invalidate the *eruv* applies to our city *eruvin*. *Magen Avraham* raises this issue and concludes that it is best to be stringent and not to apply the leniencies of a *hazer* to cities.[653] However, Rabbi Graubart quotes Rabbi Isacc Trani who explicitly says that cities have the status of a hazer thereby eliminating the problem of people passing through the breach in the *eruv* wall and allowing a break in the wall of ten *amot*.[654] Rabbi Graubart claims that if the author of *Magen Avraham* would have known this responsum of Rabbi Trani, he would have agreed with him. Therefore, Rabbi Graubart concludes that the leniencies of a *hazer* apply to city *eruvin* and the fact that people pass on the sidewalks between the walls of the houses and the *tzurot ha-petah* does not invalidate the *eruv* as long as the distance between the telephone poles and the houses is less than ten *amot*, fifteen feet.[655]

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[651] *Rama, O.H.* 365:2.
[652] *Rama, O.H.*, 363:26.
[653] *Magen Avraham, O.H.* 365:4.
[654] *She'elot U-Teshuvot Maharit*, I:94.
[655] *Havalim Ba-Neimim*, III: 26-29.

Hills and Rivers as *Eruv* Boundaries

Rabbi Graubart addresses several distinct issues concerning the use of the hills and rivers that enclosed Toronto on the south, east and west sides as *eruv* boundaries. First, he discusses whether rivers and hills constitute *eruv* boundaries even though they were not *hukaf le-dirah*, created as *eruv* boundaries to enclose a pre-existing city. He introduces an argument that had been previously used in the history of city *eruvin*.[656] He explained that the requirement that the *eruv* boundaries be *hukaf le-dirah* is only required for one of the sides of the *eruv*. As long as one of the four sides was built for the sake of the people and the houses, the entire *eruv* is valid. He adds that *Magen Avraham* writes that a *tzurat ha-petah* is considered to be *mukaf le-dirah*.[657] Since in Toronto the telephone poles were built after the city was inhabited, the requirement is met and the entire *eruv* is valid. He concludes that there was no city that did not have at least one man-made mound or rampart that would fulfill this requirement of *mukaf le-dirah*. He makes an additional argument claiming that having *eruv* boundaries built specifically for the purpose of *eruv* boundaries was obviously not a concern since the question of hills and rivers as *eruv* boundaries has been addressed throughout the past two hundred years and the question of whether it was created for the purpose of surrounding the city was never mentioned.[658]

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[656] See *Peri Megadim, Mishbetzot Zahav, O.H.,* 363: 20.
[657] *Magen Avraham, O.H*., 358:5.
[658] Ibid., III: 29-33.

As to whether people moving in and out of the city through the rivers and hills disqualifies these *eruv* boundaries, Rabbi Graubartt offers several explanations explaining why this was not a problem in Toronto. First, he explains that even according to *Tosafot* who explain that people passing through the *eruv* invalidate a natural *eruv* that only applies if the *eruv* cannot be seen from the homes. However, in Toronto, since the river and the hills can be seen from the city the *eruv* boundaries are valid even though people pass through these boundaries. Rabbi Graubart quotes Rabbi Abraham of Narbonne who supports this view and writes explicitly that the distinction between man-made *eruv* boundaries and natural boundaries lies in the fact that man-made boundaries that cannot be seen from the city are valid even if people pass through the boundaries while natural boundaries that people pass through are only valid if the boundaries can be seen from the city.[659] In addition, Rabbi Graubart quotes Rabbi Schwadron's approbation to *Eruv Ve-Hoza'ah* to support this view. Rabbi Schwadron wrote that the Atlantic Ocean is not a valid *eruv* boundary since it cannot be seen from the city. However, local rivers can serve as *eruv* boundaries since they can be seen from the houses.[660]

Concerning the problem of people entering the city via boats and ships, Rabbi Graubart makes an argument that had been previously been made by Rabbi Seigel, though Rabbi Graubart does not quote him. Rabbi Graubart argues that since entering

[659] Abraham of Narbonne, *Sefer ha-Eshkol* (Halberstadt, 1868), no. 65.
[660] *Eruv Ve-Hoza'ah*, 30.

and exiting ships is not the normal or simplest manner of passing through an *eruv* boundary, the passage from ships does not invalidate the *eruv*. He does quote Rabbi Yehezkel of Altona and Rabbi Moshe Sofer who limit the disqualification of people passing through the *eruv* boundaries to a situation in which people pass through in the normal and simple manner.[661] Finally, Rabbi Graubart mentions the view of the *Magen Avraham* that the *eruv* is only invalidated if 600,000 pass through the *eruv* boundaries.[662] However, he also mentioned that the author of the *Or Zarua* disagrees with that view and argues that even fewer than 600,000 people passing through the *eruv* boundary would disqualify the *eruv*.[663] Rabbi Graubart concludes that one can rely on the lenient opinions regarding this disagreement.[664]

Regarding whether the risk of the river accumulating sediment would invalidate the rivers as *eruv* boundaries, Rabbi Graubart makes several arguments. First, he quotes the *Rama* who writes that one must be concerned about the risk of sediment build-up.[665] Rabbi Graubart claims, based on the opinion of *Magen Avraham*, that sediment build-up is only a concern in the ocean and not in rivers.[666] Furthermore, Rabbi Graubart claims that the fear of sediment build-up is only problematic if two sides of the city are bounded by water. However, if only one side is

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[661] Yehezkel of Altona, *She'elot U-Teshuvot Kenesset Yehezkel* (Altona, 1732), no. 3 and *She'elot u-Teshuvot Hatam Sofer, O.H.*, no. 89.
[662] *Magen Avraham, O.H.*, 363:30.
[663] *Or Zarua*, *Hilkhot Eruvin*, no. 129.
[664] *Havalim Ba-Neimim*, III: 33.
[665] *Rama, O.H.*, 363:29.
[666] *Magen Avraham, O.H.*, 363: 31.

bounded by water, the three other *eruv* boundaries create a *reshut ha-yahid* according to Torah law and then the risk of sediment build-up will not disqualify the *eruv*. He quotes the precedent of the Warsaw *eruv* in which Rabbi Alter relied on the Vistula River as one of the *eruv* boundaries in the mid-nineteenth century. Rabbi Alter responded to his questioner regarding the possibility of disqualifying the *eruv* based on sediment build-up as follows: "Why are you looking for stringencies when the custom is to be lenient?"[667] Finally, Rabbi Graubart adds that in Toronto the hills surrounded the city beyond the rivers so even if the rivers were not acceptable *eruv* boundaries, the hills that surround the rivers on the east and south sides of the city would create acceptable *eruv* boundaries.[668]

Concerning the fact that the rivers freeze in the winter, Rabbi Graubart quotes the disagreement between the *Magen Avraham*, who prohibited carrying in a city where the river froze only during the period when the river was frozen and the *Taz* who prohibited carrying in such a city even during the summer months. Rabbi Graubart quotes Rabbi Moshe Sofer who argues that the Sephrdic halakhic authorities allowed carrying even during the winter months as they were not concerned with the risk of frozen waters. Furthermore, Rabbi Sofer explains that he too agrees that this is not a concern since people are afraid to cross the frozen river and, therefore, would not negate the *eruv* boundary.[669] To strengthen his argument, Rabbi Graubart describes

[667] *Teshuvot ha-Rim*, no. 4.
[668] *Havalim ba-Neimim*, III: 33-34.
[669] *She'elot U-Teshuvot Hatam Sofer, O.H.*, no. 89.

the following episode: When the *Taz* lived in Shtaynitz and prohibited carrying due to the freezing of the water, that author of the *Shach* lived in the neighboring town of Dreznitz. Rabbi Graubart described that the people of Dreznitz carried on the Sabbath and the *Shach* did not prohibit it. Furthermore, he explains that Rabbi Alter allowed for carrying in Warsaw even in the winter since people breaks the ice to gain access to the water.[670] Finally, Rabbi Graubart argues that Rabbi Moshe Isserles lived in Poland where the rivers have the potential to freeze in the winter and he did not mention this concern in his glosses on the *Shulhan Arukh*. Therefore, Rabbi Graubart concluded that the frozen rivers did not invalidate the *eruv* even during the winter season when the rivers were actually frozen.[671]

Bridges and Gardens

Rabbi Graubart discusses whether the bridges created breaches in the *eruv* wall. He begins his analysis by identifying the problem caused by bridges in the creation of city *eruvin*. Rabbi Ezekiel Landau responds to a questioner who suggested that the problem with bridges was limited to the fact that it allowed people to pass through the *eruv* boundaries thus nullifying the *eruv*. If this was the problem with bridges, Rabbi Graubart already argued that this was not an issue regarding the Toronto *eruv*. However, Rabbi Landau rejects the suggestion of the questioner and concludes that the problem with a bridge is the fact that it creates a breach in the *eruv*

[670] *Teshuvot ha-Rim*, no. 4.
[671] *Havalim Ba-Neimim*, III: 34-35.

and, therefore, each bridge requires a *tzurat ha-petah* to close this breach in the *eruv*.[672] Rabbi Graubart concludes that each bridge on the Don River and the bridge that connects the Don River to Lake Ontario have a structure at the entrance to the bridge that serves as a *tzurat ha-petah* thus preventing the breach in the *eruv* wall and creating unbroken *eruv* walls.[673]

Regarding the question whether the existence of gardens and parks within the city negates the entire *eruv*, Rabbi Graubart makes an important distinction. He argues that the only time that gardens and parks negate the *eruv* is in a situation where the garden or park is separated from the rest of the city or not used by the people in the city. In that case, the garden or park interferes with the creation of an *eruv* community. However, if after the garden or park is planted, it is incorporated into the city and used by the people in the city then it does not negate the *eruv* and can be included in the *eruv* since it becomes part of the *eruv* community. He supports this distinction by quoting the responsum written by Rabbi Malkiel of Lomza to Rabbi Chaim Tchernowitz of Odessa regarding the creation of an *eruv* there in 1899. Rabbi Malkiel wrote that the gardens only nullify the *eruv* if they are not part of the residential part of the city. In Odessa, since the gardens and parks were part of the city and used by the people in the city, they did not nullify the *eruv*. Rabbi Graubart

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[672] *Nodah Bi-Yehudah Tinyana, O.H.* no. 42.
[673] *Havalim Ba-Neimim*, II: 35-37.

argues that the gardens and parks in Toronto were also part of the city and used by the people of the city so they did not nullify the *eruv* there.[674]

Leasing of the City

Finally, Rabbi Graubart analyzes the laws of leasing the property of the non-Jews and the Jews who do not accept the principle of *eruv* from the civil authorities. He raises the issue whether the leasing of space from these civil authorities would successfully exclude the Jews who did not accept the principle of *eruv* from the *eruv* community or whether leasing of space only excludes the non-Jewish residents. Rabbi Graubart begins his analysis explaining that leasing of property was instituted to exclude non-Jews from the *eruv* community as a way to prevent Jews from interacting with non-Jews. As Rashi explained, the difficulty of leasing the property of the non-Jew each week would cause the Jews to move into an exclusively Jewish neighborhood.[675] This rationale does not apply to Jews and, therefore, Rabbi Graubart argues that leasing of property does not exclude a Jew from the *eruv* community. However, Rabbi Graubart adds that since a public Sabbath violator has the status of a non-Jew, leasing of his property would exclude him from the *eruv* community. Rabbi Graubart is uncertain whether a Jew whose only Sabbath violation is the fact that he rejects the principle of *eruv* would have the status of a non-Jew to allow for the leasing

[674] See *Divrei Malkiel* IV: 3 and *Havalim Ba-Neimim*, III: 36-38 for a discussion of the application of this principle to the Toronto *eruv*.
[675] Rashi, *Eruvin* 62a s.v. *ela*.

of his property. He explains that the incentive to prevent Jews from living with non-Jews should be extended to prevent Jews from living with non-observant Jews. However, Rabbi Graubart explains, since non-observant Jews were not common in the talmudic period, the rabbis did not explicitly extend the right to lease their property to these non-observant Jews.

Rabbi Graubart concludes this discussion quoting the opinion of Rabbi Jacob Reischer who lived at the beginning of the eighteenth century and stated that leasing of property from the local government authorities would suffice for both non-Jews and Jews who are Sabbath violators and that this was the custom in Mainz.[676] Interestingly, Rabbi Graubart had previously argued for the permissibility of renting the area from the city authorities even on behalf of the Jews who rejected the *eruv* in a responsum regarding the *eruv* in Odessa.[677] He repeats the text of that *teshuvah* in his discussion about the Toronto *eruv* and supports his opinion by quoting from Rabbi Malkiel of Lomza and Rabbi Chaim Berlin who permitted leasing of the property in Odessa from the local authorities even on behalf of the non-observant Jews. He applied this reasoning to Toronto allowing the leasing of the properties of non-Jews and non-observant Jews in Toronto from the local authorities.[678]

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[676] Rabbi Jacob Reischer, *Sefer Shevut Yaakov* (Brooklyn, 1961), III, *O.H.*, no. 29.
[677] *Havalim ba-Neimim*, I, no. 5
[678] *Havalim ba-Neimim*, III:39-40. See *Divrei Malkiel* IV: 3 for the responsum by Rabbi Malkiel of Lomza. The responsum of Rabbi Haim Berlin that Rabbi Graubart quoted in both of these responsa have been reprinted and can be found in *Sefer Nishmat Haim, Orah Haim*, nos, 29-31.

Rabbi Graubart concluded his responsum as follows:

> After all of this discussion, one can see clearly that concerning the *eruv* here one does not need to turn to paths that are far away and difficult or to rely on leniencies and get involved in differing opinions. This *eruv* has been made according to the tradition of the rabbinic authorities from whose waters we drink. All of the rules and the disagreements have been addressed in other cases and in the city of Warsaw, the great city to God, people carry on the Sabbath with the permission of the great rabbinic authorities of Israel.[679]

From these concluding comments, several things can be understood about Rabbi Graubart's approach to the creation of the *eruv* in Toronto. First, he once again makes reference to the *eruv* in Warsaw which was based on the "permission of the great rabbinic authorities of Israel." Rabbi Graubart relies on the precedent of *eruvin* in large cities in Eastern Europe and utilized the *eruv* in Warsaw as his model for a permissible big city *eruv* just as he used the *eruv* in Odessa as his model for the permissibility to create an *eruv* in spite of the fact that many Jews within the *eruv* area did not observe the Sabbath and regarding the problem of gardens and parks within the *eruv*.

Furthermore, Rabbi Graubart states explicitly that he has not relied on leniencies that would make his *eruv* controversial or open to dispute. He believes that his arguments for the *eruv* were irrefutable. In fact, there was no explicit opposition to

[679] *Havalim Ba-Neimim*, II: 40.

Rabbi Graubart's *eruv* among the Toronto rabbis and he mentioned at the conclusion of the letters of approbation that "With affection, I mention for good Rabbi Yudel Rosenberg who worked hard in the creation of this *eruv*. He walked around the city with me on cold days and exchanged many letters with me on this matter."[680]

Approbations

At the conclusion of the responsum, Rabbi Graubart includes letters from seven leading rabbinic authorities in Poland. The first two letters were written by Rabbi Abraham Nathan Elberg of Sanik. In the first lengthy approbation and the second letter that followed, he analyzes each of Rabbi Graubart's arguments found *in Havalim ba-Neimim* and agrees with each of Rabbi Graubart's conclusions.[681] Rabbi Joseph Levinstein of Siratz wrote an approbation in which he also supports Rabbi Graubart's arguments regarding the creation of the Toronto *eruv*. Interestingly, at the conclusion of his letter of approbation, Rabbi Graubart includes a letter written by Rabbi Levinstein to Rabbi Graubart in 1900 regarding the request of the Jews of New York to create an *eruv* there. Rabbi Levinstein lists the different halakhic issues concerning the *eruv* on the East Side of Manhattan and concludes that he is not in a position to comment or disagree with the halakhic decision allowing for the *eruv* in

[680] Ibid., 53. Rabbi Rosenberg left Toronto for Montreal in 1919 and Rabbi Graubart arrived in 1920. See Robinson, "Rabbi Yuddel Rosenberg," 58. It is possible that Rabbi Graubart asked Rabbi Rosenberg, who returned often to Toronto, to assist him in the creation of the *eruv* since Rabbi Graubart was not an expert in the topography of Toronto.

[681] *Havalim Ba-Neimim*, III: 41-47.

New York.[682] Rabbi Eliyahu of Kletzkin explains in his approbation that the fact that so many Jews were Sabbath violators required rabbis to be lenient regarding the details of creating city *eruvin*.[683] As previously mentioned, Rabbi Kahane of Warsaw supported Rabbi Graubart's use of telephone poles and wires and distinguished between the telegraph pole and wires in Warsaw and the telephone poles and cables in Toronto.[684] Rabbi Yaakov Chaim Goldshlog of Warsaw agrees with Rabbi Graubart's arguments regarding the acceptability of the *eruv* boundaries in Toronto.[685]

The final approbation is a letter written by Rabbi Yisrael Nissan of Makovy who describes his attempt to build an *eruv* in his town in Poland. He explains that prior to World War I, the Russian government was supportive of the efforts to build an *eruv* in the town. However, the new Polish government did not offer any assistance. Therefore, he asked Rabbi Graubart about relying on the telegraph poles and wires as *eruv* boundaries. Rabbi Yisrael Nissan also wrote that the bridge had been blown up during the war and he was not sure whether the breach that had been created nullified the *eruv*.[686] Rabbi Graubart also included a letter written by Rabbi Shaltiel of Shtashov regarding *eruvin* but not directly related to the Toronto *eruv*.[687] Although

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[682] Ibid., 48-49. See also Ezekiel Zevi Michaelson, *She'elot U-Teshuvot Tirosh Ve-Yitzhar* (Brooklyn, 1994), no. 73 which contains an undated responsum supporting the establishment of an *eruv* on the East Side of Manhattan written by Rabbi Michaelson, one of the halakhic authorities in Warsaw at the beginning of the twentieth century.
[683] *Havalim Ba-Neimim* III: 49.
[684] Ibid., 50.
[685] Ibid., 50-51.
[686] Ibid., 52-53.
[687] Ibid., 51-52.

each of the approbations utilizes various halakhic sources, Rabbi Graubart does not include material that questions any of his arguments in favor of the Toronto *eruv*.

Analysis of the Toronto Eruv

The Toronto *eruv* reflects several unique characteristics in the history of early *eruvin* in North America. First, for the first time, there was no discussion of the problem of creating an *eruv* in a city with a population of more than 600,000 people. The population of Toronto in 1921 was 521,893[688] and therefore that issue did not present itself. The fact that the city had fewer than 600,000 residents definitely made the creation of the *eruv* less controversial and Rabbi Graubart assumed throughout the responsum that Toronto was not a *reshut ha-rabim*. It is interesting that Rabbi Graubart did not feel it necessary to state explicitly that Toronto had a population less than 600,000 even though its population did approach that number.

The major difference between Toronto and the other two American eruvin that have been discussed is that there was no rabbinic opposition to the Toronto *eruv*. This is all the more surprising given the controversial nature of Rabbi Graubart's position vis-a-vis the kashruth controversies that were taking place in Toronto at that time. There are several reasons for the distinction between the kashruth battles and the acceptance of the *eruv*. First, although the kashruth debate was heated and often

[688] *The Canada Year Book 1921*, Issued by Canada.Dominion Bureau of Statistics. (Ottawa, 1922), 108.

revolved around principle, the salaries of immigrant rabbis were usually insufficient and rabbis supplemented their income earning $25 to $30 a week killing animals for ritual purposes. This income was dependant on the supervising rabbi who chose the ritual slaughterers. In addition, Rabbi Gordon seems to have made an even better income from the supervision of kosher meat, an income that he worked hard to preserve against the opposition of Rabbi Graubart.[689] The *eruv* did not involve any of these financial elements and therefore did not engender the same level of controversy.

Furthermore, while the rabbis disagreed vehemently about kashruth supervision, they agreed about the need to maintain traditional observance in the Toronto Jewish community. Kimmy Caplan has recently studied Rabbi Gordon's sermons from this period and found that these sermons, delivered in Yiddish, emphasized many issues including and largely revolving around the importance of observance in America.[690] The establishment of the *eruv* helped to create an atmosphere of Sabbath observance in Toronto without impacting on the economic stability or authority of the other rabbis.

The fact that strengthening Sabbath observance of the Toronto Jews laid at the foundation of the creation of the *eruv* can be seen from Rabbi Graubart's responsum and from his other activity in Toronto to strengthen Sabbath observance including his "Sabbath Letter" and his public sermons at Kensington Market. Rabbi Graubart began

[689] Kaplan, "Rabbi Jacob Gordon," 154.
[690] Kaplan, "Rabbi Jacob Gordon," 155-167

his responsum with the following pronouncement; "It is obvious as it is written in the Jewish books that since the generation is sinful and carries even though it is forbidden, it is a *mitzvah* to save them from this prohibition."[691] Although he does not elaborate on the violation of the Sabbath promulgated by the Jews of Toronto, he explicitly claims that there were Jews who carried on the Sabbath and needed the *eruv* to allow them to avoid being considered Sabbath violators. However, the community to which Rabbi Graubart directed his sermons in Kensington market and his "Sabbath Letter" was not the same community for which he created the *eruv*.

In order to identify the community for which Rabbi Graubart created the *eruv*, it is necessary to examine the manner in which the creation of the *eruv* was disseminated in the Toronto Jewish community. Rabbi Graubart served as rabbi in Toronto until 1927 when he assumed a rabbinic position in St. Louis.[692] He returned to Toronto several years later and died there on October 6, 1937. The obituary in the *Yiddisher Journal* called him, "the head of the *Vaad ha-Rabbanim* of Toronto for many years and one of the most important rabbis on the American continent."[693] The obituary continued to praise Rabbi Graubart for his rabbinic writings and his expertise as a talmudic scholar. Over the course of the days following his death and on the occasion of the observance of the thirty day mourning period, there were several

[691] *Havalim Ba-Neimim*, III: 21.
[692] See *Hapardes* (November, 1937) 11:8, 5. In the 1928 list of members of the Agudath Ha-Rabbonim, Rabbi Graubart's address is "c.o. Cong. Chessed shel Emes St/ Louis, Mo." See *Sefer ha-Yovel Agudath ha-Rabbonim*, p. 159.
[693] *Yiddisher Journal*, October 7, 1937.

articles about Rabbi Graubart and his contribution to Toronto Jewry.[694] Among the topics covered in these articles were the eulogies delivered at his funeral, his biography and background in Poland and his involvement in the Toronto Jewish community. There was not one mention of the *eruv* that he built in any of these articles. In addition, during the years 1921-22, in which Rabbi Graubart created the *eruv*, there was no mention in the Yiddish daily about the creation of this *eruv*. This omission is even more surprising given the fact that the *Yiddisher Journal* covered many aspects of Rabbi Graubart's tenure in Toronto including his arrival[695] and it even mentioned a speech that Rabi Graubart delivered on behalf of Yeshivat Etz Chaim in October, 1921.[696] The only mention of Rabbi Graubart's *eruv* is found in the history of Orthodoxy in Toronto written by Nachman Shemen and serialized in the *Yiddisher Journal* in 1950.[697] When describing Rabbi Graubart, Shemen wrote,

[694] See *Yiddisher Journal*, October 8, 1937, p. 4, October 10, 1937, p. 1 and 4, October 11, 1937, p. 5, October 14, 1937, p. 4 and Nov. 8, 1937 p. 1 and 5. There is also no mention of the Toronto *eruv* in the obituary in *Hapardes*.
[695] *Yiddisher Journal*, August 20, 1920, p. 1, August 22, 1920, p. 1, August 23, 1920, p. 1 and August 25, 1920, p. 4
[696] *Yiddisher Journal*, October 5, 1921, p. 1
[697] Ben Kayfetz records in his recollections of the *Yiddisher Journal*, that Shmuel Meyer Shapiro, editor of the paper, commissioned Nachman Shemen to write a history of Orthodoxy in Toronto. A fund-raising dinner was held but it did not raise enough money so the project was cancelled even though the special supplement had already been printed. It is not clear whether the serialized version that appeared in the paper predated or postdated this fuller version. See Ben Kayfetz, "The Toronto Jewish Press," *Canadian Jewish Historical Society Journal* 7:1 (Spring, 1983): 40-42.

