







**THE CONSTRUCTION
OF AN ERUV IN
CROWN HEIGHTS**
ACCORDING TO THE ALTER REBBE



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ERUV in Crown Heights according to the Alter Rebbe

There has been much discussion recently regarding whether it is desirable to establish an *eruv* in Crown Heights. Before even entering into such a discussion, it is necessary to establish whether it is *halachically* possible – particularly according to the Alter Rebbe’s rulings in *Hilchos Eruvin* – to establish such an *eruv* in this community. That is the focus of the discussion below:

A) The Starting Point: A *Tzuras HaPesach* is Not Effective in Establishing an *Eruv* in an Area that is a Public Domain according to Scriptural Law

Generally, an *eruv* is made by surrounding a community with an enclosure made up of a series of *tzuros hapasachim*, “frames of entrance,” i.e., one or more of the sides of the enclosure is created by making a doorway for that entrance, for a wall often contains a doorway, i.e., a doorpost on either side and a lintel on top. Our Sages granted a leniency and allowed the concept of a *tzuras hapesach* to be expanded far beyond the literal meaning of the term. Even when the distance enclosed by a *tzuras hapesach* is very large¹ and even when the *tzuras hapesach* does not resemble a doorway, but is merely two poles with a wire or string above them, it can serve as a valid divider.

In his *Shulchan Aruch* (sec. 364:4), the Alter Rebbe writes:

True, a *tzuras hapesach* is an entirely valid partition and if one made [an enclosure by making] a *tzuras hapesach* using four poles, it is a private domain in a complete sense according to Scriptural Law, even if it is constructed in the midst of [an area that is] a public domain in a complete sense (*reshus harabim*).... Nevertheless, according to Rabbinic Law, a *tzuras hapesach* is

1. Note, however, sec. 362:19, where the Alter Rebbe writes that there are stringent opinions that do not allow a *tzuras hapesach* that is longer than ten cubits and that weight should be given to this view.

not effective [in creating a partition] for an area that is a public domain in a complete sense, [i.e.,] it fulfills all the stipulations for a public domain stated in sec. 345[:11. According to Rabbinic Law,] one who seeks to make a public domain fit to carry [articles] within must make actual doors on either side.

Thus, a *tzuras hapesach* can serve as a valid divider to enclose areas that are essentially private property but in which carrying was forbidden because they are used by several families together, e.g., a courtyard or an alley (a *karmelis* in *halachic* terminology). If, however, one enclosed an area defined as a public domain with a *tzuras hapesach*, the enclosure is not valid according to Rabbinic Law.

B) The Definition of a Public Domain

In sec. 345:11, the Alter Rebbe defines a public domain as follows:

What constitutes a public domain? Roads and marketplaces that are sixteen cubits by sixteen cubits in area, for the road in the camp of the Levites in the desert had these dimensions....

Similarly, thoroughfares that run from town to town that are sixteen cubits wide and so too, lanes that are sixteen cubits wide that run from one road to another or from roads to thoroughfares that are sixteen cubits wide are deemed public domains in a complete sense.

There are authorities who maintain that any place where 600,000 people do not pass through every day, as was the situation in the encampment in the desert, is not considered a public domain, but rather a *karmelis*.

Based on their words, the custom has spread throughout these countries to rule leniently and to say that, in the present era, there is no concept of a public domain in a complete sense. [Those who accept this leniency] should not be admonished because they have an authority on whom to rely. (Nevertheless, every G-d-fearing person should be stringent with regard to his own conduct.)

Thus, according to the more stringent view, every particular area is judged according to its own merits: Is it a public domain – an area used

by people at large – or is it like a courtyard or an alley, shared private property. According to the lenient view, as long as a city has less 600,000 inhabitants, it is judged as a whole, without considering the particular nature of a given area.

C) Whether the Lenient View Can be Relied Upon According to Lubavitch Practice

In support for the statement, “every G-d-fearing person should be stringent with regard to his own conduct,” a marginal note appended to the Alter Rebbe’s *Shulchan Aruch* states: “This is the opinion of the leading *Rishonim* and there is a sound basis for their approach because the concept that 600,000 men [must pass through a place] is not mentioned in the *Gemara*.”

