

# The Community *Eruv* and the American Public Square

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## The *Eruv*: Legal and Historical Background

*Eruv*, a word that signifies ‘mixture,’ ‘combination,’ or ‘fusion,’ refers in rabbinic parlance to the joining of the residents of a limited area or space for the sake of establishing a localized neighborhood in order to increase the observance and enjoyment of the Sabbath. The *eruv* enhances the observance of the Sabbath by facilitating carrying of objects between a private space and a public space, an action that is rabbinically prohibited on the Sabbath.<sup>1</sup>

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 for which the *eruv* was originally intended. 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.

1 See Adam Mintz, “Halakhah in America: The History of City Eruvin, 1894–1962” (Ph.D. diss., New York University, 2011), 1–2 and Margaret Olin, “Introduction: The Poetics of the Eruv,” *Images* 5 (2011): 3.

Yet, in spite of these challenges, *eruvim* were created by Jewish communities throughout the world. In Europe and the Middle East, rabbis met these challenges and spearheaded the creation of *eruvim* in small Jewish neighborhoods and larger urban areas. As the medieval walls of many European cities were torn down in the nineteenth century, rabbis replaced these wall 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 new options for *eruv* boundaries in the modern city. However, this new option also raised new halakhic issues that became a matter of heated dispute among the leading rabbis of the time.<sup>2</sup>

The first *eruv* in North America was established in St. Louis in 1894. Although there were only three *eruvim* established in America in the first half of the twentieth century, the last part of the century witnessed the building of over one hundred *eruvim* in cities and towns across America. By 2012, at least twenty eight of the fifty states contained one or more municipalities with an *eruv*.<sup>3</sup>

The challenge of creating an *eruv* in a community which included both Jewish and non-Jewish residents has been central to the creation of the *eruv* since the talmudic period. The rabbis defined an *eruv* as an area that is enclosed by walls in which all the inhabitants of that area unify through the sharing of a common food item. A Jew who forgot to participate in the acquisition of this joint food item may relinquish his property to the other members of the area thereby removing himself from the *eruv* community. However, the Mishnah relates that this process of relinquishment does not work for a non-Jew who lives in the area. The Talmud explains that the only way to create an *eruv* in an area in which there are non-Jewish residents is for the Jewish residents to lease the property of the non-Jew, thereby eliminating him as a resident of that area for the purposes of *eruv*. According to the rabbis, this lease is merely symbolic and neither reflects the value of the non-Jew's property nor requires a written lease agreement. In the medieval period as Jews expanded beyond the traditional Jewish neighborhoods, this process of symbolically leasing property was extended to include leasing

2 This topic is discussed in Mintz, "Halakhah in America," 81–175.

3 The history of *eruvim* in America is discussed in Mintz, "Halakhah in America," 176–426.

entire neighborhoods and cities from the local governmental official, and that process has been utilized in the creation of city *eruvim* ever since.<sup>4</sup>

The Talmud relates one incident that highlights the potential tension created by the need to exclude the non-Jew from the *eruv* community. The gemara describes a situation in the Babylonian city of Pumbedita. "There was a certain alleyway in which [a non-Jew by the name of] Laḥman bar Ristaq used to live. They [the Jewish residents of the alleyway] said to him: 'Rent us your domain.' He did not rent it to them. So they went to Abbaye and told him." Abbaye promptly comes up with a solution to the problem in which the Jews were able to use a technical halakhic solution to exclude the non-Jew from the *eruv* community.<sup>5</sup> However, this negotiation is seen as symptomatic of Jewish-non-Jewish negotiations regarding the *eruv*, as the Babylonian Talmud claims that "the non-Jew will ultimately not rent out [to the Jew]."<sup>6</sup>