"Graubart used his energy for the sake of Sabbath observance and Jewish education. He created an *eruv* in the town, an innovation in America."[698]

The absence of any mention of the creation of the *eruv* in Toronto highlights the nature both of the Orthodox community in Toronto and the role of the *eruv* in the community. Rabbi Graubart was respected as the rabbinic leader of the Polish Orthodox community in Toronto. By the 1920s, this community represented a majority of Toronto Jewry thereby establishing Rabbi Graubart as the leading Orthodox rabbi in the city. One might have expected that this prominent rabbinic role would lead to Rabbi Graubart's publicizing the creation of the *eruv* in 1921. Especially given the state of Sabbath desecration in Toronto at the time that was a major concern of Rabbi Graubart's rabbinate, a public declaration on the creation of the *eruv* would have been a statement of the importance of Sabbath observance for the entire community. Yet, there is no mention of the *eruv* in the *Yiddisher Journal* and no advertisements were placed in this daily newspaper.

The explanation for the lack of publicity is two-fold. First, the *eruv* did not address the concerns of Rabbi Graubart regarding the Jews who were working on the Sabbath. Any Jew who worked on the Sabbath would not have thought twice about carrying without an *eruv*. Therefore, publicizing the *eruv* would not have helped curb that level of Sabbath desecration which Rabbi Graubart believed had to be addressed

[698] *Yiddisher Journal*, April 19, 1950, p. 5.

through his public sermons on Saturday morning in Kensington Market. Second, Rabbi Graubart viewed the *eruv* as a matter between himself and a group of observant Jews and not a public issue to be publicized in the newspaper. Although Rabbi Graubart does not identify the "many righteous people" who initially requested that he create the Toronto *eruv*, the lack of publicity that the *eruv* received suggests that the *eruv* was indented for the small group of observant Jews who followed Rabbi Graubart and would benefit from the *eruv*.

Although the social and historical context of the Toronto *eruv* is critical for an understanding of the evolution of the Toronto Jewish community and the role that *eruvin* play in the building of a community, Rabbi Graubart's *teshuvah* on the Toronto *eruv* was written without any reference to the social context in which he lived. With the exception of a brief reference to Sabbath discretion in the question posed to Rabbi Graubart, the *teshuvah* is based on halakhic reasoning and precedent and does not rely on the need to be lenient based on the religious conditions of the Toronto Jewish community. As in the case of the New York *eruv*, there is no dispute regarding the physical boundaries and, therefore, the analysis is limited to a discussion of the sources and their interpretation. The importance of this halakhic analysis can be appreciated by studying the next phase of the Toronto *eruv*.

The Extension of the Toronto Eruv

Fig. 5 - Google Maps (viewed 4/30/11)

In December, 1950, Rabbi Abraham Price wrote an article in the rabbinical journal *HaPardes* outlining his extension of the Toronto *eruv* which was necessitated by the movement of the Toronto Jewish community to northern Toronto.[699] Rabbi Price was born in 1900 in Kielce, Poland and was a disciple of Rabbi Abraham Borenstein, founder of the Sochatchover Hasidic dynasty and author of the well-known volume of responsa, *Avnei Nezer*. Rabbi Price spent some time in Berlin and

[699]Avraham Aharon Price, "Tikkun Eruvin," *Hapardes* 25:4 (Tevet 5711): 11-38.

Paris before arriving in Toronto in 1937 where he became the dean of the newly founded Torat Chaim yeshiva and the rabbi of a number of congregations consisting mainly of Polish Jews called Chevra Shas. In 1941 he ordained three students who were the first rabbis to be ordained in Canada. He served in this rabbinic leadership role in Toronto until his death in 1994.[700]

Between 1921, when the *eruv* was created, and 1951, the Jewish population in Toronto grew from 34,000 to 66,000. This growth, caused by immigration and natural population increases, created an "almost impassable mass of human being" in the Kensington area and the Jewish community began to move northward.[701] However, this relocation occurred with minimal Orthodox participation. In 1954, only seven of the city's forty-eight synagogues laid north of Bloor St., the northern border of Rabbi Graubart's *eruv*. The majority of synagogues and the social service agencies remained in the downtown area still enclosed by Rabbi Graubart's *eruv*. However, even the first trickle of northern movement of the Jewish community, which included a small portion of the Orthodox community, required an expansion of the boundaries of the *eruv*.[702]

Rabbi Price began his article explaining that he had been asked by many Jews in Toronto to expand the *eruv* to allow for Jews in the new neighborhoods to carry on

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[700] His obituary appeared in *Hapardes* 68:8 (Iyyar, 1994): 30-31
[701] See *Jewish Standard*, June, 1949.
[702] For a description of the suburbanization of the Toronto Jewish community and its significance, see Diamond, *And I Will Dwell in Their Midst*, esp. 26-54.

the Sabbath. He added that the expanded *eruv* would also save many people from Sabbath violation since even the religious people carried on the Sabbath. Although he clearly accepted the legitimacy of Rabbi Graubart's *eruv*, he wrote that he had the opportunity to create an *eruv* without the leniencies that Rabbi Graubart relied upon. He explained that he had received letters of approbation from rabbis in Israel regarding the extension of the *eruv* in Toronto. However, he chose not to publicize these letters until he had shared his explanation with the American rabbinic community through the publication of this article in *HaPardes*. He encouraged all rabbis to respond to his article and to correct any errors.[703]

Rabbi Price begins his halakhic analysis by defining the boundaries of the new *eruv*. He explains that the three sides of Rabbi Graubart's *eruv* that were enclosed by the Humber and Don Rivers and Lake Ontario stilled served as *eruv* boundaries. The only change in the *eruv* was his reliance on the telegraph poles and wires that ran the entire length of Wilson Ave, which extends for the eastern end of the city to the western end (see #5 on map). The expansion of the northern border of the eruv from Bloor St. to Wilson Ave. served to include most of the Jews who had moved to the northern suburbs during this period.[704]

Rabbi Price continues and explains the ways in which this new *eruv* is halakhically superior to Rabbi Graubart's eruv. First, in the 1920s the Humber River

[703] Price, "Tikkun Eruvin," 11-12.
[704] Ibid., 11.

was on the outskirts of Toronto and far from any houses. Rabbi Price quotes Rabbi Yisrael Walfish who describes the *eruv* that he built in his town of Zakroczym, Poland at the end of the nineteenth century. Rabbi Walfish mentions that if the *eruv* boundary is too far from the city, the *eruv* would not be valid.[705] Rabbi Price points out that by 1950, there were houses built all the way to the Humber River so this would not create a problem regarding the Toronto *eruv*. Furthermore, Rabbi Price explains that necessity required that Rabbi Graubart rely on telephone poles and wires that ran in the middle of Bloor St. thereby excluding the northern sidewalk from the *eruv*. This created potential confusion among the people. However, on Wilson Ave. the telegraph poles and wires were located on the northern side of the northern sidewalk so both sidewalks were included in the new *eruv*.[706]

At this point in the article, he discussed the most significant difference between his *eruv* and the earlier one. In 1921, the population of Toronto had been less than 600,000 thereby avoiding the issue of whether Toronto constituted a *reshut ha-rabbim* around which an *eruv* could not be constructed. However, in 1950, Rabbi Price wrote, "In Toronto, the city where I reside, the population is approximately 1.2 million and the streets are very wide with many of them exceeding the width of sixteen *amot*.

[705] Yisrael Yaakov Walfish, *Mahshevot Yisrael* (Warsaw, 1900), no. 105.
[706] Ibid., 11-12.

Therefore, maybe Toronto has the status of a *reshut ha-rabbim*?"[707] Rabbi Price argues, however, that modern cities do not have the status a *reshut ha-rabbim* for the following reasons.

First, Rabbi Price explains that local law limits the access that people have to the main streets as they are not allowed to walk on the streets and are only allowed to cross the streets at certain designated places and walk on the sidewalks. Therefore, he explains that the requirement that in addition to the 600,000 people a *reshut ha-rabbim* requires streets of sixteen *amot* that are accessible to people is not met by the streets of Toronto. Furthermore, Rabbi Price explains that the large streets in each city were reserved for cars and trolleys and these cars and trolleys had the status of their own *reshut ha-yahid*. Therefore, the people riding in cars and trolleys would not count towards the 600,000 needed to create a *reshut ha-rabbim*. Rabbi Price cites Rabbi Israel Trunk who claimed in the late nineteenth century in Poland that people who ride the trains were not included in the tally of 600,000.[708]

Rabbi Price writes that his student, Rabbi Gedalia Felder, showed him that the idea that the streets do not have the status of a *reshut ha-rabbim* because people do not

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[707] Ibid., 15. While it is difficult to determine the exact boundaries of Toronto that Rabbi Price considered in his population estimate, the population of the area that is occupied by the City of Toronto in 2010, was 1,117,470 in 1951. See http://www.toronto.ca/archives/toronto_history_faqs.htm#population (Viewed 4/26/10).

[708] Israel Trunk, *She'elot U-Teshuvot Yeshuot Malko* (Petrokow, 1927), no. 27 and Price, "Tikkun Eruvin," 15-16.

have the right to walk on the streets because they are reserved for cars and trolleys was mentioned in the responsa of Rabbi Abraham Yudelovitz in the name of a volume abbreviated TK'Z.[709] Rabbi Price wrote that he was not familiar with this volume and did not know what the abbreviation stood for. Rabbi Felder writes in his own volume on *eruvin* that the TK'Z was the *Tikvat Zekhariah*, written by Rabbi Rosenfeld who used this same argument to justify the fact that the streets of St. Louis did not constitute a *reshut ha-rabbim*. Rabbi Yudelovitz disagreed with Rabbi Rosenfeld for the following reasons: First, he argued that the even though people do not walk in the streets, the street is included in definition of the *reshut ha-rabbim* thus creating a street and sidewalks that are wider than sixteen *amot*. Furthermore, he argued that the fact that people don't walk on the street is due to fear of being injured and not a law that prohibits their walking on the street. Therefore, Rabbi Yudelovitz said that the street is accessible to people and if the population of the city exceeds 600,000 the city would have the status of a *reshut ha-rabim*. Rabbi Price disagreed with both of these arguments. He claims that it is not reasonable to include the street as part of the *reshut ha-rabbim* because people do not have the right to walk on it. Furthermore, he says that "it is mere prophecy" to distinguish between the inability to walk on the street due to fear or due to a law prohibiting such activity. Therefore, Rabbi Price agrees with

[709] Rabbi Abraham Aaron Yudelowitz, *Sefer Sheelot U-Teshuvot Beit Av Tinyana* (New York, 1919), no. 5, paragraph 10 and no. 9 section 2. See *Tikvat Zekhariah*, 40-41

Rabbi Rosenfeld that even though Toronto had a population that exceeded 600,000, it was not considered a *reshut ha-rabbim*.[710]

Regarding the use of telephone poles and wires to create the *eruv* boundary, Rabbi Price supports Rabbi Graubart's explanation that in North American cities, since the wires run on top of the crossbar that protrudes from the main telephone pole, these telephone wires constituted an acceptable *tzurat ha-petah* and that even the rabbinic authorities who disqualified the use of telegraph poles and wires in Eastern Europe would allow for the use of telephone poles and wires in America. However, although Rabbi Graubart argued that it was sufficient to place small poles at the foot of the telephone poles at each end of the street, Rabbi Price argues that small poles should be placed at the foot of each and every telephone pole that will be used as part of the *eruv* boundary. He cites Rabbi Walfish who inserted these poles of ten *tefahim* under each telegraph pole in Zacroczym.[711] Rabbi Price explains that these small poles should be inserted for two reasons: First, since the government permits the Jewish community to insert these poles, there is nothing lost by adding them to the *eruv*. Second, since there is a view, as Rabbi Graubart had discussed, that the rivers are not adequate *eruv* boundaries because they are not *mukaf le-dirah*, created to enclose the city because they predated the creation of the city, there is a need for at least one side of the *eruv* to be *mukaf le-dirah*. Rabbi Price explains that the *tzurat ha-petah* of the

[710] See Gedaliah Felder, *Yesodei Yeshurun* (Jerusalem, n.d.), 2:277. Rabbi Price's discussion of this topic can be found in Price, "Tikkun Eruvin," 17-23.
[711] *Mahshevot Yisrael*, no. 68.

telephone poles and wires on Wilson Ave. is *mukaf le-dirah*. However, he adds, that since the entire *eruv* relies on the fact that this *tzurat ha-petah* is *mukaf le-dirah*, it is preferable to include as many stringencies as possible.[712]

Finally, regarding the use of bridges as *eruv* boundaries, Rabbi Price explains that there are many bridges that cross the Don and Humber Rivers. Each one of them has a structure at each end to prevent workers from falling into the water. However, none of these bridges is covered and it would be impossible to install *tzurot ha-petah* on these bridges. Do these bridges create a breach in the eruv? Rabbi Price cites several explanations to allow for the inclusion of the bridges as *eruv* boundaries. First, he suggests the reason that bridges create a breach in the *eruv* is due to the fact that people pass over the bridges and *ati rabbim u-mevatlei mehitzah*. However, since the bridges were utilized by cars and trolleys and not people walking across the bridges, the walking traffic on the bridges did not come close to 600,000 and, therefore, the bridges did not create a break in the *eruv* wall. However, Rabbi Price argues that the bridges that were wider than ten *amot* still created a potential break in the *eruv* wall. Rabbi Price argues that Rabbi Ezekiel Landau only considered the bridges to create a break in the *eruv* wall when the bridges were within ten *amot*, 15 feet, of the water.[713] However, the bridges in Toronto were much higher than 15 feet above the water and, therefore, do not create a break in the eruv wall. Furthermore, he argues that since

[712] Price, "Tikkun Eruvin," 28-29.
[713] *Nodah Bi-Yehudah, Mahadurah Tinyana, O.H.*, no. 42.

there were columns underneath the bridges, the area underneath the bridge constituted a *reshut ha-yahid*. Rabbi Price cites the opinion of *Tosafot* that the area onto of a *reshut ha-yahid* is also considered a *reshut ha-yahid* so the bridges in Toronto also have the status of a *reshut ha-yahid*.[714]

Although Rabbi Price combined these different explanations to defend the use of bridges as *eruv* boundaries in Toronto, he concluded his article with the following comment:

> However, it is preferable when possible to fix the bridges and to fulfill the various opinions regarding the *eruv*. Therefore, I have searched for a way in which we can create *tzurot ha-petah* on the bridges.[715]

He wrote that he decided to close off each of the streets that reached the bridges with their own *tzurot ha-petah* thereby eliminating the need to rely on the bridges as *eruv* boundaries.[716]

Although Rabbi Price encouraged all rabbis to respond to his article, there is only one response published in *HaPardes* from Rabbi Menahem Pollak of New York. Rabbi Pollak questions two points in Rabbi Price's essay. First, he disagrees with Rabbi Price's claim that the fact that people do not walk in the street eliminates the street from consideration in determining the width of the *reshut ha-rabbim*.

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[714] *Tosafot*, *Eruvin* 84b, s.v. *gag* and Price, "Tikkun Eruvin," 30-37. See Felder, 297-298 who supported the explanations of both Rabbis Graubart and Price in the utilization of bridges as boundaries in the Toronto *eruv*.
[715] Price, "Tikkun Eruvin," 37.
[716] Ibid.

Furthermore, Rabbi Pollak argued that the cars and trolleys did not have the status of a *reshut ha-yahid* because a *reshut ha-yahid* must be stationary as *Tosafot* explain their definition of a *reshut ha-yahid*.[717] He concluded that due to the fact that there the population of Toronto exceeded 600,000, Toronto should have the status of a *reshut ha-rabbim*. However, he writes, that several considerations exclude Toronto from the category of a *reshut ha-rabbim*. First, the bridges are not *mefulash*, built in a straight line thereby running from one end of the city to the other end. Furthermore, the rivers can be considered acceptable *eruv* walls even though people pass over these rivers based on the opinion of the *Magen Avraham* that only traffic of 600,000 would negate the *eruv* walls.[718] With the inclusion of the river walls and the *tzurat ha-petah* on the north side, Rabbi Pollak agrees that Toronto would be considered enclosed by acceptable *eruv* walls.[719] Rabbi Price also said that he received responses from Rabbi Isaac Herzog, the Ashkenzic Chief Rabbi of Israel and Rabbi Ben Zion Uzziel, the Sephardic Chief Rabbi of Israel. However, he lost their responses and we have no record of them.[720]

Initially, Rabbi Price's *eruv* was also accepted without any rabbinic opposition in Toronto. In the 1980s, however, Rabbi Price's *eruv* became a point of conflict

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[717] *Tosafot, Shabbat* 8a, s.v., *rehavah*.
[718] *Magen Avraham, O.H*., 363:40.
[719] Rabbi Menahem Segal Pollak, "Be-Inyan Tikkun Eruvin Be-Toronto," *HaPardes*, Iyyar 5712 (26:8): 6-8.
[720] See Avraham Aharon Price, *Tikkun Eruvin He-Hadash Be-Ir Toronto Canada* (Tammuz, 5747), 1 and Rabbi Shiah T. Director, "The Eruv in Toronto, Canada," *Jewish Press*, October 10, 1980, 10.

within the Orthodox community in Toronto. While the opposition was initially muted, in 1987, Rabbi Jacob Sofer, a rabbi brought to the community by the Reichmann family, publicly denounced Rabbi Price's *eruv* and claimed that anyone who relied on this *eruv* would be in violation of the laws of the Sabbath. Immediately, Rabbi Price's supporters issued statements validating his *eruv* and Rabbi Price wrote an unpublished defense of his *eruv*.[721] In this twenty-seven page type written draft, Rabbi Price provided further support from rabbinic sources for his *eruv* and he described the extensions of the *eruv* that he had undertaken since 1950 and certain minor improvements that he had made to the *eruv*.[722]

Rabbi Price begins his article by describing the extensions to the *eruv* that he made due to the expansion of the Jewish community of Toronto northward. The east boundary was created by the Rouge River (see #3 on map),[723] the west boundary by the Humber River (see #1 on map), the south boundary by Lake Ontario and the northern boundary was created by electric poles and cables that were located along Highway 7 in Northern Toronto (see #4 on map) which did not require weekly inspections as they could not be moved due to their high voltage.[724] He explains that the electric poles and wires were preferable to the telephone poles and wires for the

[721] The anti-*eruv* declaration was signed by five Toronto rabbis, including Rabbi Sofer. For a description of the dispute concerning the *eruv*, see *The Canadian Jewish News*, March 26, 1987, p. 5, August 27, 1987, p. 3 and December 17, 1987, p. 20.
[722] Price, *Tikkun Eruvin He-Hadash Be-Ir Toronto Canada* (Tammuz, 5747).
[723] Rabbi Price chose to extend the eastern boundary of the *eruv* from the Don River (see #2 on map) to the Rouge River which extended further east.
[724] Price, "*Tikkun Eruvin He-Hadash*," 1.

following reason. The telephone wires were connected to the crossbeam that extended beyond the telephone pole thus eliminating the issue of *tzurat ha-petah min ha-tzad*. However, Rabbi Price wrote in his 1950 article that he inserted small poles under every telephone pole directly underneath the telephone wire so as not to rely on the crossbeam that extended from the telephone pole. However, Rabbi Price explains that regarding the electric poles and cables, the cables are inserted directly above the iron poles which are broad thereby eliminating any concern about *tzurat ha-petah min ha-tzad*. Therefore, Rabbi Price writes, there was no longer any need for the insertion of the small poles next to each of the electric poles. Since these small poles could easily be removed, these electric poles and wires which did not require these additional small poles represented an important improvement to the *eruv*[725].

Rabbi Price added the fact there was no fear of sediment build-up in the Toronto rivers and lakes since we follow the view of the *Magen Avraham* that sediment build-up is only an issue regarding *eruv* boundaries that utilize the sea.[726] He brings a further proof to the fact that sediment build-up is not an issue in rivers from the author of the geonic work *Halakhot Gedolot* who listed rivers as acceptable *eruv* boundaries and did not mention the limitation of sediment build-up.[727]

[725] Ibid., 6-7 and diagram on page 12.
[726] *Magen Avraham, O.H*., 363:31 and *Halakhot Gedolot* (Jerusalem, 1972), 260.
[727] Ibid., 10.

In the last section of his essay, Rabbi Price addresses those *mahmirim*, the stringent ones, who tried to gather all the stringencies and declare the Toronto *eruv* invalid. He responds to their claim by asserting that the tradition throughout the ages, from the talmudic period to the present day, is to be lenient in the laws of *eruvin*. He cites a proof from the *Gemara* in which the *Gemara* says that if the rabbis were strict and did not allow the creation of an *eruvei hazerot* on *Yom Tov*, there would be great harm since people would forget and carry on the Sabbath. Rabbi Price explains that this *Gemara* explains that being strict regarding *eruvin* leads people to sin.[728] He supports the notion that the tradition has always been to be lenient regarding *eruvin* with the example of *eruvin* in big cities. He explained that even though the *eruv* is described in the *Gemara* as being visible to the members of the *mavoi* or the *hazer* thus reminding the people that they are only permitted to carry within the *eruv*, those people living in large cities never see the *eruv* boundaries which are far from their homes. Nevertheless, the tradition is to build *eruvin* even in large cities. In addition, Rabbi Price points out that the entire institution of a *tzurat ha-petah* constituting a wall is a concept that is not utilized throughout the Talmud except in rare instances such as permitted carrying on the Sabbath.[729]

Although Rabbi Price emphasizes the tradition of being lenient regarding *eruvin*, he describes his Toronto *eruv* without any reference to leniencies. He writes:

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[728] *Beitzah* 16b and Rashi, s.v. *kaivan*.
[729] Price, "Tikkun Eruvin," 19-21.