The fact that the Alter Rebbe accepted the more stringent perspective is reflected in the fact that, by and large, in *Hilchos Eruvin*, he does not mention the more lenient approach and continually elaborates on the differences between a public domain and a *karmelis*. Whenever he does mention the lenient view, he introduces it with the phrase יש אומרים, “there are those who say.” True, in several places (e.g., sec. 252:18, 20, sec. 266:13, sec. 325:4, sec. 392:1, and sec. 404:2), the Alter Rebbe mentions that the custom is to rely on the more lenient opinion, but in all those instances, there are several extenuating circumstance involved. No such statements are made regarding ordinary circumstances.

Similarly, the *Tzemach Tzedek* writes (*Chiddushim* 64a): “Great *halachic* authorities differ with this [lenient view] and it should not be relied on with regard to a Scriptural prohibition.” And in another source (*Chiddushim* 33c), he speaks of the marketplace of Lubavitch as being considered a public domain even though the village was home to no more than a few hundred families.

D) When a Large Metropolis is Deemed as a Public Domain Even According to the More Lenient View

The existence of a metropolis that is considered as a public domain even according to the more lenient view is not just a theoretical concept. Such cities existed in the *Talmudic* era, as well. Thus, *Rashi* (*Eruvin* 6b) speaks of *Mechuzah* (a city in Babylonia) as having 600,000 inhabitants.

Many of the later *halachic* authorities discuss such cities and, in his *Shulchan Aruch*, the Alter Rebbe, sec. 392:1,² issues a ruling regarding a city that has that many people pass through it every day. In a place so densely populated, a *tzuras hapesach* would not be effective in creating an enclosure for an *eruv* that would include the city as a whole. Instead, it is necessary to judge each place individually: Is it a public domain – a place for the community as a whole – or shared private property.

There are those who maintain that the lenient view mentioned above does not focus on the city as a whole, but on a specific place. According to this understanding, as long as 600,000 people do not pass through this place in a day, it is not a public domain. From this perspective, even if the city as a whole has 600,000 people, a portion of that city where 600,000 do not pass in a day can be enclosed by *tzuros hapesachim* without considering the particular nature of a given area.

Aside from the different sources that indicate the intent is not one place, but the city as a whole, upon closer examination, as explained at length in *Dober Shalom*, p. 131, the argument that the intent is one place is entirely untenable. In the Talmudic era, by and large, people did not pass through the streets at night. Thus, a day refers to a twelve hour period. In such a period, there are 84,000 seconds. Hence, for 600,000 people to pass by a particular place in one day, 15 people must pass by every second over the duration of those 12 hours. Obviously, no such place has ever existed. Thus, the intent is not a specific place, but the city as a whole. Thus, when discussing this issue, the Alter Rebbe mentions (sec. 257:7) “a large *city* which possesses 600,000 inhabitants and (sec. 392:1) “a *city* with a large populace.” For this reason, Rav Moshe Feinstein (*Igros Moshe, Orach Chayim*, Vol. 1, responsum 139) ruled that an *eruv* that includes Brooklyn as a whole may not be constructed.

E) Why the Arguments Supporting the Boro Park *Eruv* Would Not Apply in Crown Heights

The exponents of the Boro Park *eruv* base their argument on the thesis that it the question of whether or not an *eruv* can be established does not depend on the number of inhabitants of the city as a whole, but one

2. See also sec. 357:7.

the number of people who pass on a city's main street and the other roads leading into it. Their rationale is that the cities of the Talmudic era consisted of one main thoroughfare with side streets leading into it. This was its public domain. Thus, they contend, if 600,000 people do not pass through the main street of a neighborhood and its side streets on one day, that neighborhood is not considered a public domain.

As mentioned, according to the Alter Rebbe, the emphasis is on the city as a whole, not on its main street. However, even according to the other approach, there is a fundamental difference between Crown Heights and other neighborhoods. Eastern Parkway is a major thoroughfare with many other streets leading into it. Besides all the people who live in the neighborhoods surrounding it, many commuters on public transport use it and a large number of cars pass through.³ Hence, it is quite likely that 600,000 people pass through it and its side streets on an ordinary day.