As the Jewish community expanded, the lease requests encompassed a larger area that could only be leased from an authority. There were a few instances in which the non-Jewish authorities were reluctant to lease the area to the Jewish community. In his commentary on the *Tur*, Rabbi Joseph Caro quotes two *teshuvot* written by his uncle, Rabbi Isaac Caro, who served as rabbi in Constantinople at the beginning of the sixteenth century. In the first *teshuvah*, Rabbi Joseph Caro relates that the Jews of Constantinople attempted to lease the city from the Sultan of Turkey, but the Sultan refused because he was afraid that if he leased the city, he would no longer be able to collect taxes. In another instance, Rabbi Joseph Caro writes that the Jews requested the lease of the city from a governmental official who refused since his advisors warned that if he leased the city, the Jews would remove him from his position of power. In the early nineteenth century, however, Rabbi Moshe Sofer praises the king and his advisors in Pressburg who allow the Jews to construct *šurot ha-petaḥ* in the city. He does not mention that the Jewish community had difficulty securing the lease from the governmental authorities. Although most of the instances of leasing the city for the sake of the *eruv* are not documented, it seems that, for the most part, the Jewish communities were able to successfully lease the cities and towns and create

4 Mintz, "Halakhah in America," 51–69.

5 *B. Eruv*. 63b.

6 *B. Eruv*. 62a.

*eruv* in both European and Middle Eastern countries throughout the early-modern and modern periods.<sup>7</sup>

In the United States, the *eruv* has faced little opposition. Charlotte Fonrobert writes, “Public neighborly relations look very different in the metropolitan and urban American communities in the second half of the twentieth century, at least some of them, and have changed since the days of the Babylonian Talmud.”<sup>8</sup> The lease agreements were in certain cases even presented as public proclamations. In 1979, Mayor William Donald Schaefer of Baltimore issued a proclamation declaring that “I ... hereby proclaim a grant of the rights requested to the President of the Eruv, Inc., at a rental of One United States dollar, in hand paid, in order to define the Sabbath bounds in accordance with Jewish religious law.”<sup>9</sup> This enthusiasm has been shared and expressed by secular residents and governmental officials in cities and towns through the United States, and the great increase in the number of *eruv* in the United States is in no small measure a result of this willingness on the part of the local authorities to participate in the creation of local community *eruv*.

There have been four cases, however, in which the *eruv* was opposed by local residents and the opposition brought the case before the United States courts: Belle Harbor, New York, and Long Branch, New Jersey in 1985; Tenafly, New Jersey in 1999; and Westhampton Beach, Long Island, New York in 2008. The courts decided in favor of the *eruv* proponents in all four cases.<sup>10</sup>

7 R. Joseph Caro, *Avqat Rokhel* (Jerusalem: Siah Israel, 2002), nos. 47–48 and *She’elot u-Teshuvot Hatam Sofer* (Jerusalem: Mekhon Hatam Sofer, 2004), I:99. For a discussion of the creation of *eruv* in cities in Europe and the Middle East during this period, see Mintz, “Halakhah in America,” 132–75.

8 Charlotte Elisheva Fonrobert, “Diaspora Cartography: On the Rabbinic Background of Contemporary Ritual Eruv Practice,” *Images* 5 (2011): 19–20.

9 *Ibid.*, 19.

10 For the Belle Harbor decision, see *Joseph M. Smith v. Community Board No. 14*. Supreme Court, Queens County, New York, July 8, 1985; for Long Branch, see *American Civil Liberties Union of New Jersey and Deborah d. Jacoby v. City of Long Branch, Defendants Congregation Brothers of Israel Inc., Rabbi Tobias Roth*. United States District Court, New Jersey, October 2, 1987; for Tenafly, see *Tenafly Eruv Association Inc. v. The Borough of Tenafly*. United States Court of Appeals, Third Circuit, October, 24, 2002; and for Westhampton Beach, see *Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, 778 F.3d 390 (2d Cir. 2015) and *East End Eruv Ass’n v. Town of Southampton, et al.*, No. 14-21124, 2015 WL 4160461 (Sup. Ct. Suffolk Cty. June 30, 2015).