"Anyone with a brain in his head will realize that the *eruv* that I have built in Toronto is ideal with its three sides surrounded by water and the fourth side has a *tzurat ha-petah* which is better than any *tzurat ha-petah* that I have seen in the world."[730] In an interesting attempt to satisfy even his opponents, he explained that his reliance on the *tzurat ha-petah* created by the electric poles and cables was unnecessary since the three other sides of the *eruv* were surrounded by water. Therefore, the fourth side required only two side-posts like a *hazer*. He wrote that he was only being stringent when he included the electric poles and wires as the *eruv* boundary on the fourth side.[731]

He concludes by warning those who announce that it is forbidden to carry in Toronto on the Sabbath that they will "pay the religious price" and that their remorse after the fact will not suffice. He cites as proof the letter Rabbenu Asher sent to the rabbi in Fredes threatening to excommunicate him if he did not build in an *eruv* in that city.[732]

In spite of Rabbi Price's defense of his *eruv*, the *Va'ad haRabbonim* of Toronto allowed Rabbi Sofer to erect his own *eruv* and this new *eruv* project was completed in December, 1995, shortly after Rabbi Price's death. Rabbi Sofer's *eruv* was based on the decision of Rabbi Sholom Yosef Eliashiv, one of the leading

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[730] Ibid., 21.
[731] Ibid., 22. See Shulhan Arukh, O.H., 363:1 for a discussion of the symbolic wall that is necessary on the fourth side of the *eruv*.
[732] Ibid., 25-26.

rabbinic authorities of the ultra-Orthodox community in Jerusalem. Rabbi Eliashiv only allowed the building of an *eruv* in Toronto because there had been a tradition of an *eruv* in Toronto since 1921. In addition, he consented as long as a majority of the *eruv* boundaries would consist of fences and not *tzurot ha-petah*. Through the intervention of several members of the community, Canadian Pacific and Canadian National, the two railway companies, constructed the necessary fences which served as *eruv* boundaries. [733]

Conclusion

The evolution of the Toronto *eruv*, although on one hand, the first of the North American *eruvin* that did not engender initial opposition, was, in many ways, the most complex of the *eruvin* that have been studied so far. Halakhically, the Toronto *eruv* posed few problems for Rabbi Graubart. The population did not exceed 600,000 and three *eruv* boundaries were created by the rivers and lake. In addition, the fourth *eruv* wall created by the telegraph poles on Bloor St. ran uninterrupted from east to west creating an uncomplicated *eruv* configuration. Rabbi Graubart relied heavily on the precedent of the Warsaw *eruv* that had been supported by Rabbi Yitzchak Meir Alter in the mid-eighteenth century. Rabbi Graubart is aware of Rabbi Seigel's volume on the *eruv* on the East Side of New York. However, he relied not on the opinions of Rabbi Seigel but on the opinions written in the approbation by Rabbi Mordechai

[733] *The Canadian Jewish News*, January 11, 1996, p. 3 and http://www.torontoeruv.org/ (viewed 8/10/10).

Schwadron, the great Polish halakhic authority. Rabbi Graubart's reliance on the Polish rabbinic authorities and the precedent that he draws from the Warsaw *eruv* are not surprising because Rabbi Graubart had only recently arrived in Toronto when he began his *eruv* project. He was both more familiar and more comfortable with the Polish rabbinic world than with the world of the American Orthodox rabbinate.

When Rabbi Price began to address the Toronto *eruv* in 1950, certain changes are evident in the position of the Toronto Jewish community. The population growth requires Rabbi Price to address the issue of *reshut ha-rabbim* that Rabbi Graubart was able to ignore. In addition, however, although Rabbi Price praises Rabbi Graubart's *eruv*, he attempts to improve upon it. The biggest improvement involves the insertion of the small poles underneath each telephone pole on the new northern boundary of the *eruv*. Rabbi Price explains that even though this addition to the *eruv* was not necessary, since the Jewish community was able to receive permission to insert these poles to insert these poles, it should be done. This is the first mention of the Jewish community receiving explicit permission to erect poles or other man-made *eruv* boundaries. In the nineteenth century, the government had prohibited the Jews of Cracow from *erecting tzurot ha-petah*. In addition, Rabbi Ben Zion of Bilsk wrote that small poles should be inserted in Warsaw but that care should be taken to insure that they remain inconspicuous. Rabbi Graubart does not offer a warning but only requires the insertion of these small poles at the foot of the telephone poles at the end of each

block. Rabbi Jaffe and Rosenfeld both wrote that it was impossible to consider receiving permission from the government to erect *tzurot ha-petah* in St. Louis.

The ability of the Jewish community to receive permission from the government to assist in the construction of city *eruvin* changed the mindset of the community rabbis. No longer did they need to rely only on leniencies. Rabbi Price in his 1950 article emphasizes many times that even though Rabbi Graubart's *eruv* was acceptable, his *eruv* is acceptable according to a greater number of rabbinic sources. Although the insertion of the poles is the only time that Rabbi Price relies on government approval, his attitude is driven by the change in the relationship between the Jewish community and the local authorities. It is unfortunate that neither Rabbis Graubart nor Price describe the manner in which they leased the city as that may have also reflected this change of attitude.

Ironically, it was only as a result of the criticism of Rabbi Sofer and his supporters claiming that Rabbi Sofer had been lenient in the building of his *eruv* that Rabbi Price felt the need to defend the principle of leniency regarding the creation of *eruvin* throughout history. Nevertheless, Rabbi Price writes in his 1987 defense of the *eruv* that the *tzurat ha-petah* that he utilizes is the best *tzurat ha-petah* in the world. He tries in that unpublished *teshuvah* to draw a fine balance between defending the principle of leniency regarding *eruvin* and a defense of his *eruv* as being based on the strictest definitions of the requirement of city *eruvin*.

Finally, the question of the place of the Toronto *eruv* in the history of North American *eruvin* must be addressed. As previously mentioned, Rabbi Graubart is familiar with *Eruv Ve-Hoza'ah* but is mainly interested in the comments of Rabbi Schwadron. Rabbi Graubart is also familiar with the *eruv* on the East Side of Manhattan as he cites the letter written to him by Rabbi Levinstein. However, he does not cite any precedent from either the St. Louis or the New York *eruvin*. Rabbi Price writes that he was not familiar with Rabbi Rosenfeld's work and was unable to decipher its abbreviation. It is very interesting that in 1951, *Eruv Ve-Hoza'ah* was not known to a rabbinic scholar who was writing an article about *eruvin* in North America. Does this show that *Eruv Ve-Hoza'ah* was not available or that Rabbi Price, like Rabbi Graubart, was more interested in the Polish precedent and the Polish rabbinic authorities than the American Orthodox rabbis who had addressed this issue? Either way, the study of the history of the Toronto *eruv* is fascinating for both halakhic and social reasons. However, we have yet to establish a tradition of North American *eruvin* in which the later *eruvin* are based on the precedent of the earlier *eruvin*.

CHAPTER 7

The Manhattan *Eruv*, 1949-1962

In 1936, Rabbi Yosef Eliyahu Henkin, the leading rabbinic authority on the Lower East Side at the time, wrote, "There are many observant Jews and especially those Hasidim from Poland who carry here on the street [Lower East Side] on the Sabbath relying on the permission of Rabbi Joshua Seigel of Sherps."[734] However, by the time Rabbi Henkin made this observation, many of New York's Orthodox Jews had migrated from the Lower East Side. In the period of mass immigration to the United States, almost 75% of all New York Jews lived on the Lower East Side and were serviced by Rabbi Seigel's *eruv*. However, by the 1920s, many Jews began to move from this neighborhood to other neighborhoods in Manhattan and the outer boroughs. During the 1920s, 160,000 Jews left the Lower East Side leaving behind 100,000 to fill the area where over a quarter of a million Jews had lived.[735]

Large numbers of Russian Jews from the Lower East Side already moved to the northern parts of the City shortly after the turn of the century. In 1904, the superintendent of the YMHA on 92nd St. and Lexington Ave. observed that "Numbers of people are moving uptown from the lower sections of the city and we are feeling

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[734] *Luah Ha-Yovel shel Ezrat Torah* (Brooklyn, NY, 1936), 62 reprinted in *Edut le-Yisrael*, (NY, n.d.), 151.
[735] Deborah Dash Moore, *At Home in America: Second Generation New York Jews* (New York, 1981), 19.

the effects of the invasion."[736] The first decade of the twentieth-century saw a mass movement of Russian Jews to Harlem. By 1910, over 100,000 Jews lived in Harlem. The Jewish presence in Harlem began to decline in the 1920s. Slowly, the synagogues of Harlem began to relocate with Congregation Anshe Emeth leading the way in 1917 by merging with a new congregation in Washington Heights in northern Manhattan. By 1926, Shaarei Zedek, Ohab Zedek and Anshe Chesed had all relocated to the Upper West Side (west of Central Park and south of 100th St). In 1927, the Institutional Synagogue, which had been located on 116th St. since 1917, established a branch on the Broadway and 83rd St. and in 1929, it built a synagogue center on West 76th St.[737]

This relocation of Jews to the northern and then western parts of Manhattan meant that a majority of Manhattan's Jews no longer lived in the area enclosed by Rabbi Seigel's *eruv*. In addition, Rabbi Henkin argued that Rabbi Seigel's *eruv* was no longer halakhically acceptable for the following reasons: First, he claimed that the bridges that had been built in Manhattan since Rabbi Seigel had written his defense of the *eruv* did not meet the requirements of proper *eruv* boundaries. Second, Rabbi

[736] *Thirteenth Annual Report and Yearbook of the YMHA, 1904*, p. 68, quoted in Jenna Weissman Joselit, *New York's Jewish Jews: The Orthodox Community in the Interwar Years* (Bloomington, IN, 1990), 9.
[737] For the history of Jewish Harlem, see Jeffrey S. Gurock, *When Harlem Was Jewish, 1870-1930* (New York, 1979).

Henkin claimed that Rabbi Seigel had leased the City for ten years and that this lease had never been renewed.[738]

As a result of these demographic and halakhic issues, the New York rabbinic community began to reexamine the possibility of creating an *eruv* that would surround the entire Borough of Manhattan. According to one report, in 1949, Rabbi Shimon Kalish, the Amshinover Rebbe, would telephone other rabbis every Friday afternoon to encourage them to create an *eruv* around Manhattan.[739] Rabbi Tzvi Eisenstadt, a respected rabbinic scholar who had been head of a yeshiva in Cracow until 1940 and immigrated to Brooklyn in 1948, surveyed the entire Borough of Manhattan and composed a work dated December 14, 1948, outlining the issues regarding the creation of an *eruv* around Manhattan. He concluded that it was halakhically permissible to consider Manhattan surrounded by *eruv* walls and that an *eruv* could be created around it. He ended his work as follows: "I have written all of this as a suggestion that should be addressed by the rabbinic authorities of the city. And, even if they find a problem with these conclusions according to one opposing view, they should consider whether it is preferable to permit carrying on the Sabbath according to most rabbinic authorities or to leave the situation as it is without any *eruv* at all."[740]

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[738] *Luah Ha-Yovel shel Ezrat Torah* 62 reprinted in *Edut le-Yisrael*, 151.
[739] Menahem Mendel Kasher, *Tikkun Eruvin be-Manhattan New York* in Kasher, *Divrei Menachem* (Jerusalem, 1980), II: 5 (special pagination at conclusion of volume).
[740] Rabbi Menahem Tzvi Eisenstadt, *Kuntres Haza'ah Le-Tikkun Eruvin Be-Ir Manhattan New York*, in Menahem Tzvi Eisenstadt, *Sefer Minhat Tzvi* (New York

In April, 1949, Rabbi Michael Weissmandel, the head of the Nitra Yeshiva in Mt. Kisco, New York, wrote to Rabbi Eisenstadt. In the letter, dated *erev* Pesach, 1949, Rabbi Weissmandel explained that each time he had met Rabbi Eisenstadt, Rabbi Eisenstadt had discussed with him the issue of creatung *eruvin* in big cities. Most recently, Rabbi Weissmandel said, Rabbi Eisenstadt had asked him to write his own opinion on the possibility of creating such an *eruv*. Rabbi Weissmandel responded that although he was very busy with his yeshiva, he would nevertheless address this issue. He wrote a lengthy responsum to Rabbi Eisenstadt about the possibility of creating an *eruv* around Brooklyn. He argued that such an *eruv* could be created. In addition, he encouraged Rabbi Eisenstadt to include Rabbi Yonatan Steif, "a rabbi in Brooklyn whose authority is respected by the masses," to lead the initiative of creating the *eruv* in Brooklyn.[741] It is noteworthy that, although Rabbi Eisenstadt had asked for Rabbi Weissmandel's opinion regarding the *eruv* in Manhattan, Rabbi Weissmandel responded regarding the *eruv* in Brooklyn, where Rabbi Weissmandel lived at the time.

However, in a letter Rabbi Weismandel wrote to Rabbi Eisenstadt on May 20, 1949, he argued that it would be more logical to first establish an *eruv* in Brooklyn and then create one in Manhattan. A Brooklyn *eruv*, he argued, involves the erecting of

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(Weissmandel) (Pollak) (Placeholder1) (Moskowitz), 2003), 28-38. An abridged version of the article can be found in Kasher, *Tikkun Eruvin*,117. For a biography of Rabbi Eisenstadt, see the introduction to *Sefer Minhat Tzvi*.

[741] Michael Dov Weissmandel, *Torat Hemed* (Mt. Kisco, NY, 1958), no. 1, especially 156-157.

some *tzurot ha-petah*. Consequently, uninformed people would assume that some activity was needed to establish the *eruv*. On the other hand, the proposed Manhattan *eruv* did not involve any physical activity since the river walls created acceptable *eruv* boundaries. Consequently, uninformed people might question what concrete steps were taken by the rabbis to alter the existing conditions that had precluded the establishment of an *eruv* earlier. However, Rabbi Weissmandel did allow the creation of the *eruv* in Manhattan and was posthumously included on a list of *rabbanim* who supported an *eruv* there.[742]

Rabbi Eisenstadt sent a copy of his article to Rabbi Steif. In a responsum dated May 25, 1950, Rabbi Steif responded to Rabbi Eisenstadt, agreeing with him that an *eruv* could be created around Manhattan. However, he writes that, since there were some rabbis who opposed the idea of an *eruv* in Manhattan and the purpose of *eruvin* is to create peace among the Jews, he had the following suggestions. He argued that it would be preferable for each neighborhood to build its own *eruv* which would supervised by the local rabbi. This would avoid the controversy that was brewing in Manhattan. In the course of his answer to Rabbi Eisenstadt, Rabbi Steif mentioned that he had also written an article about the possibility of establishing an *eruv* in Manhattan but that it was not yet completed. Yet, Rabbi Steif added that in order to provide

[742] See Rabbi Weissmandel's letter Yeshiva University MS 1300 1/9 reprinted in *Sefer Hai Anochi Le-Olam* (Brooklyn 2003), 148 and *Divrei Menachem*, II: 10 where Rabbi Weissmandel is included in a list of the rabbis who supported the *eruv*.

support for Rabbi Eisenstadt's position, he would present an outline of his views on the permissibility of creating an *eruv* around Manhattan.[743]

Rabbi Eisenstadt also sent a copy of his article to Rabbi Menahem Pollak, one of the great Hungarian rabbinic authorities who immigrated to America in 1940 and became a rabbi on the Lower East Side. Rabbi Pollak wrote a lengthy article explaining the permissibility of creating an *eruv* around Manhattan. He began by explaining that there was a specific need for an *eruv* in Manhattan: "Because many people, including Sabbath observers, fail in their observance due to the prohibition of carrying on the Sabbath and no words of rebuke will prevent this transgression."[744] Regarding Rabbi Eisenstadt's article, Rabbi Pollak wrote, "There has come to my possession an article by my close friend Rabbi Tzvi Eisenstadt who also wrote about the creation of an *eruv* in our city and I have found in it that which is beloved in my eyes."[745]

In 1949, a committee was established for the establishment of the Manhattan *eruv* under the leadership of Rabbi Yonatan Steif. Rabbi Steif sent a letter to New

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[743] The undated responsum to Rabbi Eisenstadt can be found in *Sefer Sheelot U-Teshuvot Ve-Hiddushei Mahari Steif* (Brookln, NY, 1968), no. 68 and a more complete version of the letter can be found in *Minhat Tzvi*, 39-43. The original letter is found in Yeshiva University Archives MS. 1300 1/12. Rabbi Steif wrote additional material on the Manhattan *eruv* which was published in "Kuntres Tikkun Eruvin", *Ohr Yisroe*l 8:4 (Sivan, 5763): 6-9 and *Ohr Yisroel* 9:1 (Tishrei: 5764): 6-15.

[744] Rabbi Menahem Seigel Pollak, "Kuntres Be-Inyan Tikkun Eruvin Be-Manhattan," *Kol Zvi*, no. 7, 2005, 67-82. The original article is located in Yeshiva University Archives MS. 1300 1/8. An abridged version of this article can be found in Kasher, "*Tikkun Eruvin*," 13-14.

[745] Ibid.

York Orthodox rabbis and included Rabbi Eisenstadt's and Rabbi Pollak's proposal for a Manhattan *eruv*.[746] The letter read as follows:

> December 27, 1949
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> Dear Rabbis,
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> We are presenting you with the following article written as a suggestion for the creation of an *eruv* around Manhattan by one of the members of the *Vaad haRabbonim* of New York who has worked on this article and seeks our reactions. [This refers to Rabbi Menahem Zvi Eisenstadt together with another article on the topic by Rabbi Menahem Seigel Pollak].
>
> Therefore, it is our desire to receive the approbatuons of other Torah giants so that we may begin this work immediately to establish an *eruv* in Manhattan so that thousands and tens of thousands will not violate the laws of the Sabbath…
>
> If anyone has any suggestions, they should mail them to our most important colleague, Rabbi Yonatan Steif, at the above address. In order to facilitate this process, if we do not receive your reply within ten days, we will record you as agreeing with this proposal.
>
> Vaad Le-Ma'an Ha-Eruv Be-Manhattan New York (Committee for the Sake of the Manhattan Eruv)[747]

The only response to the Vaad's request for suggestions was that of Rabbi Eliyahu Meir Bloch, the head of the Telz Yeshiva in Cleveland. He writes that he is surprised by the assertion that if the Vaad does not receive an answer within ten days,

[746] Kasher, "*Tikkun Eruvin*," 6
[747] Ibid.

they will record the rabbi as agreeing with the proposal. He claims, disparagingly, that this approach is "the American way." He continues to raise several halakhic issues concerning the creation of an *eruv* around Manhattan. In addition, he questions whether it is a constructive idea to build an *eruv* around Manhattan as Jews will quickly forget that it is prohibited to carry on the Sabbath and it is difficult to maintain the *eruv* boundaries in such a large city. He concludes, "I have come only to suggest that the rabbis take into consideration whether there is more gain or harm in the creation of an *eruv* around Manhattan."[748] Rabbi Pollak responds to Rabbi Bloch defending his support of the *eruv* project on both halakhic and social grounds.[749]

The next rabbi to address the issue of an *eruv* in Manhattan was Rabbi Menahem Kasher. A well-known rabbinic scholar and author, Rabbi Kasher wrote a lengthy article arguing for the permissibility of creating an *eruv* around Manhattan in an appendix to a volume of his majestic work on the Torah, *Torah Shleimah*.[750] When the article was republished in his collection of responsa, he added the following note, "Three years ago I received from one of the illustrious rabbis in New York, the head of the Committee for the Sake of the Manhattan Eruv, two articles from important rabbis which explained the permissibility of creating an *eruv* around Manhattan. At

that point, I was inclined to be strict and not allow the *eruv*. However, now I have

[748] Rabbi Eliyahu Meir Bloch, "Mikhtav Be-Inyan Eruvin Be-Manhattan", Yeshiva University Archives MS 1300 1/7 reprinted in *Kol Tzvi* 7, 15-22.
[749] Yeshiva University Archives MS 1300 1/8.
[750] Rabbi Menahem Kasher, *Torah Shleimah* (New York, 1953), vol. 15, Appendix

returned to the topic and I realize that there is room to permit the Manhattan *eruv* as I will describe."[751]

In 1954, Rabbi Joseph Moskowitz, the Shatzer Rebbe, who lived on the Lower East Side of Manhattan, wrote an article in the rabbinic journal *Hamaor* in which he outlined his reasoning for allowing an *eruv* to be created in Manhattan.[752] He concluded his article as follows: "Here there is a *mitzvah* [to create an *eruv*] to save the tens of thousands who unintentionally violate the Sabbath. Furthermore, even for the religious Jews, it is impossible to avoid carrying on the Sabbath."[753] In the middle of this article, he included several comments from Rabbi Menahem Mendel Schneerson, the Lubavitcher Rebbe. Rabbi Schneerson concludes his comments, "When Rabbi Eisenstadt asked my opinion, I praised him and all those involved in this project for the sake of the community. However, this endeavor should be done without any publicity in order to avoid several concerns."[754] Rabbi Moskowitz also mentions in his article that when he sent his article to Rabbi Pinchas Teitz of Elizabeth, New Jersey, Rabbi Teitz responded with two letters in which he made minor comments but did not commit as to whether he supported or rejected the *eruv*. Finally, Rabbi

[751] Kasher, "*Tikkun Eruvin*," 43
[752] Rabbi Joseph David Moskowitz, "Tikkun Eruvin Be-Manhattan New York," *HaMaor* October, 1954 (5:8):11-14.
[753] Ibid., 14.
[754] Ibid., 12.

Moskowitz wrote that he spoke to Rabbi Steif about his article and Rabbi Steif concurred regarding the importance of creating an *eruv* around Manhattan.[755]

In 1959, Rabbi Moskowitz published a volume in which he expanded on the material in his previous article and further argued for the acceptability of the *eruv* around Manhattan.[756] He included at the beginning of the volume several letters, including a letter written to him by Rabbi Steif in 1954 complimenting a draft of his original article[757] and a letter from Rabbi Schneerson, who wrote that although he had earlier commented upon the importance of creating this *eruv*, his family tradition was not to rely on city *eruvin*.[758]

There was, however, also opposition to the creation of the Manhattan *eruv*. Rabbi Pollak, in his 1950 article supporting the creation of the *eruv*, mentions several arguments made by unnamed opponents to the creation of the *eruv*. He responds to these issues in his arguments in favor of the *eruv*.[759] He also wrote that Rabbi Henkin had written to him questioning the permissibility to create this *eruv* around Manhattan. Although Rabbi Pollak responds to these claims, he does not state whether Rabbi Henkin ultimately accepted his arguments and subsequently supported the *eruv*.[760] Furthermore, in the Spring of 1952, Rabbi Moshe Feinstein, the renowned Lithuanian

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[755] Ibid.
[756] Rabbi Joseph David Moskowitz, *Sefer Tikkun Eruvin Be-Ir* (Feinstein) (Ha-Kohen) *Manhattan New York* (New York, 1959).
[757] Ibid., IX-X.
[758] Ibid., X.
[759] Pollak, 76-78.
[760] Pollak, 78-80.

rabbinic authority who lived on the Lower East Side, wrote a letter to Rabbi Eisenstadt in which he explained that he was responding to Rabbi Eisenstadt's request for a reaction to the latter's article supporting the *eruv*. Rabbi Feinstein replied in a lengthy responsum in which he reviewed many of the issues discussed by Rabbi Eisenstadt. He concluded the responsum explaining that he had also read Rabbi Pollak's article but, for various reasons, he believed that one should be strict and not create an *eruv* around Manhattan.[761]

In his article in *Hamaor,* Rabbi Moskowitz explained that he showed his article to Rabbi Yoel Teitelbam, the Satmar Rebbe, who opposed the creation of an *eruv* in Manhattan. Rabbi Moskowitz also wrote that he showed his article to Rabbi Feinstein. According to Rabbi Moskowitz, Rabbi Feinstein showed him a copy of the as yet unpublished response to Rabbi Eisenstadt opposing the creation of the *eruv* in Manhattan. In response to these rabbinic opponents of the *eruv*, Rabbi Moskowitz wrote, "If we follow each of these stringencies...how could we eat meat, marry or divorce and especially how could we sell our *chametz*?"[762]

In his 1959 volume, Rabbi Moskowitz includes letters from both Rabbi Henkin and Rabbi Feinstein. Rabbi Henkin reiterates his doubts about whether an *eruv* could successfully be constructed around Manhattan. However, he concludes that if the sea

[761] The three responsa that constitute Rabbi Feinstein's answer to Rabbi Eisenstadt are found in Rabbi Moshe Feinstein, *Iggerot Mosheh,* (New York 1959), *Orah Haim*, vol. 1, nos. 138-140.
[762] Moskowitz, *HaMaor*, 15-16.

walls were determined to be acceptable *eruv* boundaries then the *eruv* would be valid because no action was required.[763] Rabbi Feinstein compliments the rabbinic scholarship of the volume, commenting that he agreed with certain aspects of the book although he disagreed with other aspects. Yet, he encourages everyone to assist Rabbi Moskowitz in the publication of this volume and added that "The rabbis will address the issues included within it." Rabbi Feinstein neither supported nor opposed the *eruv* in this letter.[764] Both Rabbis Henkin and Feinstein wrote about the Manhattan *eruv* in several different publications, in some cases expressing their opposition to the creation of the *eruv*, whereas in other places, they were more open to the acceptance of the Manhattan *eruv*. The details of these views will be explored later in this chapter.