Moreover, there is one day a year, Labor Day, that 600,000 people certainly pass through Eastern Parkway and its side streets. According to many authorities, that is sufficient to affect the street's status.

F) Must the Main Street be Straight and Run from One End of the City to the Other

The proponents of the thesis that it is the existence of a major thoroughfare that determines whether an area is deemed a public domain or not find an argument for leniency in our Sages' statement that for a street or a marketplace to be deemed a public domain, it must run straight from one end of the city to the other.

In his *Shulchan Aruch* (sec. 345:11), the Alter Rebbe addresses this issue, stating that marketplaces and major roads are deemed public domains "provided they are not roofed and they are not encompassed by a wall or even if they are encompassed by a wall but [the road] runs from gate to gate. "

Thus, the leniency that a major road is considered a public domain only when it runs straight, from one end of the city to the other, applies only

3. As evident from the Alter Rebbe's ruling in his *Kuntreis Acharon* (note 3) to sec. 345 even though the cars constitute a private domain, the people riding in them can be considered as within the larger area.

in a city with walls. If a city does not have walls, a road can be classified as a public domain even if it does not run from one end of the city to the other. This conclusion is also clearly stated by the *Tzemach Tzedek* (*Chiddushim*, pp. 33d-34a) who explains that since Lubavitch was unwalled, its main streets were considered public domains even though they did not run from one end of the village to the other.

G) Conclusions that Apply with regard to Actual Practice

As explained, according to the rulings of the Alter Rebbe and the *Tzemach Tzedek*, a general *eruv* encompassing the community as a whole with a *tzuras hapesach* would not be valid. It is, however, possible to use a *tzuras hapesach* to make an *eruv* that encompasses areas deemed as a *karmelis*. Areas that are deemed public domains according to Scriptural Law could not, however, be included in such an *eruv*.

Which parts of the community would be deemed public domains? Let us return to the definition of a public domain given by the Alter Rebbe in sec. 345:11:

What constitutes a public domain? Roads and marketplaces that are sixteen cubits by sixteen cubits in area, for the road in the camp of the Levites in the desert had these dimensions....

Similarly, thoroughfares that run from town to town that are sixteen cubits wide and so too, lanes that are sixteen cubits wide that run from one road to another or from roads to thoroughfares that are sixteen cubits wide are deemed public domains in a complete sense.

He mentions four types of public domain:

a) roads – I.e., major arteries of human traffic. Eastern Parkway and Empire Blvd. would certainly be placed in this category.

b) marketplaces – Kingston Ave, Nostrand Ave, and Utica Avenue would certainly be placed in this category. After all, the *Tzemach Tzedek* (*Chiddushim* 33c) considered the town square of Lubavitch as being considered a marketplace – and therefore a public domain – even though the village was home to no more than a few hundred families.

c) thoroughfares that run from town to town – Highways of this nature are not found in our community.

d) lanes that are sixteen cubits wide that run from one road to another – Such lanes would not ordinarily be considered as public domains because, in and of themselves, they do not produce a large amount of human traffic. Nevertheless, because they are connected to major roads or marketplaces, it is likely that human traffic from the roads and marketplaces will spill over into them. Hence, they too are deemed public domains.

Most of the streets in the community, Brooklyn Ave, Albany Ave, President Str., Crown Str.,⁴ Montgomery Str., etc., would be placed in this category because they run either from Eastern Parkway to Empire Blvd. (from one road to another) or from Kingston to Utica or Nostrand (from one marketplace to another).

In which places could an *eruv* be constructed using a *tzuras hapesach*? In the alleys that run behind the homes in the streets between Union and Empire, for these alleyways are not places through which people at large pass.

As mentioned initially, the purpose of this treatise is not to judge whether or not it is desirable to make an *eruv* in Crown Heights, but rather to clarify whether making such an *eruv* is possible according to the *halachic* tradition of Chabad-Lubavitch.

4. Possible exceptions would be streets like Malbone Rd. or Clove Rd.