In 1961, Rabbi Moshe Bick wrote a letter to Rabbi Moskowitz in which he said that he was unable to support the *eruv*, because both Rabbis Henkin and Feinstein had expressed some reservations about it. In addition, he claimed that most of the Manhattan rabbis do not agree with the *eruv* proposal and it is unfair not to include their opinions simply because they did not respond to the letter sent out by the Vaad. Finally, he questions Rabbi Moskowitz's assertion that rabbis were not able to reject his proofs supporting the *eruv*. Rabbi Bick argues that there were many rabbis who

[763] Moskowitz, *Tikkun Eruvin*, V-VIII
[764] Ibid., VIII.

offered refutations to Rabbi Moskowitz. However, for various reasons, they chose not to write their opinions.[765]

In 1959, Rabbi Moskowitz together with Rabbi Eisenstadt and Rabbi Raphael Zilber once again toured the entire Borough of Manhattan to determine the viability of constructing an *eruv*. They drove around the island and then rented a boat to allow them to investigate the piers more carefully. On March 26, 1959, the rabbis gathered in the home of Rabbi Henkin to hear a report from Rabbi Eisenstadt on their findings. At that meeting, Rabbi Eisenstadt reiterated his belief that an *eruv* could be created around Manhattan.[766]

The next episode in the debate regarding the Manhattan *eruv* took place on June 25, 1959, when the Committee for the Sake of the Eruv joined a meeting of the Orthodox rabbinate of New York to discuss the Manhattan *eruv*. Thirty rabbis attended the meeting. At that meeting, it was determined that, each rabbi would be encouraged to send his comments regarding the *eruv* project within the following three months. At that point, another meeting of the rabbis would be convened and a decision

[765] Rabbi Bick's letter is dated February 17, 1961 and can be found in *Kerem Be-Yavneh* 3 (Shevat, 2000): 13-18. The editor of the journal writes that this was the second letter that Rabbi Bick wrote to Rabbi Moskowitz concerning the *eruv*. The first letter is not extant.

[766] Rabbi Moshe Bunim Pirutinsky, "Haza-ah Le-Tikkun Eruv Be-Manhattan," *HaPardes* June 1959 (33:9): 10. A more complete version of this article with four additional pages can be found in Yeshiva University Archives MS 1300 2/6.

would be reached about how to proceed.[767] During this three-month period, Rabbi Moshe Bunim Pirutinsky, the Secretary of the Committee for Sake of the Eruv, wrote a lengthy article in *HaPardes* reviewing the major issues regarding the *eruv* and concluding that it was permissible to create an *eruv* around Manhattan. He included a note at the beginning of the article that his purpose was to assist other rabbis in responding to the issue in a timely fashion.[768]

At the rabbi's meeting of June 25, 1959, several rabbis suggested that the matter be presented to rabbis in Israel for their opinions. The matter was thus presented to Rabbi Tzvi Pesach Frank, the Chief Rabbi of Jerusalem. Rabbi Frank responds that even though there were rabbis who were opposed to the creation of an *eruv* in Manhattan and their reasons were valid, since the need for an *eruv* in Manhattan was great in order to prevent Sabbath violation, the rabbis in New York should be lenient and allow for the creation of an *eruv*. He supported his view based on the creation of the Warsaw *eruv* in the mid-nineteenth century, in which case there was also legitimate opposition to the *eruv*. Yet, due to the need to enforce Sabbath observance, the rabbis supported the creation of an *eruv* in Warsaw.[769]

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[767] Moskowitz, *Tikkun Eruvin*, 169-170 and letter found in Kasher, "*Tikkun Eruvin*," 10.
[768] Pirutinsky, *HaPardes*, 8-19.
[769] Kasher, *Tikkun Eruvin*, 31-33. Rabbi Frank was first approached for his opinion on the Manhattan *eruv* in 1955 by the members of the Vaad. See the letter in Yeshiva University Archives MS. 1300 2/3

After receiving Rabbi Frank's response, the Committee for the Sake of the Eruv sent a letter to the New York rabbis, once again reviewing the progression of events since 1949. They referred to the responsum of Rabbi Frank and concluded that, now that Rabbi Frank had approved the *eruv* project, they were prepared to complete it. Nevertheless, once again the Committee gave the rabbis another month to send their comments. At that time, they promised, a final decision would be reached. The letter was signed by all the members of the Committee and was dated March 15, 1960. A lengthy article by Rabbi Kasher outlining the issues regarding the *eruv* accompanied this letter.[770]

On July 9, 1961, Rabbi Henkin wrote a letter to the Committee, in which he advised that they should not wait to convene another rabbis' meeting, as experience dictated that such a meeting would be delayed indefinitely. Therefore, Rabbi Henkin advises that they should complete the *eruv* process and publicize the fact that the *eruv* was acceptable. However, Rabbi Henkin writes, until the Committee received the consent of the entire New York rabbinate, the *eruv* should only be utilized where absolutely necessary by certain classes of individuals. He delineated three such cases; (1) women and children who find it difficult to remain at home for the entire Sabbath, (2) doctors who need to carry medicine or instruments to treat patients who are not in life threatening predicaments and (3) carrying to the succah on the Sabbath during the holiday of Succot. He encouraged the rabbis to publicize the *eruv* in their synagogue

[770] Ibid., 10-11.

bulletins and the Hebrew and English Jewish press and to establish a fund to insure that there will always be rabbis who would check the *eruv* on a weekly basis.[771]

In his article in *HaPardes*, Rabbi Pirutinsky explained that he approached Rabbi Feinstein to discuss once again Rabbi Feinstein's opposition to the *eruv*. Rabbi Pirutinsky reports that Rabbi Feinstein responded that, even though he followed the rabbinic views that did not allow for the creation of an *eruv* in Manhattan, since the number of rabbis who permitted an *eruv* in Manhattan are more numerous than those who prohibited it, he felt that the rabbis had the right to create an *eruv* in Manhattan.[772] Based on the opinions of Rabbi Henkin and Rabbi Feinstein, Rabbi Moskowitz and Rabbi Kasher together wrote a letter, dated June 2, 1962, noting that Rabbis Henkin and Feinstein had supported the creation of the *eruv* and informing the recipients that the *eruv* was functional. Finally, they explained that the *eruv* had been completed with the lease of the City, a task accomplished by Rabbi Eisenstadt from

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[771] This letter was printed originally in *HaPardes 36:4* (January, 1962), and reprinted in Kasher, "*Tikkun Eruvin*," 14-15; and *Kitvei Hagriah Henkin*, pp. 32-33. Rabbi Kasher included two letters that Rabbi Henkin wrote to him. In the first letter, dated November 1, 1960, Rabbi Henkin expressed his support for the *eruv* while expressing some reservations especially about the bridges and the potential break they created in it. At the conclusion of the letter, Rabbi Henkin wrote that he did not feel that he was the ultimate authority concerning this *eruv* as there were many worthy rabbis who were working on the project.(Kasher, "*Tikkun Eruvin*," 14) In the next letter to Rabbi Kasher, which is undated and which appears in the original at the conclusion of the *eruv* section of *Divrei Menachem*, Rabbi Henkin wrote that "I hang on the coattails of Rabbi Moshe Feinstein who does not criticize those who support the *eruv* even though he will not participate in this project."(Kasher, "*Tikkun Eruvin*," 135). In this letter Rabbi Henkin seemed to retreat slightly from his previous view.

[772] Pirutinsky, *HaPardes*, 14-15.

Mayor Robert Wagner on October 16, 1959, for one dollar and a duratuon of forty-nine years.[773]

Rabbi Aharon Kotler, the head of Beth Medrash Govoha in Lakewood, New Jersey wrote a *teshuvah* in 1962 in which he said that he followed the opinion of the author of the *Mishkenot Yaakov* who argued that an *eruv* cannot be created around any city with streets that are more than sixteen *amot* wide and Manhattan clearly fell into that category. Rabbi Kasher reported that Rabbi Kotler was in the middle of his *teshuvah* on *eruvin* in big cities when he died in November, 1962, and was unable to complete it.[774] In addition, Rabbi Simon Schwab of the Khal Adath Jeshurun in Washington Heights, New York wrote two letters to the Vaad opposing the creation of the Manhattan eruv[775].

The opposition to the *eruv* continued even after the completion of the project. In June 1962, the Agudath HaRabbanim distributed a letter which reported on a meeting that took place on June 20, 1962. The letter read:

> In the meeting of the Agudath HaRabbanim that took place on Wednesday, *Parashat Beha'alotcha*, the 18th of Sivan, 5762, it

[773] Kasher, "*Tikkun Eruvin*," 16-17. A copy of the lease agreement can be found in The Jewish Center Archives. A handwritten note outlining the terms and length of the lease is located in Yeshiva University Archives 2/12.
[774] See the *teshuvah* in Rabbi Aharon Kotler, *Mishnat Rabbi Aharon* (Jerusalem, 1985), I: 6 and the note in Kasher, "*Tikkun Eruvin*," 16.
[775] The first letter is found in the Yeshiva University Archives MS. 1300 2/10. The second letter was published in Rabbi Simon Schwab, "Mikhtav Be-Inyan Tikkun Eruvin Be-Manhattan," *HaPardes* 36:5 (February 1962): 26.

> was decided to publicly announce the decision already made by the Agudath HaRabbanim that it is absolutely forbidden to establish an *eruv* in Manhattan and that it is forbidden to carry in Manhattan even after the repairs that have been made or that will be made by some rabbis. Whoever relies on the Manhattan *eruv* is considered a *Shabbat* violator.
>
> Aharon Kotler
> Yaakov Kamenetsky
> Gedalia Halevi Schorr
> Chaim Bick
> Moshe Feinstein[776]

This letter was reprinted in *HaPardes* in 1966, announcing that a meeting of the Agudath HaRabbonim had taken place on the first day of *Chol Hamoed Pesach* of that year (April 7, 1966) under the leadership of Rabbi Feinstein, at which time the decision was made to confirm the position of 1962 and to call upon rabbis to urge their communities not to rely on the Manhattan *eruv*.[777]

However, this opposition did not deter the supporters of the *eruv*. In 1977, Rabbi Israel Silverstein, the lay chairman of the Committee, wrote to Rabbi Kasher, who was living in Jerusalem, to report that "regarding the Manhattan *eruv*, all is in order."[778] In 1986, Rabbi Gavriel Zinner, a rabbi in Brooklyn who specialized in the building of *eruvin*, wrote a responsum in which he supported the Manhattan *eruv* but suggested that additional *tzurot ha-petah* should be constructed to repair certain

[776] The letter can be found at http://eruvonline.blogspot.com/2005/12/1979-flatbush-kol-korei-exposed.html (viewed 5/10/10).
[777] *HaPardes 40:7* (April, 1966): inside of front cover.
[778] Kasher, *Tikkun Eruvin*, 17.

breaches in the *eruv*.[779] These *tzurot ha-petah* were built under the leadership of Rabbi Jacob J. Schacter of The Jewish Center.[780] The Manhattan *eruv* continued to be operative until 2005 at which point Rabbi Haskel Lookstein, whose father Rabbi Joseph H. Lookstein, had been one of the original rabbinic supporters of the Manhattan *eruv*, wrote:

> After months of discussion, it appears that the Manhattan *eruv* which was established almost fifty years ago can no longer be maintained as a proper *eruv*. The problem is not halakhic but rather structural. Many changes have taken place over the last decade or two which make it extremely difficult to maintain the *kashrut* of the *eruv*. The necessary improvements to bring the *eruv* up to the standards that Rabbi Kasher, of blessed memory, established would be very expensive to make and, in any event, the nature of traffic and construction in Manhattan make it virtually impossible to assure the *kashrut* of the *eruv* on any given Shabbat.[781]

At that point, the Mechon L'Hoyroa, a rabbinical group from Monsey, New York, which has been invited to build a community *eruv* on the Upper West Side of Manhattan in 1999, built an *eruv* around sections of Manhattan utilizing the man-made *tzurot ha-petah* that had become popular in most community *eruvin* in the last decades of the twentieth century.[782]

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[779] This responsum is located in The Jewish Center Archives.
[780] Documentation of the construction of these *tzurot ha-petah* and the correspondence with other rabbis is located in The Jewish Center Archives.
[781] Private communication between Rabbi Haskel Lookstein and the Manhattan Orthodox rabbis, July 1, 2005.
[782] For a detailed map of the Manhattan *eruv* created by the Mechon L'Hoyroa, see http://maps.google.com/maps/ms?hl=en&ie=UTF8&msa=0&msid=113076836900840950588.00044dbfc593b01e16fc3&ll=40.834593,-73.996353&spn=0.121826,0.219727&z=12 (viewed 8/11/10).

Given the multiple views of the many rabbis involved in this dispute, the analysis will address each halakhic issue as it was discussed by the different rabbis.

Is Manhattan a *Reshut Ha-Rabbim*?

As has been previously discussed, any area that is defined as a *reshut ha-rabbim* must be surrounded by walls. In 1949, the population of Manhattan approached two million people[783] and the streets were wider than sixteen *amot*. Therefore, according to all authorities, Manhattan had the status of a *reshut ha-rabbim*. In order to create an *eruv* around the borough, the rabbis had two possible approaches they could utilize; either they could identify walls that surrounded Manhattan or they could determine that, for some other reason, Manhattan did not have the status of a *reshut ha-rabbim*.

In his initial article about the Manhattan *eruv*, Rabbi Eisenstadt addresses this question. He explains that the source of the view that a *reshut ha-rabbim* requires a population that exceeds 600,000 is the fact that the Israelite camp in the desert contained 600,000 Jewish men. That calculation, argues Rabbi Eisenstadt, did not include women, children or non-Jews. Since Manhattan did not contain 600,000 Jewish men, it is not a *reshut ha-rabbim*. However, he quotes the opinion of the *Ritba* who explains that 600,000 is the required number of people who pass through the city

[783] Rabbi Eisenstadt claimed that the population of Manhattan was approximately 1,906,000. See Eisenstadt, *Minhat Tzvi*, 28.

and not the number of people who live in the city. In that case, there are 600,000 Jewish men who pass through Manhattan each day. However, he says that since these people do not travel to Manhattan on the weekends, Manhattan is not a *reshut ha-rabbim*. He concludes that although these arguments are reasonable because they are not conclusive, Manhattan must nevertheless be considered as a *reshut ha-rabbim*.[784]

Rabbi Steif argues that Manhattan does not have the status of a *reshut ha-rabbim* due to the fact that a *reshut ha-rabbim* requires that the streets be *mefulash*, run straight from one end of the city to the other. Since Manhattan does not have any streets that run straight from one end to the other, it is not to be considered a *reshut ha-rabbim*. In addition, Rabbi Steif claims that if an area is filled with houses, then it does not have the status of a *reshut ha-rabbim*. He supports this opinion by explaining that only the Levite camp in the desert had the status of a *reshut ha-rabbim*, whereas the Israelite camp was not a *reshut ha-rabbim* even though 600,000 passed through it daily. Rabbi Steif explains the distinction as follows: Because the Israelite camp was filled with tents it did not have the status of a *reshut ha-rabbim*.[785]

Rabbi Pollak argued that, according to Rashi, 600,000 must pass through the city each day.[786] In that case Manhattan would be a *reshut ha-rabbim*. However,

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[784] Ibid. See *Ritba Eruvin* 59a, s.v. *matnitin*.
[785] See Rabbi Steif's opinion in *Ohr Yisroel* 8:4, 7 and 9:1, 6 and 13.
[786] Rashi, *Eruvin* 59a, s.v. *ir shel rabbim*. Rabbi Pollak infers Rashi's view that the 600,000 must pass through the city because Rashi offers his explanation for *a reshut ha-rabbim* regarding a "city of many people."

according to the author of the *Shulhan Arukh*, the requirement of 600,000 is that this number of people must pass through at least one of the streets of the city each day.[787] Rabbi Pollak claims that even on streets such as Broadway, where there are 600,000 people during the week, since there are not 600,000 people on Sunday, Broadway would not be considered a *reshut ha-rabbim*.[788]

Rabbi Moskowitz likewise believed that Manhattan did not have the status of a *reshut ha-rabbim*. He argued that the number of people in Manhattan each day does not reach 600,000 for the following two reasons. First, he claims that each person only counts once even if they enter and leave Manhattan several times during the day. He bases this view on the opinion of *Tosafot* who define a *reshut ha-rabbim* as the place in which 600,000 pass through each day. According to Rabbi Moskowitz, since *Tosafot* do not mention the frequency of passage through this place, they must believe that each person who travels through this place counts only once regardless how many times they enter and leave the area.[789] Second, Rabbi Moskowitz quotes Rabbi Ephraim Margolioth who was the first one to claim that people who ride in carriages are not included in the tally of 600,000. Interestingly, Rabbi Moskowitz does not mention the discussion of this issue regarding the earlier *eruv* on the East Side of Manhattan.[790]

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[787] *Shulhan Arukh, O.H.* 345: 6.
[788] Pollak in *Kol Zvi*, 68.
[789] *Tosafot, Eruvin*, 6a, s.v. *kaitzad*.
[790] Moskowitz, *Tikkun Eruvin*, 104-6.

Rabbi Kasher discusses the issue whether Manhattan is a *reshut ha-rabbim* in great detail. First, he analyzes the statement of the author of the *Shulhan Arukh* who quotes Rashi's opinion regarding the definition of a *reshut ha-rabbim*. The *Shulhan Arukh* writes: "And there are those who say that any place that does not have 600,000 passing through it each day is not a *reshut ha-rabbim*."[791] Rabbi Kasher traces the source of the requirement of 600,000 each day. He concludes that this is based on the text of the *Halakhot Gedolot* which says,"A *reshut ha-rabbim* is a place where 600,000 pass through every day."[792] Rabbi Kasher argues that this definition is referring to the number of people and the frequency of these people in the city who pass through the *eruv* boundaries in order to invalidate the *mehitzot* and is providing a definition of a *reshut ha-rabbim*. Therefore, he explains that the fact that there are fewer than 600,000 on the streets of Manhattan on the weekends does not negate the fact that Manhattan is a *reshut ha-rabbim*. In addition, he argues that the 600,000 people must live in the city but they do not need to travel the streets. Finally, he includes non-Jews in his calculation of 600,000. Therefore, according to this reasoning, Manhattan would have the status of a *reshut ha-rabbim* according to Rabbi Kasher.[793]

However, Rabbi Kasher argues that Manhattan is not a *reshut ha-rabbim* for the following reason. According to Rashi, in addition to the requirement of 600,000

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[791] *Shulhan Arukh, O.H*. 245:7.
[792] *Halakhot Gedolot*, edited by Esriel Hildesheimer (Berlin, 1888), 131.
[793] Kasher, "*Tikkun Eruvin*," 43-48.

people and streets that are sixteen *amot* wide, a *reshut ha-rabbim* must have streets that are *mefulash* and *mekhuvanim mi-sha'ar le-sha'ar*.[794] According to Rabbi Kasher, *mefulash* means that the streets must open into a *reshut ha-rabbim*. *Mekhuvanim mi-sha'ar le-sha'ar* means that the streets must run straight from one end of the city to the other end. Rabbi Kasher says that even though there are streets that open into the bridges which have the status of a *reshut ha-rabbim*, there is no street that runs straight from one end of Manhattan to the other end. Therefore, Manhattan does not have the status of a *reshut ha-rabbim*.[795]

Rabbi Pirutinsky summarizes the opinions of Rabbis Moskowitz and Kasher arguing that Manhattan does not have the status of a *reshut ha-rabbim*. First, he explains that since the streets were not aligned from one end of the city to the other end, even though the population exceeded 600,000, Manhattan was not a *reshut ha-rabbim*. Second, he says that the people driving in cars or traveling on buses do not count towards the 600,000 people and even New York does not have 600,000 people traveling by foot. Finally, he quotes the author of the *Shulhan Arukh* who writes that a *reshut ha-rabbim* requires 600,000 passing through it each day and there are not 600,000 passing through on the weekends.[796]

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[794] Rashi, *Eruvin* 6b s.v. *Yerushalayim*.
[795] Kasher, "*Tikkun Eruvin*," 23-27 and 87-90.
[796] Pirutinsky, *HaPardes*, 12-13.

The opponents of the Manhattan *eruv* cast the situation in a different light. Rabbi Bloch argues that Manhattan had the status of a *reshut ha-rabbim*. He rejects the claim that non-Jews were not included in the calculation of 600,000 as that distinction is not found in any of the *rishonim*. In addition, he rejected the claim that since there was fewer than 600,000 in Manhattan on the weekends it is not considered a *reshut ha-rabbim*. First, he explains that there are 600,000 in Manhattan even on the weekends. Furthermore, he says that 600,000 are required to be in the city on a regular basis but not every minute of the day or night. He bases this argument on Rashi's definition of a *reshut ha-rabbim*. Rashi writes that 600,000 must pass through the area "always."[797] Rabbi Bloch explains that this word "always" cannot possibly be taken literally and must mean that there are 600,000 in the area on a regular basis. [798]

Rabbi Moshe Feinstein discusses the status of Manhattan in several different places in his *Iggerot Mosheh*. In a letter dated 5 Adar 5712, he states, "Regarding a *reshut ha-rabbim*, the custom has already been established to follow the opinion of Rashi and *Tosafot* who are lenient [and require 600,000 to establish a *reshut ha-rabbim*]." He continues that based on this understanding there might be places in New York and Brooklyn which would be considered a *reshut ha-rabbim* as more than 600,000 travel in those places.[799] In his responsum to Rabbi Eisenstadt, Rabbi Feinstein more precisely defines the qualificatuons of a *reshut ha-rabbim*. He

[797] Rashi, *Eruvin* 59a s.v. *ir shel rabbim*.
[798] Bloch, *Kol Tzvi*, 17-19.
[799] *Iggerot Mosheh, O.H.*, I: 109.

explains that a *reshut ha-rabbim* is an area twelve *mil* by twelve *mil* (approximately 8 miles by 8 miles) which has daily traffic in excess of 600,000. He bases his definition on his understanding of the Israelite camp in the desert which had a daily traffic that exceeded 600,000 people. He explains that this traffic may include Jews and non-Jews, women and children and he even includes people who are driving in cars and riding on the buses.[800] However, in several *teshuvot* written in the late 1970s and early 1980s, Rabbi Feinstein argues that in order to have 600,000 on the streets every day, a city would need to have five times that many people living or commuting to the city at the time. He says that this must be true since the rabbis established an *eruv* in Warsaw even though Warsaw's population exceeded 600,000 and they never would have created this *eruv* if Warsaw had the status of a *reshut ha-rabbim*. He never explicitly writes whether he believed that Manhattan had the status of a *reshut ha-rabbim* based on this definition.[801]

In his second *teshuvah* to Rabbi Eisenstadt's question, Rabbi Feinstein writes that Rabbi Eisenstadt had received his first *teshuvah* and had expressed his surprise that Rabbi Feinstein did not address the fact that Manhattan was not *mefulash* and *mekhuvan mi-sha'ar le-sha'ar*. Rabbi Feinstein responds that he believed that in order to consider an area a *reshut ha-rabbim*, the streets must open into a *reshut ha-rabbim*. The requirement of running straight from one end of the city to the other end is not

[800] *Iggerot Mosheh, O.H.*, 1:139.
[801] See *Iggerot Mosheh, O.H.*, IV: 87 and V: 28-29.

necessary. Therefore, since Manhattan has streets that open onto bridges at both ends of the street, Manhattan would have the status of a *reshut ha-rabbim*.[802] In a *teshuvah* written in 1981, Rabbi Feinstein clarifies his view concerning *mefulash* and *mekhuvan mi-sha'ar le-sha'ar*. He explains that Rashi only mentions in one place the requirement that the streets of a *reshut ha-rabbim* must be *mekhuvan mi-sha'ar le-sha'ar*.[803] Therefore, Rabbi Feinstein writes that this one reference is not halakhically binding since all the other definitions of a *reshut ha-rabbim* by Rashi do no mention this requirement. Furthermore, Rabbi Feinstein suggests that even according to Rashi the only time that a *reshut ha-rabbim* requires streets that are *mekhuvan mi-sha'ar le-sha'ar* is a situation in which the city is walled like Jerusalem and the camps in the desert which were surrounded by the walls of God's clouds. In such a city, the area is is only considered a *reshut ha-rabbim* (requiring gates that are closed at night) if the streets are both open to a *reshut ha-rabbim* and run straight through the city. However, in an unwalled city, the area is considered a *reshut ha-rabbim* as long as the streets open into a *reshut ha-rabbim*, even if they do not run straight through the city.[804]

[802] Ibid., I: 140.
[803] Rashi, *Eruvin* 6b s.v. *Yerushalayim*.
[804] *Iggerot Mosheh* (Jerusalem, 1996), V:28:7.

The Eruv Boundaries

Fig. 6 - Map of the New York City Subway System, Union Dime Bank, 1954

Rabbi Eisenstadt addresses the boundaries of the Manhattan *eruv* in his article written in 1949. He explains that Manhattan is surrounded on all sides by rivers which are ten *tefahim* deep and, therefore, serve as acceptable *eruv* boundaries. Nevertheless, he raises several issues concerning these boundaries. First, he finds that the boundaries created by the Atlantic Ocean, the East River, the West Channel and the Hell Gate had the status of seas and not rivers and, therefore, were not acceptable as *eruv* boundaries because of the risk of sediment build-up. In addition, he adds that natural *mehitzot* are unacceptable according to *Tosafot* based on the principle of *atu rabbim u-mevatlei mehitzah.*[805] Therefore, he argues that the *eruv* boundaries around Manhattan are created by the man-made piers and sea walls that rise at least ten *tefahim* above the water line. These *mehitzot* are immune to the risk of sediment build-up and the human traffic would not invalidate them. Finally, Rabbi Eisenstadt writes that in several places in northern Manhattan there are no man-made sea walls that rise above the water line. In those cases, Rabbi Eisenstadt claims that *tzurot ha-petah* can be built. Alternatively, one can rely on the depth of the rivers that exceed ten *tefahim*. Since the northern tip of Manhattan is enclosed by the East River and the Hudson River, there is no concern of sediment build-up.[806]

Rabbi Pollak accepts the rivers as satisfactory *eruv* boundaries. He does not mention the risk of sediment build-up and therefore treats these rivers as rivers which

[805] *Tosafot, Eruvin* 22b s.v. *dilma.*
[806] Eisenstadt, *Minhat Tzvi*, 29-31.

are not negated by the risk of sediment build-up. He addresses the problem of people passing over the *eruv* boundaries thereby nullifying the boundaries. However, he writes that since the piers are man-made, public traffic does not nullify these boundaries. He also discusses the area in northern Manhattan that did not have man-made river walls. He argues that in those places the natural river which was ten *tefahim* high would serve as an appropriate *eruv* boundary. He raises the fact that the river, although it is an acceptable *eruv* boundary, was in existence prior to the creation of the city thereby creating a situation where the *eruv* walls are not *mukkaf le-dirah*. However, he quotes the *Shulhan Arukh* who writes that as long as most of the *eruv* is *mukkaf le-dirah*, the *eruv* is acceptable.[807]

[807] Pollak, *Kol Tzvi*, 68-69 and *Shulhan Arukh, O.H*., 365: 2.

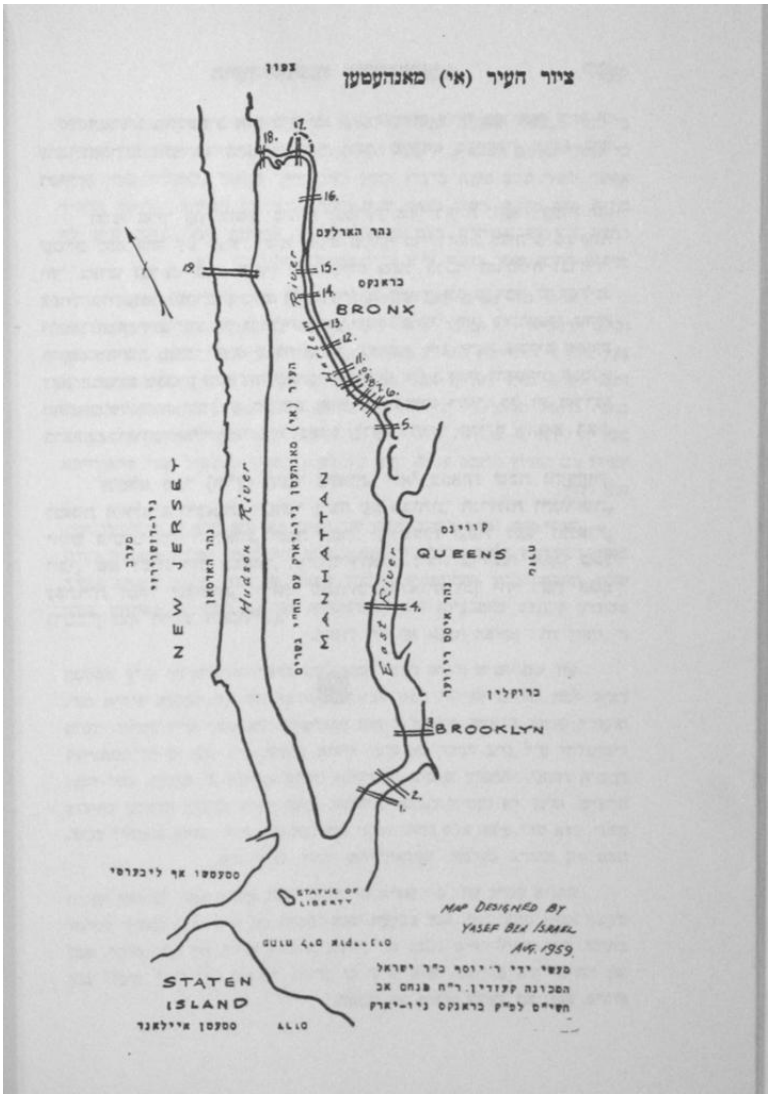

Fig. 7 - Moskowitz, *Tikkun Eruvin*, 175 reprinted in Kasher, "Tikkun Eruvin," 12

Rabbi Moskowitz writes, at the beginning of his *Tikkun Eruvin Be-Manhattan*, that he had surveyed the boundaries of Manhattan several times and he saw that the man-made river walls surround the entire city and since they are ten *tefahim* high, they

are acceptable *eruv* boundaries. Rabbi Moskowitz also addressed the several places around Manhattan that are missing the river wall. He makes the following suggestions. First, he suggested that in those places the river itself can serve as an acceptable *eruv* boundary. In Warsaw, Rabbi Alter had allowed the river to serve as the fourth *eruv* boundary even though it was not ten *tefahim* deep.[808] Furthermore, he claimed that there are fences between the river and the city in all the places that are lacking acceptable *eruv* boundaries. Therefore, he said, Manhattan is surrounded by acceptable *eruv* boundaries. He concluded that gates were not necessary in Manhattan, because gates are only needed if the *eruv* boundaries consist of *tzurot ha-petah*. However, if the *eruv* boundaries are real walls, the area inside the walls is transformed into a *reshut ha-yahid* and does not require gates. It would appear that all the rabbis who accept the river walls as *eruv* boundaries agree that gates would not be necessary in Manhattan.[809]

Rabbi Moskowitz also addresses the fact that the rivers are not visible from the houses and that *Ramban* argues that if the natural boundaries are not visible from the houses, those natural boundaries are not acceptable.[810] However, Rabbi Moskowitz quotes the opinion of Rabbi Schwadron in his approbation to *Eruv Ve-Hotza'ah* in which he explains as follows. *Ramban* is limiting his comments to the case of the ocean which is not visible from anywhere in the city and cannot be reached on the

[808] Yitzchak Meir Alter, *Sefer Shut Ha-Rim* (Warsaw, 1882), *Orah Haim*, no. 4.
[809] Moskowitz, *Tikkun Eruvin*, 19-22.
[810] *Hiddushei Ha-Ramban, Eruvin* 59a, s.v. *u-mihu*.

Sabbath. However, argues Rabbi Schwadron, in a city where the rivers are visible at least to the people living nearby and the rivers can be reached on the Sabbath, even *Ramban* would agree that the rivers serve as acceptable *eruv* boundaries.[811]

Rabbi Pirutinsky also addresses the area in northern Manhattan in which the man-made river wall did not create an acceptable *eruv* boundary. He agrees with Rabbi Moskowitz that one could rely on the opinion that stated that the river creates an *eruv* boundary even if it is not ten *tefahim* deep. Furthermore, he suggests that this portion of Manhattan be excluded from the *eruv* through the building of *mehitzot* around that unacceptable area. He writes that the role of the Committee was to make the determination how to address this specific issue.[812]

Rabbi Kasher relies on the precedent of Rabbi Seigel who accepted the *eruv* boundaries created by the rivers surrounding Manhattan. Rabbi Kasher adds that he agrees with Rabbi Seigel's claim that man-made piers resolve the problem that the river predated the creation of the *eruv* boundaries.[813]

Rabbi Henkin's opinion regarding the boundaries of the Manhattan *eruv* is interesting. In the approbation letter that he wrote to Rabbi Moskowitz upon the publication of his *Tikkun Eruvin Be-Manhattan*, he stated that if the river walls were in existence as Rabbi Moskowitz had claimed, then he supported the *eruv*. However, if,

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[811] *Eruv Ve-Hotza'ah*, 29-31.
[812] Pirutinsky, *HaPardes*, 10-12.
[813] *Eruv Ve-Hotza'ah*, 23 and Kasher, "Tikkun Eruvin," 59.

as he suspected, the *eruv* boundaries still needed *tzurot ha-petah*, then he believed that these *tzurot ha-petah* would not endure in New York.[814]

Rabbi Feinstein accepts the man-made river walls as valid *eruv* walls. He adds that these walls were *mukaf le-dirah*, built specifically for the sake of the inhabitants of the city, as they create a safe place to walk and to take the children to play.[815]

Public Traffic Nullifies the Eruv Boundaries

Although all the rabbinic authorities agreed that the sea walls constituted acceptable *eruv* boundaries, the issue of people crossing over these boundaries created an issue that needed to be addressed. Rabbi Eisenstadt quotes the opinion of the *Magen Avraham* that people exiting ships would negate the *eruv* boundary.[816] Rabbi Eisenstadt explains that the view of the *Magen Avraham* does not create a problem in Manhattan for the following reasons. First, Rambam rejects the entire principle of *atu rabbim u-mevatlei mehitzah*. Second, even according to the author of the *Magen Avraham*, since each pier is enclosed by its own fenced-in area, the *eruv* boundary is established by these enclosures and not by the river walls. Rabbi Eisenstadt says that if *tzurot ha-petah* are created around the few piers that are not already enclosed, the Manhattan *eruv* would be acceptable even according to the *Magen Avraham*. Furthermore, Rabbi Eisenstadt adds that even though there are several places in

[814] Moskowitz, *Tikkun Eruvin*, V.
[815] *Iggerot Mosheh*, *O.H.*, I: 139:1.
[816] *Magen Avraham*, *O.H.*, 363:30.

between the piers where people sometimes disembark from the boats, since it is not normal to disembark at a point other than a pier, this traffic would not negate the *eruv* boundaries. Finally, he explains that since the sea walls are constructed by people, man-made *mehitzot* are exempt from the issue of *atu rabbim u-mevatlei mehitzah*.[817]

Rabbi Steif quotes the opinion of the author of the *Beit Ephraim* who claims that the principle of *atu rabbim u-mevatlei mehitzah* does not apply if all four *eruv* boundaries are created by walls. Therefore, in Manhattan there would be no issue regarding the people getting on and off the ships the ships nullifying the *eruv* boundary.[818] Rabbi Moskowitz explains that the view of the *Magen Avraham* that people disembarking and crossing the *eruv* boundaries nullify the *eruv* is not accepted by all the rabbinic authorities. Furthermore, since the piers in Manhattan all contain man-made walls, there is not question that the people disembarking do not nullify the *eruv* boundary.[819]

In 1949, Rabbi Henkin raised the issue of whether the public traffic nullified the *eruv* around Manhattan. He writes that this issue has already been addressed by Rabbi Seigel in his *Oznei Yehoshua* in which he explains that public traffic does not nullify the *eruv* in New York because Manhattan is enclosed by acceptable *eruv* walls

[817] Eisenstadt, *Minhat Tzvi*, 31.
[818] Steif, *Ohr Yisrael* 8:4, 6-7. See *Beit Ephraim, O.H.*, 79-80.
[819] Moskowitz, *Tikkun Eruvin*, 56-7.

and because Manhattan does not have the status of a *reshut ha-rabbim* since there is no one street that has 600,000 people on it.[820]

Rabbis Bloch and Feinstein do not address this opinion of the *Magen Avraham* or the issue of *atu rabbim u-mevatlei mehitzah* in relation to the Manhattan *eruv*. Rabbi Kotler, however, does address this issue. He argues that the practice follows the opinion of the author of the *Mishkenot Yaakov* that, even if there are four walls surrounding a city, there is still a potential problem of *atu rabbim u-mevatlei mehitzah*.[821] To bolster this argument, he says that the opinion of *Tosafot* that *atu rabbim* does not apply if the *eruv* boundaries are man-made is a lone opinion and not accepted by the rabbinic authorities throughout the ages. Given these two arguments, Rabbi Kotler says that according to the *Magen Avraham* people disembarking would nullify the *eruv* boundaries and Manhattan would not be considered surrounded by acceptable *eruv* boundaries Therefore, Rabbi Kotler would require gates around Manhattan in order to consider Manhattan as a *reshut ha-yahid*.[822]

Fear of Sediment Build-Up

Rabbi Moskowitz includes in his volume a lengthy discussion about the risk of sediment build-up in the rivers and the possibility that this risk would disqualify the *eruv* boundaries. First, Rabbi Moskowitz explains that all the waterways surrounding

[820] Seigel, *Oznei Yehoshua*, 180 and *Edut Le-Yisrael*, 151.
[821] *Mishkenot Yaakov, O.H.*, I: 120.
[822] *Mishnat Rabbi Aharon*, I: 6.

Manhattan have the status of a river and not a sea or ocean since they each have banks on both sides of the waterways. Second, he explains that all rabbinic authorities, with the exception of the author of the *Taz*, believe that sediment build-up is only an issue regarding seas and oceans and not regarding rivers.[823] Since the decision-making rule regarding *eruvin* is to follow the more lenient opinion, the opinion of the *Taz* is rejected and the fear of sediment build-up is not considered a problem. Finally, he argues that since sediment build-up is so rare there is no reason to be concerned with this possibility.[824]

Rabbi Kasher quotes the opinion of Rabbi Schwadron in his approbation to *Eruv Ve-Hotza'ah* in which he addresses the issue of sediment build-up in rivers as follows. Rabbi Schwadron records the opinion of the *Or Zarua*[825] who quotes the author of the *Halakhot Gedolot*, in which the *Halakhot Gedolot* states that a city that a city that is surrounded by a river is considered enclosed regarding the laws of *eruvin*.[826] Rabbi Schwadron concludes that since *Or Zarua* quotes this opinion without any limitations that an island such as Manhattan that is enclosed by rivers is

[823] *Taz, O.H.,* 363:20.
[824] Moskowitz, *Tikkun Eruvin*, 78-93. Rabbi Steif also addresses this issue in a short paragraph in which he explains that the prevalent view follows the *Magen Avraham* that sediment build-up is not an issue in rivers. See Steif, *Ohr Yisrael* 9:1, 10.
[825] *Or Zarua*, II: *Hilkhot Eruvin*, no. 164.
[826] *Halakhot Gedolot* (Jerusalem, 1972), 260.

considered enclosed and there is no risk of sediment build-up and there is no need for man-made river walls since they are not mentioned by the *Halakhot Gedolot*.[827]

Bridges

Rabbi Eisenstadt is the first one to address the issue of the bridges in Manhattan. He writes that when he first addressed this issue in 1949 there were eighteen bridges connecting Manhattan with the outer boroughs and New Jersey. He explains that at the time most of them had a *tzurat ha-petah* thereby alleviating the breach that the bridges caused in the eruv wall. However, in 1959, he surveyed each bridge, including two additional railway bridges, together with Rabbis Moskowitz and Zilber. Rabbi Eisenstadt includes in a lengthy footnote in his earlier article a list and description of the bridges and the reason why each of the bridges do not negate the *eruv* wall. He argues in the original *teshuvah* as follows: First, he explains, that most of the bridges have a *tzurat ha-petah*. However, he argues that these *tzurot ha-petah* do not create adequate *eruv* walls because Rabbi Eisenstadt believes that Manhattan has the status of a *reshut ha-rabbim* thereby requiring solid walls. However, he explains that since the bridges are not lined up opposite one another, Manhattan is not considered *mefulash* and therefore does not have the status of a *reshut ha-rabbim*. For this reason, the *tzurot ha-petah* would be adequate to create an *eruv* boundary around

[827] *Eruv Ve-Hotza'ah*, 29-31 and Kasher, "Tikkun Eruvin," 59-60.

the city. Rabbi Eisenstadt adds that if a bridge does not have a *tzurat ha-petah*, it would be simple to construct one.[828]

Rabbi Eisenstadt raises a further concern regarding the bridges, namely, that the traffic across the bridges negates the bridges as *eruv* boundaries even if they are enclosed with *tzurot ha-petah*. He explains, however, that since the *Magen Avraham* writes that public traffic only negates the *eruv* boundaries if 600,000 cross the boundary, in Manhattan where most of the people who cross the bridges ride in cars or trains which are excluded from the calculation of 600,000, there would be no problem of invalidating the eruv based on pubic traffic across the bridges.[829] Furthermore, Rabbi Eisenstadt explains, according to *Nodah Bi-Yehudah* and *Hatam Sofer*[830] the problem created by the bridges is the fact that they create a breach in the *eruv* wall. Therefore, Rabbi Eisenstadt suggests that if the problem with the bridges is the fact that they create a breach in the *eruv* wall, they should build a canister on each side of the bridge entrance with mesh wrapped around the canister. This mesh would serve the function of gates that could be closed at night and would satisfy those rabbinic authorities who do not require that the gates are actually closed at night. Interestingly, in his footnote describing the details of the twenty bridges around Manhattan written

[828] Eisenstadt, *Minhat Tzvi*, 32.
[829] *Magen Avraham, O.H*. 363:40.
[830] *Noda Bi-Yehudah, Tinyana, O.H*. no. 42 and *Hatam Sofer O.H.*, no. 89.

in 1959, Rabbi Eisenstadt argues that each bridge can be considered closed off without relying on this canister which he recognized was an impractical solution.[831]

Rabbi Steif believes that Manhattan does not have the status of a *reshut ha-rabbim*. Therefore, the *tzurot ha-petah* on the bridges would suffice to enclose the breach created by the bridges. However, since there is significant debate concerning bridges in an *eruv*, Rabbi Steif suggests building *tzurot ha-petach* around the area in front of the bridges, thereby relying on the *tzurot ha-petah* as *eruv* boundaries and not including the bridges in the *eruv*.[832]

Rabbi Pollak also believes that Manhattan is not a *reshut ha-rabbim*. Therefore, the *tzurot ha-petah* that are created at the entrance to the bridges would suffice to close off the breaches in the *eruv*. He further clarifies his view about the potential breach that is created by the bridges. He argues that according to *Hatam Sofer* that the only time that the bridges create a breach in the *eruv* wall is in a situation in which the bridge is on ground level.[833] In such a situation, the bridge cancels the *eruv* wall beneath since the *eruv* wall is obliterated by the bridge. However, in a situation in which the bridge is elevated from ground level, the bridge

[831] Eisenstadt, *Minhat Tzvi*, 32-3. See his description of the bridges in f.n. 2.
[832] Steif, *Ohr Yisrael* 9:1, 13-14.
[833] *Hatam Sofer, O.H.* no. 89.

does not create a breach in the *eruv* wall since the *eruv* wall can still be seen on ground level and it is not negated by the bridge.[834]

Rabbi Moskowitz believes that Manhattan does not have the status of a *reshut ha-rabbim*. Therefore, he claims that every bridge can be closed off with a *tzurat ha-petah*. He says that each bridge had its own structure that constituted a *tzurat ha-petah*. In some cases, the bridges have a *tzurat ha-petah* over the main part of the bridge as well as over the two sidewalks on either side of the bridge roadway. Rabbi Moskowitz writes that he first investigated the eighteen bridges in 1954. Five years later in 1959, he also describes how he joined Rabbi Eisenstadt and Rabbi Raphael Silber and they investigated the now twenty bridges that surrounded Manhattan. He includes in his volume the same description included as the footnote in Rabbi Eisenstadt's *teshuvah* outlining each one of the bridges and describing the manner in which each bridge is closed off. He concludes that each bridge is adequately closed off by means of a *tzurat ha-petah* and, therefore, the bridges do not create a breach in the *eruv* wall.[835]

Rabbi Kasher also argued that the fact that Manhattan was not a *reshut ha-rabbim* allowed for the closing off of the bridges via *tzurot ha-petah* that were already part of the structure of the bridges.[836] Rabbi Pirutinsky also agrees that the *tzurot ha-*

[834] Pollak, *Kol Tzvi*, 71-5.
[835] Moskowitz, *Tikkun Eruvin*, 23-54.
[836] Kasher, "*Tikkun Eruvin*," 62-3.

petah on the bridges is adequate to close off the bridges that surround Manhattan.[837] Rabbi Kroizer adds one additional element to this discussion. He argues that even if Manhattan has the status of a *reshut ha-rabbim*, the bridges would still not create a breach in the *eruv* wall for the following reason: According to the author of the *Beit Ephraim*, as long as the *eruv* walls surround the city, a breach of even more than ten *amot* would not invalidate the *eruv*.[838] Therefore, even though *tzurot ha-petah* do serve as *eruv* walls in a *reshut ha-rabbim*, because Manhattan is surrounded by river walls that serve as *eruv* walls the fact that there are small breaches created by the bridges would still not invalidate the *eruv*.[839]

In 1936, Rabbi Henkin first addressed the problem that the bridges caused in the creation of the Manhattan *eruv*. Rabbi Henkin, writes that the city landscape has changed since the days of Rabbi Seigel. Specifically, he explains that the bridges that have been built or that were not part of Rabbi Seigel's original *eruv* nullify the *eruv* boundaries that are underneath these bridges.[840] In a second paragraph that was added to this description when Rabbi Henkin republished this discussion in 1949, he writes that the entranceways to the bridges might create a *tzurat ha-petah* to alleviate the problem that the bridges create. However, he is not satisfied with this solution because

[837] Pirutinsky, *HaPardes*, 12
[838] *Beit Ephraim, O.H.*, 68.
[839] D. M. Kroizer, "Tikkun Eruvin Be-Manhattan, N.Y." *Noam* 1 (1958): 227.
[840] *Luah Ha-Yovel shel Ezrat Torah*, 62 reprinted in *Edut le-Yisrael*, 151.

he does not think that these entranceways actually function as *tzurot ha-petah*.[841] In his approbation to Rabbi Moskowitz's volume, Rabbi Henkin explains that Rabbi Moskowitz had claimed to him that the bridges surrounding Manhattan had *tzurot ha-petah* but Rabbi Henkin writes that he is "not sure."[842]

Rabbi Feinstein, in his *teshuvah* to Rabbi Eisenstadt, has a different approach to the issues of the bridges surrounding Manhattan. Rabbi Feinstein explains that the *eruv* wall around Manhattan rises all the way up to the heavens. Therefore, the bridge does not create a breach in the *eruv* wall. However, Rabbi Feinstein argues that the part of the bridge that is beyond the extended *eruv* wall would be considered a *reshut ha-rabbim* if 600,000 passed over the bridge or a *karmelit* if fewer than 600,000 passed over the bridge. Rabbi Feinstein adds an additional element that creates a serious problem for the establishment of the Manhattan *eruv*. He argues that even a *karmelit* requires gates and the only difference between a *reshut ha-rabbim* and a *karmelit* is that a *reshut ha-rabbim* requires gates that actually close at night while a *karmelit* only requires gates that have the ability to be closed. Rabbi Feinstein bases his argument that a *karmelit* also requires gates on the fact that a *karmelit* also has people passing over it and therefore it is included in the requirement for gates. This

[841] *Edut le-Yisrael*, 151. Edut Le-Yisrael does not contain a date of publication. The date of 1949 seems to be the correct date of publication as the calendar in the back of the book begins in 1950. In addition, the copy of the book in the New York Public Library has a stamped date of acquisition of 1949.
[842] Moskowitz, "Tikkun Eruvin," V.

being the case, Rabbi Feinstein explains that an *eruv* cannot be built around Manhattan since we do not have the ability to close off the bridges with gates. At then end of the *teshuvah*, Rabbi Feinstein adds that since there are clearly fewer than 600,000 passing over any of the bridges and the prevalent view is that is acceptable to enclose such an area with *tzurot ha-petah* and not to consider it a *karmelit* that requires gates, he would not nullify the *eruv* on account of the bridges alone.[843]

Rabbi Bloch, in the *teshuvah* that he wrote to the *Vaad* in 1950, expresses a view similar to that of Rabbi Feinstein. He explains that the since the bridges are open to public traffic, they are considered either a *reshut ha-rabbim* or a *karmelit*. Furthermore, he suggests that since they are open beyond the *eruv* wall of the city, it is possible the bridges nullify the *eruv* walls underneath.[844]

Rabbi Moshe Bick argues that the bridges in Manhattan are *mefulashim mi-sha'ar le-sha'ar* since streets such as Delancy St. continue directly from the bridges. Therefore, Rabbi Bick argues that the bridges would require doors with gates and would not suffice with *tzurot ha-petah*. Rabbi Bick presents a novel explanation for *mefulash* as all the other rabbinic authorities required that the bridges be aligned with one another in order to consider the city *meflaush mi-sha'ar le-sha'ar*. Rabbi Bick does not present any justification for his view.[845]

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[843] *Iggerot Mosheh, O.H.* I: 139.
[844] Bloch, *Kol Tzvi*, 20.
[845] Rabbi Mosheh Bick, *Kerem Beyavneh* 3, 12-13.

Tunnels

Rabbi Eisenstadt addresses the issue of the twenty tunnels that leave Manhattan, fifteen of which are used for trains or subways and the other five are for cars. Rabbi Eisenstadt writes that regarding the train and subway tunnels there is no problem since they are blocked off on the side of the tunnel outside of Manhattan by gates that are closed and which enclose the subway and train maintenance and storage areas. Regarding the five other tunnels, Rabbi Eisenstadt argues that in addition to the *tzurot ha-petah* that are created at the entrance to every tunnel, the toll booths serve as gates that close off the tunnels. He concludes that he has only examined the Queens Midtown Tunnel and he must check the other tunnels.[846]

Rabbi Moskowitz argues that tunnels do not constitute a breach in the *eruv* walls because the roofs of the tunnels can be extended downward to create *eruv* walls based on the principle of *pi tikra yored ve-sotem*, the edge of the beam descends. In addition, he explains that he joined Rabbis Eisenstadt and Kasher in surveying the tunnels of Manhattan. They saw that the openings of the tunnels do not exceed ten *amot* and, therefore, they do not create a breach in the *eruv* but are merely considered like a doorway.[847] In his approbation to Rabbi Moskowitz's volume, Rabbi Henkin writes that he is not convinced that the rule of *pi tikra* applies regarding tunnels since the roofs of the tunnels are round and the Gemara writes that a *tzurat ha-petah* can

[846] Eisenstadt, *Minhat Tzvi*, 32.
[847] Moskowitz, *Tikkun Eruvin*, 54-6.

only be built if the top of the gate is flat.[848] Rabbi Henkin extends this rule to *pi tikra* and argues that this rule also only applies if the roof is flat.[849]

The other rabbis who wrote about the Manhattan *eruv* did not address the issue of the tunnels.

Pelatya---The Central Market

When the *brayta* in Tractate *Shabbat* defined a *reshut ha-rabbim*, it gave several examples. One of the examples was a *pelatya*, a central marketplace. Rabbi Shlomo ibn Adret introduced a novel explanation of the status of a *pelatya*. He writes that a *pelatya* is any open space sixteen square *amot* in which people come to conduct their business. Regarding such an area, ibn Adret says that even if it is completely enclosed and it does not have 600,000 using it each day, it has the status of a *reshut ha-rabbim* that can never be rectified since it is an area with public access.[850] According to the rule proposed by ibn Adret, since Manhattan contains several such areas an *eruv* cannot be created around Manhattan or any other large city. Rabbi Eisenstadt quotes Hakham Ashkenazi who writes that no rabbinic authority follows the opinion of ibn Adret.[851] Rabbi Eisenstdt adds that the *Shulhan Arukh* did not

[848] *Eruvin* 11b
[849] Ibid., V-VI.
[850] Ibn Adret, *Avodat Ha-Kodesh, sha'ar* 3, no. 1
[851] *Hakham Tzvi,* no. 37

include this opinion in the *Shulhan Arukh* and the tradition for centuries had been to build *eruvin* even around cities that had areas that could be defined as a *pelatya*.[852]

Rabbi Steif makes the following argument. He claims that his suggestion to construct the *eruv* in Manhattan neighborhood by neighborhood would avoid the problem of the *pelatya* as most neighborhoods do not have a large marketplace and the local rabbis will be able to avoid including the marketplace in the *eruv* if such an area does exist.[853]

Rabbi Moskowitz agrees with Rabbi Eisenstadt that the common practice of community *eruvin* does not follow the view of ibn Adret. However, he attempts to clarify this opinion which he finds very problematic. He argues that ibn Adret meant to say that the *pelatya* requires gates that close at night for if it does not have gates that close at night it will be an area with complete public access which would be deemed a *reshut ha-rabbim* even without 600,000 people. However, argues Rabbi Moskowitz, if the gates were locked at night, carrying would be permitted in the *pelatya*.[854]

Rabbi Kasher presents a different approach to address the opinion of ibn Adret. He argues that even according to ibn Adret, the only type of area that would defined as a *pelatya* is a marketplace with many different types of markets in the same square.

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[852] Eisenstadt, *Minhat Tzvi*, 35-6.
[853] *Minhat Tzvi*, 41-2.
[854] Moskowitz, *Tikkun Eruvin*, 128-33.

However, since today there are no such marketplaces, there would be no area in Manhattan which would be considered a *pelatya*.[855]

Rabbi Feinstein quotes the opinion of ibn Adret and he believes that the *halakhah* follows this opinion. Therefore, an *eruv* cannot be built around Manhattan since it contains *pelatya* that are considered *reshut ha-rabbim* even if they are enclosed. He explains that the reason that rabbis built *eruvin* in European cities even though they contained *pelatya* was because the custom was to define a *pelatya* as a marketplace that had 600,000 passing through it. Since no city in Eastern Europe had such a large population, they were able to construct *eruvin*. However, in Manhattan which has 600,000 and *pelatya* are found throughout the city, even if the area is enclosed, it does not lose its status of a *reshut ha-rabbim*. At the conclusion of the *teshuvah,* Rabbi Feinstein writes that even though some rabbinic authorities disagree with ibn Adret, the combination of the problem created by the bridges and the issue of *pelatya* render it impossible to create an *eruv* around Manhattan.[856]

Rabbi Moshe Bick presents another explanation for the opinion of ibn Adret. Rabbi Bick explains that even according to Hakaham Ashkenazi, the *halakhah* does not follow ibn Adret to require a special enclosure for the *pelatya*. However, even Hakham Ashkenazi would agree that any city that contains *pelatya*, the entire city

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[855] Kasher, "*Tikkun Eruvin*," 64-6. For a discussion of Rabbi Kasher application of the pelatya to modern day cities, see Rabbi Baruch Hayim Simon, *Sefer Imrei Barukh* (New York, 2009), 66-8.
[856] *Iggerot Mosheh, O.H.,* I: 139: 5-6.

must be enclosed by eruv walls and cannot suffice with *tzurot ha-petah*. Furthermore, he disagrees with Rabbi Kasher and argues that there are indeed market areas in Manhattan which would create the status of a *pelatya*.[857]

Lease of the City

Rabbi Eisenstadt concludes his letter saying that after all the *eruv* walls are in place, bread must kept in Manhattan and that the city must be leased from one of the government officials for 99 years.[858] Rabbi Steif agrees that the city can be leased from the government official and quotes the precedent that this type of lease was used in Poland.[859] He adds that such a lease would work for the houses of the Jews who reject the concept of *eruv* since, even though, the reject the principle of *eruv*, they will helped responsible for their desecration of the Sabbath and thereby benefit from the establishment of an *eruv*. Finally, he quotes Hakham Zevi who argues the lease should be renewed each year or two and Rabbi Solomon Tabak who argues that the lease can extend for either ten or twenty years.[860] Rabbi Steif concludes that each local rabbi can arrange the proper length of lease.[861]

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[857] Rabbi Moshe Bick, *Kerem Be-Yavneh* 3, 11-12.
[858] Eisenstadt, *Minhat Tzvi*, 37.
[859] See Samuel Ha-Kohen Borstein, *Sefer Minhat Shabbat* (Tel Aviv, 1964), *hasmatot le-simman* 94 who explains the tradition in Poland to lease the city from the local governmental authority. Rabbi Borstein quotes several different views whether leasing from a Jewish governmental authority would be sufficient.
[860] *Teshuvot Hakham Zvi*, no. 30. Solomon Leib Tabak, *Sefer She'elot U-Teshuvot Teshurat Shai* (Bnei Brak, 1990), no. 357.
[861] Steif, *Minhat Tzvi*, 42-3 and *Ohr Yisrael* 9:1, 15.

Rabbi Moskowitz traces the history of leasing the city for the sake of creating an *eruv*, quoting the sources the sources that had been utilized by Rabbi Eisenstadt and Steif. Rabbi Moskowitz concludes that it is permissible to rent the city from the government official or his agent, even if the agent is Jewish. At the end of his discussion on this topic, he quotes *Hazon Ish* who makes the following argument. *Hazon Ish* argues that the city should be leased from the local policeman. However, he recognizes that this local policeman has no right to own or to lease the properties in the city. Therefore, *Hazon Ish* explains, this lease works based on the principle that the local policeman is the *sekhiro u-lekito* of the governmental official to enter the houses and this right is sufficient to effectuate the lease regarding *eruvin*.[862] Finally, Rabbi Moskowitz quotes Rabbi Henkin who suggests that the rabbi should lease the city for a government official even if the city is not surrounded by *eruv* walls. This should be done, he argues, since Jews make *eruvin* in their apartment buildings and non-Jews in the building would nullify the *eruv*. Leasing of the city would allow these Jews to make the *eruv* in the apartment buildings and the presence of non-Jews would not nullify this *eruv*. Rabbi Moskowitz writes that he rented the city from the agent of a government official in 1954 even before the Manhattan *eruv* was finalized to achieve this goal.[863]

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[862] Abraham Yeshayahu Karelitz, *Sefer Hazon Ish Hilkhot Eruvin* (Jerusalem, 1955), 18:9.
[863] Moskowitz, *Tikkun Eruvin*, 108-12.

Rabbi Pirutinsky quotes an unnamed prominent rabbi who opposed the Manhattan *eruv* because he claimed that in America the government does not have the right to enter someone's home without their permission. Rabbi Pirutinsky responds that according to the *Rivash*, the right of rental is based on the governmental official's ability to place items in the houses during times of war.[864] That right, argues Rabbi Pirutinsky, applies in America. Furthermore, he argues that the police and fire departments have the right to enter people's home in the case of an emergency.[865]

Rabbi Kasher was asked the following question by a rabbi who opposed the Manhattan *eruv*. The rabbi asked whether, since he was opposed to the *eruv*, he should have the status of someone who rejects the concept of *eruv* about whom the *Mishnah* says that his presence in the *hazer* or the city would nullify the entire *eruv*. Rabbi Kasher answers by quoting Rabbi Shlomo Kluger, who argues that, in such a case, the person who rejects the *eruv* does not nullify the *eruv* since the *eruv* is a merit for him and therefore he can be included in the *eruv* even against his will.[866] Furthermore, Rabbi Kasher adds that many cities had rabbis who opposed the local *eruv* and no one ever suggested that their presence in the city would nullify the *eruv*.[867]

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[864] *Rivash*, no. 405.
[865] Pirutinsky, *HaPardes*,13.
[866] Shlomo Kluger, *Sefer U-Vaharta Ba-Hayyim* (NY, 1960), no. 123.
[867] Kasher, "*Tikkun Eruvin*," 95-7.

Social and Religious Implications of the Manhattan Eruv

Rabbi Kasher writes at the end of his work on the Manhattan *eruv* as follows:

> It is important to emphasize that we are not establishing this *eruv* simply for the "sinners." Rather, there are religious people who are careful even about the prohibition of *muktzeh* but still carry glasses or handkerchiefs or papers and even *tallitot*. Any rabbi who does not want to fool himself and to recognize the truth will realize this.[868]

Rabbi Kasher continues to point out that this phenomenon was not a new one and that for hundreds of years otherwise religious Jews had been carrying personal items on the Sabbath.

Rabbi Bloch, in his 1950 letter to the Vaad, also understands the fact that religious Jews are carrying on the Sabbath. However, he reaches a different conclusion. First, he argues that if an *eruv* is established in Manhattan, even the religious people will forget that it is prohibited to carry on the Sabbath absent an *eruv* and this will lead them to carry when they spend the Sabbath outside of Manhattan. Furthermore, he explains that it is very possible for the *eruv* boundaries to be broken and no one will be authorized to repair them, leading to mass violation of the Sabbath. Rabbi Bloch concludes that the Vaad must consider whether the benefits of the *eruv* outweigh the risks or vice versa.[869]

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[868] Ibid., 90.
[869] Bloch, *Kol Tzvi*, 20-2.

Rabbi Pollak responds to Rabbi Bloch in a letter dated February 5, 1950. Rabbi Pollak defends the establishment of the e*ruv* by explaining that a great mistake has arisen among the religious Jews in New York who observe the details of the *halakhah* but nevertheless carry on the Sabbath. He argues that, therefore, it is the obligation of the rabbis to remove this stumbling block and to build an *eruv* in Manhattan. Rabbi Pollak proceeds to address Rabbi Bloch in Rabbi Bloch's role as president of the *Agudath RaRabbonim*. Rabbi Pollak writes that the mission of the *Agudath HaRabbonim* is to promote Sabbath observance. Therefore, they should support the Manhattan *eruv* project. He concludes the letter offering the hope that Rabbi Bloch would reconsider and decide to support the Manhattan *eruv*.[870]

A different approach to the question of the need for the Manhattan *eruv* was taken by Rabbi Feinstein. In an article written in 1959 in *HaPardes*, Rabbi Pirutinsky supported the *eruv*. Rabbi Pirutinsky writes that he showed the article to Rabbi Feinstein. Rabbi Pirutinsky quotes Rabbi Feinstein's entire response. Rabbi Feinstein writes:

> I do not see a need to establish an *eruv* here for it is not similar to the cities in Europe where there was a need for an *eruv* in order to survive as it was impossible to prepare water for the animals and other similar things that were crucial for people. However, here everything is in the home and there are even *siddurim* and *humashim* in the synagogues. It is only for the sake of the sinners who violate all the laws of the Torah in order to remove the prohibition of carrying on the Sabbath. This

[870] Yeshiva University Archives MS 1300 1/8.

> must be balanced with the dangerous state that will be created for the religious Jews who will rely on the lenient view without knowing the opinions of the more stringent ones… However, if after proper consideration the supporters of the *eruv* consider it a necessity for the children or those who carry unintentionally, I do not object but I can not participate with them.[871]

Rabbi Feinstein reiterates this point in a letter that he wrote to Rabbi Leo Jung of The Jewish Center in Manhattan on December 15/16, 1960. Rabbi Feinstein writes that, although he has decided that it is not acceptable to build an *eruv* around Manhattan since there are many reputable rabbis who support the *eruv*, he does not criticize them even though he will join in their effort. However, he warns Rabbi Jung that this *eruv* will cause religious Jews to carry based on these lenient opinions which are not acceptable according to many rabbinic authorities.[872]

Rabbi Feinstein makes one additional argument explaining why he opposes the Manhattan *eruv* for social reasons. He writes in his *teshuvah* to Rabbi Eisenstadt that he wonders why Jerusalem did not have an *eruv* in the Temple period. He suggests that Jerusalem did not have an *eruv* since people came to Jerusalem from other cities and if they were allowed to carry in Jerusalem they would assume that it was permissible to carry in the cities where they lived. Rabbi Feinstein says that in this

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[871] Rabbi Moshe Feinstein in Rabbi Pirutinsky, *HaPardes* 33:9 (Sivan 5719): 13. Rabbi Moshe Bick said in an interview in 1975 that he accepted the need for Rabbi Seigel's eruv since at that time the bathrooms were outdoors and people needed to carry keys in order to enter. However, he agreed with Rabbi Feinstein that there was no need for eruvin in the second half of the twentieth century in New York. See Lyle Kamlet, "Eruv Controversy in New York," *Hamevaser* 14:3 (December 30, 1975): 5.
[872] Iggerot *Mosheh, O.H.*, IV: no. 89.

regard Manhattan is similar to Jerusalem since people come from all over the world and if they are permitted to carry on the Sabbath in Manhattan they will assume that it is permissible to carry when they return to their homes.[873]

Rabbi Pirutinsky, who had quoted Rabbi Feinstein's objections in his article in *HaPardes* replies to Rabbi Feinstein. He explains that the *eruv* in Manhattan is not being built for the sake of those who bring water to the animals. Rather, it is for the sake of the observant Jews who are carrying personal items on the Sabbath and especially for the sake of the observant women who cannot take the children outside the home without an *eruv*. Furthermore, Rabbi Pirutinsky is not concerned that people will erroneously conclude that the *eruv* extends beyond Manhattan as the role of the Vaad is to post *eruv* maps and signs in all the synagogues outlining the borders of the *eruv*. As the purpose of the *eruv* is for the sake of the observant Jews, Rabbi Pirutinsky is confident that the Jews will listen to the rabbis and not irresponsibly carry outside of the *eruv*.[874]

At the end of his *Tikkun Eruvin*, Rabbi Moskowitz lists his responses to Rabbi Feinstein's social opposition to the Manhattan *eruv*. First, he disagrees with Rabbi Feinstein's claim that the *eruv* is only for the sake of the "sinners." Rabbi Moskowitz argues that there are thousands of Jews who have the status of "regular Jews" who

[873] *Iggerot Mosheh, O.H.*, I: 139: 5.
[874] Pirutinsky, *HaPardes*, 19. There is an elaboration on this issue in the copy of the article in Yeshiva University Archives MS 1300 2/6, 12-13.

observe the Sabbath and do not go to work but it is difficult for them to avoid carrying. For these people alone, Rabbi Moskowitz says, it is worthwhile to build the *eruv*. Second, regarding Rabbi Feinstein's claim that an *eruv* is not needed in America the way it was needed in Europe, Rabbi Moskowitz says that the opposite is true. In America, where the people work hard all week long and want to walk with their families on the Sabbath, they need an *eruv* to allow them to push their children in baby carriages. Otherwise, they will be stuck in the house for the entire day. He says that one woman heard that he was working on building an *eruv* in Manhattan and she told him that he would be doing her a big favor.

Finally, Rabbi Moskowitz takes issue with Rabbi Feinstein's argument that if carrying is allowed in Manhattan then travelers will return home and assume that carrying is permitted in their home towns. Rabbi Moskowitz says that many people claim that they have no need for a *mikveh* because their bathtub is a more sanitary *mikveh* than the public one. Yet, that argument does not prevent the community from building a *mikveh*. The same is true, Rabbi Moskowitz argues, regarding *eruvin*. The fact that people might do something wrong does not prevent or even discourage the community from providing the necessary services for the community, including a *mikveh*.[875]

[875] Moskowitz, *Tikkun Eruvin*, 161-4.

In a subsequent letter dated May 22, 1960, Rabbi Moskowitz addresses a prominent Manhattan rabbi who wrote a letter to many other rabbis arguing that there is no need for an *eruv* in Manhattan and who outlined the risks involved in building this *eruv*. Rabbi Moskowitz responds in a letter addressed to "the rabbis of the synagogues in Manhattan." He reviews many of the items that he discussed in his response to Rabbi Feinstein and elaborates upon them. He points out that the fact that observant Jews carry on the Sabbath was not a problem that was invented in New York. The prophet Jeremiah warned the people against carrying on the Sabbath and the tradition of relying on leniencies in the laws of *eruvin* is based on the fact that observant Jews were nonetheless carrying. Second, he explains that the concern that people may think that the *eruv* extends to the other boroughs is not a factor because the Jews who are being protected attend synagogue and signs will be posted identifying the borders of the *eruv*. Third, he disagrees with the argument that people will question the rabbinate since no *eruv* boundaries need to be built in Manhattan. Rabbi Moskowitz argues that this is not a valid argument because even if they had needed to build *tzurot ha-petah*, people could have asked why *tzurot ha-petah* were not needed until that point. Rather, we see that this concern never prevented rabbis from building *eruvin*, with or without *tzurot ha-petah*. Finally, Rabbi Moskowitz is critical of this rabbi for distributing his letter to the wide community of rabbis. He

writes, "A man whose intentions are for the sake of heaven would first approach the members of the Vaad and speak to them face to face."[876]

Two additional letters were written on this issue by Rabbi Simon Schwab, the Rabbi of Khal Adath Jeshurun in Washington Heights, NY. In the first letter, dated April 20, 1960, Rabbi Schwab, with the approbation of Rabbi Joseph Breuer, Senior Rabbi of Khal Adath Jeshurun, wrote to the Vaad opposing the establishment of the Manhattan *eruv*. He expressed several reservations. First, he explains that most of the rabbis with whom he spoke believed that Manhattan was a *reshut ha-rabbim*. However, much of Rabbi Schwab's opposition was social. He argued that if the *eruv* was created in Manhattan, Jews living in the other boroughs will assume that they too may carry on the Sabbath in their neighborhoods. Furthermore, he argued that, since the Manhattan *eruv* did not require any structural changes to the city, Jews will think that *halakhah* is a joke merely dependant on the rabbinical whim.[877]

In his second letter, printed in *HaPardes*, Rabbi Schwab elaborated on his opposition to Rabbi Kasher's support for the Manhattan *eruv*. Rabbi Schwab wrote:

> Everyone agrees that it is a great mitzvah to establish *eruvin* to prevent Sabbath violation…However, in this time and especially in this country which is corrupted by arrogance and ignorance at a time when the ignorant have taken control and young people stand in the place of elders and are not embarrassed to misinterpret the Torah…we must consider the problems that could arise and the destruction that might

[876] This letter is located in Yeshiva University Archives MS. 1300 2/11.
[877] This letter is located in Yeshiva University Archives MS 1300 2/10.

> come from this innovation…for if even one person will carry four *amot* in a *reshut ha-rabbim* due to this *eruv*, what will you answer on the Day of Judgment?[878]

Rabbi Schwab is concerned that the *eruv* will lead this "arrogant" generation to become lax in general in the observance of the laws of the Sabbath. Furthermore, he claims that carrying on the Sabbath is the marker by which one can tell whether someone is part of the observant Jewish community. If they do not carry on the Sabbath, then one can assume that they are strict about the laws of kosher and that they send their children to *yeshivot*. If they carry on the Sabbath, he argues, it is a safe guess that they are not observant in other areas of Jewish law.

Rabbi Schwab admits that the *eruv* will help to prevent the inadvertent Sabbath violator from violating the laws of carrying on the Sabbath. Therefore, he suggests that the *eruv* be created around Manhattan and the city be leased from the governmental authorities. However, he says that the rabbis should keep the *eruv* a secret so that those who carry by accident will not be liable but those who want to use the *eruv* as a vehicle to allow for further Sabbath desecration will not be aware of its existence.[879]

Conclusion

In many respects, the debate regarding the Manhattan *eruv* in the years after World War II followed the pattern of North American *eruv* debates that have been

[878] Rabbi Simon Schwab, "Mikhtav Be-Inyan Tikkun Eruvin Be-Manhattan," *HaPardes* 36:5 (February 1962): 26.
[879] Ibid., 26-8.

studied. Although the debate revolved around halakhic principles and precedent, the social component played a critical role in understanding the position of the rabbis regarding this *eruv*. The issue of *reshut ha-rabbim* that was addressed regarding the St. Louis *eruv* and the East Side of Manhattan *eruv* was once again explored by the rabbinic authorities regarding the Manhattan *eruv*. In addition, the question of utilizing bridges as eruv boundaries and the potential problem of public traffic over the *eruv* boundaries was also addressed concerning the Manhattan *eruv*. The question of the proper manner of leasing the city was also discussed regarding the Manhattan *eruv*. The only issue that was not addressed was the possible utilization of telegraph poles and wires as *eruv* boundaries because the Manhattan *eruv* relied on the river walls and piers to create its *eruv* walls.

There was, however, a critical difference between this *eruv* debate and the previous ones in North America. From the very beginning of this initiative in 1949, there was an attempt on the part of the rabbis who led the initiative and constituted the leadership of the Vaad to gain rabbinic consensus concerning the *eruv*. Letters were sent to the rabbis of New York soliciting their reactions and their criticisms. Even the opponents of the *eruv* led by Rabbi Feinstein were respectful of the supporters of the project and were careful not to question their motives or to declare their conclusions wrong.

There are several explanations for this attempt at consensus. First, in the years following World War II, the Jewish community and especially the rabbinic

community felt vulnerable and weakened. There was a desire to create rabbinic unity rather than rabbinic strife. Rabbi Steif, in his initial letter to Rabbi Eisenstadt, suggested that each rabbi should build an *eruv* in his community to avoid the conflict that might ensue from the creation of a city-wide *eruv*.[880]

Second, in Manhattan at that time, Rabbis Feinstein and Henkin were the two leading halakhic authorities. If the *eruv* was going to gain acceptance, it was critical that these two rabbis be included in the process and hopefully to receive, if not their approval, their acceptance of the *eruv*. The fact that both Rabbis Feinstein and Henkin both participated in the process, offered their encouragement and did not openly oppose the *eruv*, points to the successful process that was undertaken first by Rabbi Eisenstadt and then with the partnership of Rabbis Moskowitz and Kasher.

Finally, the Manhattan *eruv* was the first North American *eruv* that affected so many different sub-communities. Rabbi Schwab wrote in strong opposition to the Manhattan e*ruv* not as an outsider but as the rabbi of a community that would be included within this *eruv*. The *eruv* also included the Lower East Side, the community of Rabbis Feinstein, Henkin and Moskowitz and the Upper West Side, with its combination of Modern Orthodox rabbis and a Hasidic community of which Rabbi Kasher was a leading member. Each of these communities interacted with one another in multiple ways and a consensus of rabbinic support would prevent tension and controversy.

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[880] Steif, *Ohr Yisrael* 9:1, 15.

However, the most important difference between the Manhattan *eruv* and the previous North American *eruvin* lied in the fact that the Manhattan *eruv* was the first *eruv* that relied heavily on the precedent of an earlier North American *eruv*, in this case, the 1905 *eruv* created by Rabbi Seigel on the East Side of Manhattan. Rabbi Henkin begins the trajectory that led to the creation of the Manhattan *eruv* in 1936 when he wrote that although many Jews rely on Rabbi Seigel's eruv, in truth; this *eruv* is no longer valid. However, this does not mean that Rabbi Seigel's *eruv* and his discussion of the *eruv* did not play a critical role in the development of the later Manhattan *eruv*. Rabbi Eisenstadt, in his initial treatise suggesting the creation of the Manhattan *eruv*, includes a list of volumes that he consulted. He includes Rabbi Seigel's *Eruv Ve-Hotza'ah* and Rabbi Bernstein's *Hilkhata Rabbta Le-Shabbata* in this list of books.[881] Rabbi Steif, in his approbation to Rabbi Moskowitz's *Tikkun Eruvin*, lists the volumes that must be consulted regarding the creation of this new *eruv*. The first volume mentioned in this list is *Eruv Ve-Hotza'ah*. He also mentions Rabbi Bernstein's *Hilkhata Rabbta Le-Shabbata*.[882] In addition, Rabbi Kasher in the introduction to his eruv treatise "Tikkun Eruvin" discusses the history of the *eruv* in Manhattan beginning with Rabbi Seigel's *Eruv Ve-Hotz'ah* and the fact that Rabbi Schwadron gave an approbation to this volume.[883] Rabbi Pirutinsky begins his article

[881] This page listing the books that he used appears as Appendix III in the typewritten copy of Rabbi Eisenstadt's treatise. It was not republished in the later version of the treatise. See Yeshiva University Archives, 1/2.
[882] Moskowitz, *Tikkun Eruvin*, IX.
[883] Kasher, "Tikkun Eruvin," 5.

with the history of the Manhattan *eruv* and he credits Rabbi Seigel with initiating the discussion about an *eruv* around Manhattan. He adds that Rabbi Seigel's *eruv* was not relied upon following Rabbi Seigel's death.[884] Rabbi Kroizer, in his article published in *Noam*, mentions the *eruv* in St. Louis and then refers to Rabbi Seigel's volume and to the approbations that were included.[885] Finally, Rabbi Moskowitz reprints the introduction of Rabbi Kroizer at the conclusion of his *Tikkun Eruvin*.[886]

Although each one of these rabbinic authorities points out that Rabbi Seigel's *eruv* only encompassed the East Side of Manhattan, it is clear that they view his *eruv* as the beginning of the process that led to the creation of the Manhattan *eruv*. On one hand, this is not surprising. Rabbi Seigel had created an *eruv* around a portion of the borough that was being addressed and had dealt with many of the halakhic issues that were relevant to the Manhattan *eruv*. On the other hand, Rabbi Seigel's *eruv* had either fallen into disuse or was being used without rabbinic sanction. Therefore, it would have been easy for the rabbis to create the impression that the Manhattan *eruv* had been their own innovation and not open themselves to criticism that they were relying on an *eruv* that was, at the very least, no longer valid.

The use of Rabbi Seigel's *eruv* as a precedent is all the more surprising given the fact that in the halakhic discussion of the Manhattan, as has been shown, there are

[884] Pirutinsky, *HaPardes*, 9.
[885] Kroizer, *Noam*, 197.
[886] Moskowitz, *Tikkun Eruvin*, 164-5.

very few references to Rabbi Seigel's arguments supporting his earlier *eruv*. Although to an extent this can be explained by the fact that a large portion of Rabbi Seigel's work focuses on the utilization of the Third Avenue El which was not a factor in the later *eruv*, it is striking that Rabbi Seigel is proudly mentioned by each of the later rabbinic authorities yet, all but ignored even regarding issues that Rabbi Seigel addressed, in their halakhic analysis.

The recognition that Rabbi Seigel's *eruv* began the process that led to the creation of the Manhattan *eruv* reflects a turning point in the history of American Orthodoxy. Following World War II, the American Orthodox rabbinate began to recognize the existence of a history of American Orthodoxy. In the first half of the twentieth century, when rabbis such as Rabbi Seigel or Rabbi Graubart created their eruvin, the fact that there were rabbis who had previously addressed these issues in America did not concern them since they saw their community as a continuation of the communities of Eastern Europe. However, in the second half of the century, although these rabbis were generally still not born and educated in America, they recognized that they were building on a preexisting history of Orthodoxy in America. Therefore, even though the rabbis involved in the Manhattan did not rely on Rabbi Seigel for his halakhic expertise, these same rabbis felt that it was important to trace the history of the Manhattan *eruv*. They were willing to admit that this history gave the concept of a Manhattan *eruv* more credibility. It is not surprising that these rabbis mentioned the approbations, especially the one by Rabi Schwadron, in their discussion of the history

of the *eruv* as that gave the additional credibility of this Polish rabbinic sage to this American rabbinic initiative.

The realization that earlier *eruvin* in the history of American Orthodoxy were not merely isolated events but were the beginning of a pattern of *eruvin* in communities in North America helped to create the self-confidence and self-awareness that allowed for the explosion of community *eruvin* in the last quarter of the twentieth century.

Conclusion

In his approbation to Rabbi Joseph Moskowitz's volume, *Tikkun Eruvin*, which supported the creation of the Manhattan *eruv,* Rabbi Moshe Feinstein, a leading opponent of the Manhattan *eruv*, wrote, "I have seen [in this volume] many topics that follows the law as the truth of Torah. Even though there are other matters in which, according to my humble opinion, there are opposing views, it is the Torah tradition that God is happy when two scholars argue for the sake of heaven."[887] The history of the American city *eruv* is the story of Jewish scholars who have argued and disputed the laws and traditions of past generations and attempted to apply those laws and traditions to the realities of North America. This dissertation has traced these disputes regarding the four city *eruvin* that were created in North America prior to 1970 and contextualized these debates in the framework of the evolution of community *eruvin* from the Talmudic period through the end of the nineteenth century.

The community *eruv* was first introduced in the Talmudic period as a vehicle by which Jewish residents living around a courtyard could carry their possessions into the shared courtyard. As the Jewish community expanded beyond these small courtyards, the Talmud and subsequent halakhic literature addressed the manner in which an *eruv* could be created to enclose the neighborhoods in which the Jews lived thus allowing them to carrying in that area on the Sabbath. The creation of these

[887] Moskowitz, *Tikkun Eruvin*, VIII.

communal *eruvin* required the utilization of natural boundaries such as rivers and hills and man-made boundaries such as city walls in order to enclose otherwise open areas. Often there was a need to combine several different types of natural boundaries in order to properly enclose the neighborhoods or cities in which the Jews lived. In addition, if non-Jewish residents lived in the area around which the *eruv* was to be created, the area had to be leased from these non-Jews. Since leasing from every non-Jew in the city was impractical, the medieval rabbinic authorities debated whether the area could be leased from a government official who represented all the residents of the city. This debate was critical in the history of communal *eruvin* as the Jews often had access to a limited number of government officials from whom they felt comfortable affecting such a lease.

In the nineteenth century, as the walls of medieval cities were demolished, the rabbis explored other options in order to properly enclose the neighborhoods or cities. The invention of the telegraph in the middle of the nineteenth century created a new option for enclosing cities since the telegraph poles and wires ran along many of the streets and roads. There was a debate among the halakhic authorities of this period regarding the question as to whether telegraph poles and wires constituted acceptable *eruv* boundaries since the wire was connected to the side of the telegraph poles and not to the top of the pole as is required in a traditional *tzurat ha-petah*. Many rabbis explained that these wires and poles were still considered acceptable *eruv* boundaries. These arguments were based on earlier halakhic discussions and the recognition that

these telegraph poles and wires were often the only possible solution by which the city could be enclosed to create an *eruv*. *Eruvin* were created in the eighteenth and nineteenth centuries in major cities and small towns in Europe and Middle Eastern countries. Some of these *eruvin* were opposed by rabbis who believed that the natural or man-made *eruv* boundaries did not meet the halakhic requirements that had been established since the Talmudic period. These city *eruvin* and the debates that accompanied them set the stage for the history of communal *eruvin* in America.

The first documented *eruv* in North America, created in 1894 in St. Louis, was the most contentious of the early American *eruvin*. Rabbi Rosenfeld, the creator of the *eruv*, engaged in a heated scholarly and religious debate with Rabbi Jaffe, a rabbinic colleague in St. Louis, about the viability and desirability of creating an *eruv* in St. Louis. Their arguments focused on the traditional issues of whether natural boundaries were acceptable as *eruv* boundaries and whether telegraph poles and wires could constitute *eruv* borders. These issues had been debated by rabbis since the Geonic Period and had been at the heart of the questions relating to the creation of city *eruvin* in the Early Modern and Modern Periods. In addition, Rabbi Jaffe claimed that St. Louis had a population that exceeded 600,000; this is the first time that the concern of *reshut ha-rabbim* is addressed in the history of the debate on city *eruvin*. Rabbi Rosenfeld responded that the population of St. Louis did not exceed 600,000 but Rabbi Jaffe believed that this response was based on dubious facts, They also argued about the acceptability of leasing the city from a local policeman. Rabbi Rosenfeld

claimed that the policeman had authority to enter houses thereby achieving the status of a *sekhiro u-lekito* (representative) of the mayor. Rabbi Jaffe mocked the manner in which Rabbi Rosenfeld leased the city from the policeman claiming that he might as well lease the city of Chicago from the policeman at the same time. Finally, Rabbi Rosenfeld claimed that there was a need for an *eruv* in St. Louis since otherwise observant Jews would carry on the Sabbath since these Jews did not heed his reprimands and warnings about the severity of the prohibition of *hotza'ah* on the Sabbath. Although Rabbi Jaffe did not object to the idea of creating a city *eruv*, he believed that Rabbi Rosenfeld had invented halakhic arguments merely to satisfy the members of the Jewish community. The debate between Rabbis Rosenfeld and Jaffe serves as an important chapter in the history of city *eruvin* even though its role in later American *eruvin* was marginal.

The *eruv* on the East Side of Manhattan was created in 1905 by Rabbi Joshua Seigel. Utilizing the rivers that surround New York as the *eruv* boundaries on three sides, Rabbi Seigel relied on the Third Avenue Elevated train tracks as the *eruv* boundary on the fourth side. His *eruv* was opposed by several rabbis at the time who argued that the rivers did not serve as acceptable *eruv* boundaries or that the elevated train tracks did not create a proper *tzurat ha-petah* that could be utilized as an *eruv* boundary. Rabbi Seigel did not write a response to their volumes of opposition. These rabbis supported their views based on opinions of earlier rabbinic authorities and used the precedent of city *eruvin* that had been created in Eastern Europe. The

only reference in this debate to the earlier St. Louis *eruv* is Rabbi Aharon Gordon's use of Rabbi Jaffe's opinion that the city could not be leased from the local policeman. One striking example of their reliance on rabbinic sages from Eastern Europe can be found in the rabbis' reaction to an approbation to Rabbi Seigel's volume, *Eruv Ve-Hotza'ah*, written by Rabbi Mordekhai Schwadron of Brezhin, a leading halakhic authority in Poland at the time. Rabbis Bernstein and Herman, who opposed Rabbi Seigel's *eruv*, were only willing to voice their opposition to the *eruv* once they were told that Rabbi Schwadron had changed his mind and had opposed Rabbi Seigel's *eruv*. In addition, according to Rabbi Herman's grandchildren, their grandfather traveled to Poland to convince the rabbis who had given approbations to Rabbi Seigel's volume, that Rabbi Seigel's arguments were wrong. This *eruv*, created in North America, was viewed by these rabbis in New York as being part of the chain of *eruvin* that had been created in the cities and towns of Europe.

The *eruv* in Toronto was created by Rabbi Graubart in 1921. Chosen as the head of the Polish Jewish community in Toronto the previous year, Rabbi Graubart commanded respect among the rabbis of the community. Rabbi Graubart utilized the rivers around Toronto as three of the *eruv* boundaries and the telephone poles and wires that ran along Bloor St. as the fourth *eruv* boundary. There is no recorded opposition to Rabbi Graubart's *eruv*. Interestingly, Rabbi Graubart quotes from Rabbi Seigel's volume *Eruv Ve-Hotza'ah*. However, he does not quote Rabbi Seigel's opinion. Rather, he uses Rabbi Schwadron's approbation to Rabbi Seigel's volume as

support for the creation of the *eruv* in Toronto. Once again, the tradition of city *eruvin* in North American is based on the precedent of earlier European *eruvin* and the rabbis who created and supported those *eruvin* rather than on the precedent of the earlier American *eruvin*. In 1951, as the Jewish community moved northward in Toronto, Rabbi Graubart's *eruv* was extended by Rabbi Abraham Price. Relying on Rabbi Graubart's *eruv* and the halakhic reasoning utilized by Rabbi Graubart, Rabbi Price also brings supporting views from Eastern European rabbis and utilizes the precedent of these earlier European *eruvin*. When Rabbi Price's student quotes Rabbi Rosenfeld's volume on the *eruv* in St. Louis, *Tikvat Zekhariah*, Rabbi Price is not familiar with the book.

The debate regarding the Manhattan *eruv* spanned the years 1949-1962 and involved many of the leading Hasidic and Lithuanian rabbinic scholars of the time in New York. Although the rabbis who supported the *eruv* relied on the rivers that surrounded Manhattan as the *eruv* boundaries and did not need to utilize any other natural or man-made boundaries, the issues regarding this *eruv* were complex. The subject of whether Manhattan was considered a *reshut ha-rabbim* was addressed by many of the rabbis and the advisability of creating an *eruv* in Manhattan given the possibility that Jews may mistakenly assume that there were *eruvin* in other boroughs or cities was considered by a number of the rabbinic authorities. Finally, the attempt to gain consensus regarding this *eruv* from the local rabbis led to a prolonged effort that, in the end, still had dissenters and opponents. The rabbis involved in this debate

once again sought support from the opinions of earlier European rabbinic authorities and they relied heavily on the city *eruvin* in Cracow and Warsaw as precedents for the Manhattan *eruv*. Although they did not cite the precedent of the St. Louis or Toronto *eruvin*, the rabbis were all aware of Rabbi Seigel's *eruv* and stated that an analysis of the viability of an *eruv* in Manhattan must begin with study of *Eruv Ve-Hotza'ah*. The acknowledgment that the Manhattan *eruv* was connected, if not dependant in certain respects, on the earlier East Side *eruv* is the first recognition of a tradition of city *eruvin* in America.

The study of these four American *eruvin* sheds important light on a variety of issues. First, it reflects the history of *halakhah* as it relates to the often changes realities of *eruv* creation and construction. The rabbis who supported the early American *eruvin* did not have the political clout or influence to gain permission to construct *tzurot ha-petah* to serve as *eruv* boundaries. Therefore, these *eruvin*, like many of the *eruvin* that preceded them throughout the Jewish world, relied on natural boundaries and pre-existing man-made boundaries. The difficulty of assessing whether the existing boundaries met the requirements of the Talmud and later authorities was the main challenge facing these American rabbis. In certain instances, the rabbis relied on minority opinions to uphold the acceptability of an *eruv* boundary that was necessary for the completion of the *eruv*. Not all rabbis were willing to rely on certain leniencies and this issue was fundamental for much of the debate regarding these early American *eruvin*. Yet, while these debates took place in the cities of North

America, they reflected a direct continuation of similar debates that had divided the rabbinic world as long as city *eruvin* had been established. The American rabbis' reliance on these earlier authorities reflects a halakhic continuity that had followed the Jews from the Talmudic period to the *eruvin* of Medieval and Early Modern Europe and throughout the Jewish world where *eruvin* were created.

The halakhic tradition also reflected a continuation of the challenges that the *halakhah* posed for the Jewish community living as a minority in foreign, often hostile, countries. Both Rabbis Rosenfeld and Seigel utilized a local policeman from whom they leased the city. They both justified this tradition based on halakhic sources, however, their decision reflects their inability to approach the mayor or other local authorities and request the leasing of the city for the purpose of the *eruv*. Although Rabbi Graubart does not mention from whom he leased the city of Toronto, by 1959 the rabbis in Manhattan were able to lease the city from Mayor Wagner. The issue of leasing the city from a lesser authority than the king or mayor, due to the insecurity of the Jewish community, was a topic that was addressed by rabbinic authorities from the end of the Medieval Period and reflects that challenges of interpreting the *halakhah* in a society and country in which the normal manner of leasing from the governmental authority was not viable.

The importance of the tradition of communal *eruvin* is reflected in the recent work of Charlotte Elisheva Fonrobert. In an article that she wrote for a special edition of *Jewish Social Studies* on the "Jewish Conceptions and Practices of Space," she

argued, based on the rabbinic tradition that requires the sharing of food in order to create an *eruv*, that the intent of the *eruv* "is unification of the community, the establishment of a peaceful residential community, of equanimity."[888] She explains that the leasing of the property of the non-Jewish neighbor reflects the recognition of the Other in the Jewish community and the attempt to achieve a level of symbolic interaction with the Other in the community. Finally, she claims that the *eruv* has particular importance in the Diaspora. She writes, "The *eruv* does construct a collective identity with respect to space, but it does so in the absence of having control or any form of sovereignty over that space. On the contrary, it maps a collective symbolism into space over which it does not claim control, political or otherwise."[889] Although these concepts of space were not the focus or the interest of the rabbinic authorities who created the *eruv*, Fonrobert's formulation frames the history of the communal *eruv*, especially in the Diaspora, in sociological terms. Her analysis reflects how Jewish communities living in foreign countries throughout the generations might have thought about the *eruv* and its significance for them in the Diaspora. Although more work needs to be done to integrate the *halakhah* and the sociological framework of the *eruv*, Fonrobert has opened up an important avenue in understanding how the community viewed the significance of the *eruv*.

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[888] Charlotte Elisheva Fonrobert, "The Political Symbolism of the Eruv," *Jewish Social Studies, New Series* 11:3 (Spring-Summer 2005): 28.
[888] Ibid., 29
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Although the establishment of American *eruvin* at the end of the nineteenth century and the first part of the twentieth century reflects a sense of continuity in the tradition of communal *eruvin*, there are several aspects of these American *eruvin* that represent the attitude of the American rabbis specifically to Orthodox life in America. The challenges facing the Eastern European Orthodox immigrant to America were daunting. The famed Rabbi Israel Meir Ha-Kohen, the Hafetz Haim, wrote in 1893 that "whoever wanted to have true merit before the Lord should strengthen himself and not live in those faraway lands." He continued by saying that if someone was forced to travel to these places, he should leave his children behind.[890]

This view was shared by Rabbi Jacob David Wilowsky, founder of a prominent yeshiva in Slutsk, Belarus and known by the acronym " Ridbaz." In 1900, he traveled to the United States for six months to raise money to complete his commentary on the Jerusalem Talmud. During his stay, he addressed a gathering of the Union of Orthodox Congregations in New York and was quoted as condemning

[890] Israel Meir ha-Kohen, *Nidhei Yisrael* (Warsaw, 1893), epilogue. For a thorough review of the rabbinic voices in opposition to emigration to America and the popular anti-emigration sentiment expressed in the Hebrew and Yiddish newspapers in Eastern Europe, see Arthur Hertzberg, "'Treifene Medina'-Learned Opposition to Emigration to the United States," *Proceedings of the Eighth World Congress of Jewish Studies: Panel Sessions Jewish History* (Jerusalem, 1984), 1-30. The view that saw the immigration to America as a move to the promised land, a view that was most often expressed by those who sought freedom from pressure to be observant in Eastern Europe, is surveyed in Israel Bartal, "Amerika shel Maalah: Artzot ha-Brit ke-Idial u-khe-Mofet le-Yehudei Mizrah Airopah be-Meah ha-19", in *Be-Ikvot Kolumbus: Amerikah, 1492-1992*, edited by Miri Eliav-Feldon (Jerusalem, 1996) 511-22.

anyone who came to America. "For here, Judaism … is trodden underfoot. It was not only home that the Jews left behind them in Europe, it was their Torah, their Talmud, their Yeshebahs (sic), their Chochomim (sic)."[891] Nevertheless, Rabbi Wilowsky immigrated to Chicago in 1903 where he lived for two years before becoming disillusioned and moving to Safed.[892]

Although this negative view of America was not shared by all the Eastern European rabbis, the ambivalence towards Judaism in American, especially halakhic Judaism, was fundamental to the thinking of the early American Orthodox rabbis who relied on the rabbinic opinions of the rabbis of Eastern Europe and did not take seriously the precedent or the opinions of the rabbinic leaders in America.[893] The attitude of the rabbinic community towards Judaism in America was slow to change. Yet, a change can be seen in a sermon delivered by Rabbi Moshe Feinstein in commemoration of the 150th anniversary of the United States Constitution in 1939,

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[5] "Union of Orthodox Congregations," *American Hebrew*, vol. LXVIII, no. 7 (January 4. 1901): 236.

[892] For a biography of Ridbaz, see Rothkoff, Aaron, "The American Sojourns of Ridbaz: Religious Problems Within the Immigrant Community", *American Jewish Historical Quarterly*, 57:4 (June, 1968): 557-72 and Abraham J. Karp, "The Ridwas: Rabbi Jacob David Wilowsky: 1845-1913, *Perspectives on Jews and Judaism: Essays in Honor of Wolfe Kelman* (NY, 1978), 215-37.

[893] The premier example of an immigrant American Orthodox rabbi who viewed life in America and American democracy in a positive light is Rabbi Chaim Hirschenson who served as rabbi in Hoboken, New Jersey from 1903-35. See Eliezer Schweid, *Democracy and Halakhah* (Lanham, MD.), 47-75 and Rabbi Chaim Hirschenson, *Sefer Malki Ba-Kodesh*, edited by David Zohar (Jerusalem, 2006).

two years after he immigrated to the United States. He said:

> And so, the government of the United States, which already 150 years ago established its law that it will not uphold or favor any faith but will allow anyone to do as they see fit, and the government will serve only to assure that no one harms another, they are thus following the will of Almighty God, and they therefore succeeded and grew during this time. And, we are obligated to pray for them that Almighty God shall have them succeed in whatever they undertake.[894]

Rabbi Feinstein's public statement of approval for the American model of separation of religion and state was not an endorsement of American secularism. Yet, in the years leading up to World War II, there was a feeling among the Orthodox rabbis that America could serve as a haven for those who were forced to leave Europe due to the rise of Hitler and that the arrival of leading rabbinic authorities in America would allow the Jews to recreate the Torah community of Eastern Europe in the United States.[895] It is this changing attitude that was reflected, at least in part, in the creation of the Manhattan *eruv* where the rabbis accepted the establishment of the religious community in American and began to acknowledge an American tradition of *eruvin*.

Finally, in order to evaluate the importance of these early *eruvin* one must trace the subsequent development of *eruvin* in American cities. While prior to 1970

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[894] Moshe Feinstein, *Darash Mosheh* (New York, 1988), Derush 10, p. 416. Translation in Chaim I. Waxman, "From Treifene Medina to Goldene Medina: Changing Perspectives on the United States Among American Haredim," *Why is America Different? American Jewry on Its 350th Anniversary*, edited by Steven T. Katz (Lanham, MD., 2009),117

[895] Waxman, 118.

there were only four communty *eruvin* that had been created in North America, in 2011 there are over 150 community *eruvin* in North America.[896] There are several factors that have contributed to the explosion in the number of *eruvin* being built in American cities and towns. First, by the 1970s, there emerged a move within the Orthodox Jewish community towards a stricter level of practice and observance. In 1971, only 11% of Jewish males identified as Orthodox.[897] Yet, in that same year, the Jewish sociologist, Marshall Sklare, wrote, "Orthodoxy has transformed its image from that of a dying movement to one whose strength and opinions must be reckoned with in any realistic appraisal of the Jewish community."[898] The gradual strengthening of the Orthodox community was reflected in stricter observance and increased attendance in Orthodox day schools. In addition, the Orthodox began to create vibrant communities. Already in 1960, Far Rockaway, Queens was called "Torah Suburb-by-the Sea."[899] This increased level of observance and the creation of Orthodox

[896] For a list of *eruvin* in North America, see http://en.wikipedia.org/wiki/List_of_eruvin (viewed 1/19/10). This list includes only *eruvin* that have a website. It is impossible to estimate the total number of smaller neighborhood *eruvin* in North America. One of the first of these post-1970 *eruvin* was built in Kew Gardens Hills, Queens. See Moshe Feinstein, *Iggerot Moshe, Orah Hayyim*, IV: 86 in which Rabbi Moshe Feinstein supported the creation of this *eruv* in a letter written to Rabbi Peretz Steinberg of Queens on April 1, 1974.
[897] Bernard Lazerwitz and Michael Harrison, "American Jewish Denominations: A Social and Religious Profile," *American Sociological Review* (August, 1979): 659-61.See also Gurock, *Orthodox Jews in America*, 209-10.
[898] Marshall Sklare, *America's Jews* (New York, 1971), 40.
[899] Michael Kaufman, "Far Rockaway – Torah Suburb by the Sea," *Jewish Life* (August, 1960): 20.

communities led the rabbis to initiate the building of more community *eruvin* and the community supported the efforts.[900]

Another factor that allowed for the creation of *eruvin* was the increased involvement of Orthodox Jews in the political sphere. When *The New York Times* described the growing influence of local religious groups in a 1974 article, it quoted Rabbi Moshe Sherer, President of the Orthodox organization Agudath Israel, "There is hardly a legislator from any Jewish neighborhood in the city who does not know how we stand on issues that concern us and how thorough we are about informing our constituents about positions the legislators take on these issues."[901] Chaim Waxman, a sociologist who has studied the Orthodox community in America, argues that this approach towards involvement in government and civil matters was a reflection of the fact that Jews felt both more secure and religiously autonomous in America. Therefore, they believed that it was their right to make their opinions known in matters of concern to the Jewish community, both nationally and locally.[902] This sentiment of feeling at home in America reflected itself in a sense of gratitude toward the United

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[900] Personal conversation with Rabbi Mordechai Willig, Rabbi of Young Israel of Riverdale, December 29, 2010. Rabbi Willig described the increased observance of the Orthodox Jews in Riverdale, New York in the early 1970s which led to the building of the Riverdale *eruv* in 1975 which was funded and supported by the Riverdale community.

[901] *New York Times*, May 19. 1998, B11.

[902] Waxman, 119-23. This feeling of religious entitlement is evident, for example, in the celebrated case of the "Yale Five" in which five Orthodox students at Yale brought a lawsuit against the university asking that they be exempt from the school policy that they must live on campus. See Samuel G. Freedman, "Yeshivish at Yale," *The New York Time Magazine*, May 24, 1998

States government and its policies. In 1982, Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, said about the United States government, "By the grace of God, we are in a country which is a benevolent polity."[903]

The fact that the creation of *eruvin* took place at the same time as the Orthodox Jews were becoming more involved with local governments is no coincidence. The ability to approach the local authorities to request permission to erect poles and strings thereby creating *tzurot ha-petah* around a neighborhood required both access to these officials and a sense of privilege to ask for such permission. For the first time in modern history, Jews were able to construct their own communal *eruv* without relying on natural or pre-existing man-made boundaries. Therefore, *eruvin* no longer needed to rely on many of the halakhic leniencies that were necessary when the rabbis relied on natural or pre-existing man-made *eruv* boundaries. In addition, *eruvin* could now be built around any neighborhood regardless of its geographic location. Furthermore, the ability of members of the Orthodox community to approach government officials allowed the leasing of the city to be done directly from the mayor or governor. Once again, there was no longer a need to rely on the halakhic leniencies that had been necessary at the end of the nineteenth and beginning of the twentieth centuries.[904]

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[903] Menachem Mendel Schneerson, "Likutei Sihot al Parshiyot Ha-Shavua hagim U-Moadim," vol. 25, *Breishit*, 2nd ed. (Brooklyn, NY), 419. This is quoted in Waxman, 126, n. 36

[904] A wonderful example of the comfort level of the American Orthodox community regarding *eruvin* is evident in the fact that the lease agreement between the Jewish communities of Boston, Brookline and Newton and the Governor of Massachusetts,

The rabbis who created the *eruvin* in St. Louis, the East Side of Manhattan, Toronto and Manhattan could never have imagined the successful position of the Orthodox Jewish community in America post-1970. In addition, the rabbis who opposed each of these *eruvin* would have been astounded to realize how their halakhic and sociological evaluation of the American Orthodox community played out in reality. Yet, these rabbis, both the supporters and opponents of the early *eruvin*, met the challenges of Orthodox life in America by continuing the traditions of creating community *eruvin* or by debating the application of the laws to the new realities that they faced in America. Over time, the early *eruvin* that they created have been replaced by man-made poles and strings built with the permission of governmental authorities. However, the story of these courageous rabbis and the *eruvin* that they built or fought hard to oppose remains a vital part of the history of American *Halakhah*.

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was posted on the web. See http://www.bostoneruv.org/kinyan_kesef.htm (viewed 1/18/10).

Epilogue

Although this dissertation has addressed the debates regarding the American city *eruvin* before 1962, a number of the *eruvin* that were built after that date also engendered significant discussion and disagreement. Regarding the *eruv* in Flatbush, Brooklyn that was built in 1978, Rabbi Moshe Feinstein wrote to the rabbis in Flatbush and explained that he had not wanted to get involved with the dispute as to the validity of the Flatbush *eruv*. However, he decided to address the issue due to the fact that rumors had spread that he had allowed the *eruv* in Flatbush. Rabbi Feinstein clarifies that he had already discussed many of the issues regarding the Flatbush *eruv* in his *teshuvah* regarding the Manhattan *eruv* that he wrote in 1952 to Rabbi Eisenstadt; he also elaborated on several reasons to allow the *eruv* and several reasons to prohibit it.[905] In a subsequent *teshuvah* written by Rabbi Feinstein to the Flatbush rabbis in 1979, he concluded that it was unacceptable to build an *eruv* anywhere in Brooklyn since Brooklyn had the status of a *reshut ha-rabbim*. He explained that

[905] Feinstein, *Iggerot Mosheh, Orah Haim*, IV: 87. The teshuvot regarding the Manhattan eruv can be found in *Iggerot Mosheh, Orah Haim*, I: 138-9. It is noteworthy that in 1952, Rabbi Feinstein began his teshuvah to Rabbi Eisenstadt referring to Rabbi Eisenstadt's request to build an *eruv* in Brooklyn and Manhattan. In the end, the initiative was limited to the Manhattan *eruv*.

because Brooklyn did not have natural or man-made *eruv* walls, an eruv in Brooklyn was not acceptable.[906]

In 1981, Rabbi Feinstein wrote a lengthy *teshuvah* explaining his rationale for prohibiting the building of an *eruv* in any community in Brooklyn. He writes:

> In spite of the fact that I wrote that it is prohibited to build an *eruv* in Brooklyn even in one section in Flatbush and that it is likewise prohibited to build an *eruv* in Boro Park, several rabbis have gone and built an eruv in both Flatbush and Boro Park … Therefore, I am required to clarify the matter so that there will not be a stumbling block for the hundreds and thousands [of Jews].[907]

Rabbi Feinstein proceeded to discuss many of the issues that he had already addressed with regard to the Manhattan *eruv* and he once again made reference to his *teshuvah* on the Manhattan *eruv*. There was significant debate surrounding the *eruvin* in Brooklyn, especially the Boro Park *eruv*. The main proponent of the Boro Park *eruv* to whom Rabbi Feinstein responds in his *teshuvah* was Rabbi Menashe Klein, head of the Ungvar Hasidic community in Boro Park.[908] There is additional halakhic material regarding the Boro Park *eruv* that was included in several issues of the rabbinic journal, *Ohr Yisrael*.[909] Much of this material was also collected on the website

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[906] *Iggerot Mosheh, Orah Haim*, IV: 88.
[907] *Iggerot Moshe, Orah Haim*, V: 28, p. 93. This *teshuvah* is addressed to Rabbi Feinstein's grandson, Rabbi Mordechai Tendler.
[908] See Menashe Klein, *Sefer Om Ani Homah: Mishneh Halakhot* (Jerusalem, 2000).
[909] See *Ohr Yisrael* 5:2 (Tevet, 5760), 5:3 (Adar II: 5760): 161-254 and 5:4 (Sivvan: 5760): 196-247

http://eruvonline.blogspot.com/ (viewed 2/26/11). The debate surrounding the Brooklyn *eruv* focused on the status of Brooklyn as a *reshut ha-rabbim*, how to construct acceptable *eruv* walls in Brooklyn and the necessity to build an *eruv* in order to make Sabbath observance easier and more pleasant for the members of the Jewish communities in Brooklyn. The halakhic discussion utilized the precedents of the Eastern European *eruvin*. However, the rabbis also incorporated many of the issues that had been addressed by Rabbi Seigel and the rabbis who debated the validity of the Manhattan *eruv* quoting their opinions and utilizing them in favor and in opposition to the *eruvin* in Brooklyn. The willingness of these rabbis to rely on the rabbinic views regarding these two earlier American *eruvin* reflects the recognition on the part of these late twentieth century Orthodox rabbis of the halakhic credibility of their American rabbinic predecessors. [910]

The last decade of the twentieth century and the beginning of the twenty-first century has seen a new type of dispute regarding *eruvin*. Both Jews and non-Jews in several communities have opposed the *eruv* and brought legal action against the *eruv* based on a fear that the *eruv* reflects the influence of the Orthodox Jews on the

[910] See especially the discussion in *Ohr Yisrael* 5:2 (Tevet, 5760). There was also a debate regarding the *eruv* in Williamsburg which began with the construction of an *eruv* there in 1973. Rabbi Feinstein did not address this *eruv* specifically. However, much of the halakhic discussion on this *eruv* is included in *Sefer Al Mitzvat Eruv* (Brooklyn, 2000), 155-96.

community and the demands they make on the entire community.[911] The celebrated case of the *eruv* in Tenafly, New Jersey produced a bitter legal battle between Jewish groups in this affluent suburb.[912] A letter sent to the mayor of Tenafly outlined the attitude of some of those opposed. It read: "The *eruv* will also be the beginning of many more demands the Orthodox people will impose on the town of Tenafly and its non-Orthodox residents."[913] In June, 2003, the United States Supreme Court declined to hear the case, thereby bringing the legal battle to a close and the *eruv* was built. The legal decision, however, failed to resolve the tensions within the community.[914] The *eruv* in Palo Alto, California, was only approved by the local authorities in 2007; seven years after the initial request had been made to build it.[915] The *eruv*

[911] For a broader discussion of the issue of debates and controversies within the Jewish community, see Samuel G. Freedman, *Jew vs. Jew: The Struggle for the Soul of American Jewry* (New York, 200).
[912] For a comprehensive study of the Tenafly *eruv* controversy, see Susan H. Lees, "Jewish Space in Suburbia: Interpreting the Eruv Conflict in Tenafly, New Jersey, in *Contemporary Jewry* 27:1 (October, 2007): 42-79.
[913] Ibid., 55.
[914] The London *eruv* debate reached the newspapers with a photograph published in the *Daily Mail* in 1994 which was borrowed from Stephen Spielberg's *Schindler's List* and printed above the headline "The danger of creating your own ghettoes." In reaction to this photograph, Holocaust survivors wrote statements about how, for them, the poles and wires of the *eruv* invoked visions of concentration camp fences. Although the London *eruv* was completed in 2003, the anti-*eruv* sentiment did not disappear. For a study of the London *eruv* controversy, see Jennifer Cousineau, "Rabbinic Urbanism in London: Rituals and the Material Culture of the Sabbath," in *Jewish Social Studies, New Series* 11:3 (Spring-Summer 2005): 36-57. (Kotler)
[915] For a discussion of the Palo Alto *eruv* controversy, see John Mandsager, "The Eruv: A Space for Negotiating Identity," (Stanford University, 2003), master's thesis and Josh Richman, "New Eruv Reopens Old Church-State Debates in Palo Alto," in *The Jewish Daily Forward*, July 20, 2007.

controversy in Westhampton Beach, Long Island pitted the Orthodox Jewish community against the secular Jewish and non-Jewish members of this upscale summer resort. In 2008, a full-page newspaper advertisement read: "Is Westhampton Beach an Orthodox Jewish Community? No it's a secular, open village with a proud history of welcoming all faiths. The erection of an *eruv* will proclaim us as an Orthodox Jewish community for all time. Don't let it happen."[916] To date, this *eruv* has not been built and the dispute continues.

As the American Orthodox community enters the second decade of the twenty-first century, it continues to bind its halakhic roots to the traditions and precedents of the past. Yet, the American Orthodox community has also been forced to address opposition from both non-Orthodox Jews and non-Jews within their communities. Both of these aspects of American Orthodoxy have played an important role and continue to be a factor in the history of city *eruvin* in America.

[916] Joseph Berger, "Orthodox Jews Request Divides a Resort Village," *The New York Times*, June 22, 2008, Long Island Section, p.1.

Bibliography

Bechhofer, Yosef Gavriel. The Contemporary Eruv: Eruvin in Metropolitan Areas. Jerusalem, 1998.

Bernstein, Yehudah David. *Hilkhata Rabbta Le-Shabbata.* New York, 1910.

Brody, Robert. The Geonim of Babylonia and the Shaping of Medieval Jewish Culture. New Haven, 1998.

Brukhin, Jacob. *Mishkenot Ya'akov.* Jerusalem, 1960.

Caplan, Kimmy. "Rabbi Jacob Joseph, New York's Chief Rabbi: New Perspectives." Hebrew Union Colege Annual (1996): 1-43.

Cousineau, Jennifer. "Rabbinic Urbanism in London: Rituals and the Material Culture of the Sabbath." Contemporary Jewry (Spring-Summer 2005): 36-57.

Ehrlich, Walter. Zion in the Valley. Columbia, MI, 1997.

Eisenstadt, Menahem Tzvi. *Sefer Minhat Tzvi.* New York, 2003.

Feinstein, Moshe. *Iggerot Mosheh.* New York, 1959 .

Felder, Gedaliah. *Yesodei Yeshurun.* Jerusalem, n.d.

Fonrobert, Charlotte Elisheva. "Neighborhood as Ritual Space: The Case of the Rabbinic Eruv." *Archiv fur Religionsgeschichte* (2008): 252-57.

—. "The Political Symbolism of the Eruv." Jewish Social Studies (2005).

Fonrobert, Charlotte Elsiheva. "From Separatism to Urbanism: The Dead Sea Scrolls and the Origins of the Rabbinic Eruv." Dead Sea Discoveries (2004): 43-71.

Freedman, Samuel G. Jew Vs. Jew: The Struggle for the Soul of American Jewry. New York, 2000 .

Goldberg, Avraham. *Perush Ha-Mishnah: Massekhet Eruvin*. Jerusalem, 1986.

Gordon, Aharon. "*Teshuvah Be-Niggud le-Hazaah Le-Tikkun Eruvin Be-Helek Mi-Mizrah New York.*" *Kol Zvi* (2005): 37-48.

Graubart, Yehuda Leib. A Sabbath Letter. Toronto, 1922.

Graubart, Yehudah Leib. *Havalim Ba-Neimim.* Jerusalem, 1975.

Ha-Kohen, Yisrael Meir. *Nidhei Yisrael.* Warsaw, 1893.

Haverkamp, Alfred. "The Jewish Quarter in German Towns During the Late Middle Ages." In and Out of the Ghetto (1995).

Herman, Azriel. "*Sefer Mayyim Hayyim*." Kovetz Shut Be-Inyanei Eruvin Be-Artzot Ha-Brit (n.d.).

Hirschfeld, Yizhar. The Palestine Dwelling in the Roman Byzantine Period. Jerusalem, 1995.

Horowitz, Chaim. *Sefer Tikkun Eruvin*. Cracow, 1887.

Hutterer, Boaz. *Eruv Hazerot Be-Merhav Ha-Eroni: Hishtasheluto Ha-Hilkhatit Mi-Tekufat Ha-Mishnah Ve-Ha-Talmud ve-ad Tehilat Ha-Meah Ha-20.* Forthcoming.

Jaffe, Sholom Elchanan. *Shoel Ka-Inyan.* Jerusalem, 1895.

—. *Teshuvah Ka-Halakhah Ve-Divrei Shalom*. Jerusalem, 1896.

Karp, Abraham. "New York Chooses a Chief Rabbi." Publications of the American Jewish Historical Society (1955): 129-98.

Kasher, Menachem Mendel. *Tikkun Eruvin Be-Manhattan*. Jerusalem, 1980.

Klein, Menashe. *Om Ani Homah: Mishneh Halakhot*. Jerusalem, 2000.

Kotler, Aharon. *Mishnat Rabbi Aharon*. Jerusalem, 1985.

Krengel, Menahem Mendel. *Torat Eruv*. Cracow, 1891.

Kroizer, D. M. "*Tikkun Eruvin Be-Manhattan N.Y.*" Noam (1958).

Lange, Elimelekh. *Hilkhot Eruvin.* Jerusalem, 1973.

Lees, Susan H. "Jewish Space in Suburbia: Interpreting the Eruv Conflict in Teaneck, New Jersey." Contemporary Jewry (October, 2007): 42-79.

Lieberman, Saul. *Tosefta Ki-Feshutah*. New York, 1962.

Margolioth, Ephraim Xalman. *Beit Ephraim.* Warsaw, 1884.

Moskowitz, Joseph David. S*efer Tikkun Eruvin Be-Ir Manhattan*. New York, 1959.

Pollak, Menahem Seigel. "*Kuntres Be-Inyan Tikkun Eruvin Be-Manhattan*." *Kol Zvi* (2005).

Price, Avraham Aharon. "*Tikkun Eruvin*." *Hapardes* (1951): 11-38.

—. *Tikkun Eruvin He-Hadash Be-Ir Toronto Canada*. 1987.

Regev, Eyal. *Ha-Tzedukim Ve-Hilkhatam*. Jerusalem, 2005.

Rosenfeld, Zechariah. *Tikvat Zekahriah*. Chicago, 1896.

Safrai, Shmuel Safrai and Zeev. *Mishnat Eretz Yisrael: Massekhet Eruvin*. Jerusalem, 2009.

Seigel, Joshua. *Eruv Ve-Hoza'ah*. New York, 1907.

—. *Oznei Yehoshua*. Jerusalem, 1914.

Shemen, Nachman. "*Rabbenu Yehudah Leib Graubart* ." *Yovel Buch, Talmud Torah Etz Chaim* (1943): 13-45.

Speisman, Stephen A. The Jews of Toronto: A History to 1937. Toronto, 1979.

Sperber, Daniel. The City in Roman Palestine. New York, 1998.

Tchernowitz, Chaim. *Sefer Tikun Shabbat.* Odessa, 1899.

Tulchinsky, Gerald. Taking Root: The Origins of the Canadian Jewish Community. Hanover, NH, 1993.

Weissmandel, Michael Dov. *Torat Hemed*. Mt. Kisco, NY, 1958.