The substance of the arguments presented before the courts revolves around the Free Exercise and Establishment Clauses of the First Amendment and deserves its own study and analysis.<sup>11</sup> This article will address areas in which these legal battles and court cases reflect the changing place of American Orthodox Jews within the American public space at the end of the twentieth and beginning of the twenty-first centuries. This will be evaluated through an analysis of the manner in which Jewish law and rabbinic authorities were utilized in these cases and the relationship between the Orthodox community and its non-Orthodox Jewish neighbors in the towns in which the *eruv* was disputed. In each instance these cases represent a stark departure from the history of American Orthodoxy and reflect a new and complex reality for Orthodox Jews in America.<sup>12</sup>

### Role of Jewish Law in These Controversies

On March 23, 2011, in a short “news” clip on the popular television comedy, *The Daily Show*, the *eruv* controversy in Westhampton Beach was parodied.<sup>13</sup> One of the reporters, Wyatt Cenac, interviewed Charles Gottesman, an opponent of the *eruv*, and Jeffrey Wiesenfeld, one of its supporters. During the interview, Gottesman, a longtime resident and shop owner in Westhampton Beach and a vocal member of the Jewish People Opposed to the *Eruv*, explained that, among other reasons, he opposed the *eruv* because it would attract more Orthodox Jews who want to break the rules of their

11 For a preliminary analysis of the constitutional issues, see Alexandra Lang Susman, “Strings Attached: An Analysis of the Eruv Under the Religious Clauses of the First Amendment and the Religious Land Use and Institutionalized Persons Act,” *University of Maryland Law Journal of Race, Religion, Gender, and Class* 9 (2009): 93–134.

12 There were other *eruvim* that were opposed by local residents but were never brought to trial. The most well-known are the *eruvim* in Palo Alto, California and North-West London. For a discussion of the Palo Alto *eruv* controversy, see John Mandsager, “The Eruv: A Space for Negotiating Identity” (master’s thesis, Stanford University, 2003), 84–98 and Josh Richman, “New Eruv Reopens Old Church-State Debates in Palo Alto,” in *The Jewish Daily Forward*, July 20, 2007. For a study of the London *eruv* controversy, see Jennifer Cousineau, “Rabbinic Urbanism in London: Rituals and the Material Culture of the Sabbath,” *Jewish Social Studies* 11:3 (2005): 36–57 and Calvin Trillin, “Drawing the Line,” *The New Yorker* (December 12, 1994): 50–62.

13 <http://www.thedailyshow.com/watch/wed-march-23-2011/the-thin-jew-line>.

own religion. Although this idea is not explained, later in the parody the reporter dons an “*eruv* hat” with a miniature fence adorning the top of the hat. While wearing the hat, this reporter eats a bacon sandwich and then dips the meat into milk, an act which is forbidden according to Jewish law. While partaking of the non-kosher meal, the reporter explains to Wiesenfeld, the *eruv* supporter, that the loophole of the *eruv*, represented by the *eruv* hat, should be extended to allow for the violation of all commandments, even consuming non-kosher food. Wiesenfeld protests that this is incorrect, and it is clear that the reporter is mocking Gottesman’s comments. In an internet post the following day, Arnold Schieffer, chairman of the Jewish People Opposed to the *Eruv*, expressed his disappointment at the mockery of Gottesman, whom he claims is “a very nice person.”<sup>14</sup>

This notion that the *eruv* is a circumvention of Jewish law is not only used as parody. During this five minute clip, the reporter explains that the word *eruv* derives from the word “loophole.” Although this is an inaccurate translation of the term *eruv*, the notion that the *eruv* is a circumvention of the laws of the Sabbath is a valid interpretation of the laws of *eruv* in which carrying, an act ordinarily prohibited on the Sabbath, is permitted as long as an *eruv* surrounds the community. Circumventions are an integral part of any legal system and they can also be found within the Jewish legal system. However, the expansion of this principle suggesting that the “*eruv* hat” would allow for the circumvention of the laws of kosher food represents a misinterpretation and a mockery of the laws of *eruv*. At least on *The Daily Show*, this mockery is instigated by Gottesman’s suggestion that Jews are trying to break their own laws through the creation of an *eruv*.

Although *The Daily Show* is known for its spirit of mockery and irreverence, and it is nonsensical to suggest that a Jew is permitted to eat non-kosher meat within an *eruv*, the argument that the Jews are attempting to circumvent their Sabbath laws through the erection of the *eruv* was made in a serious vane in both Tenafly and Westhampton Beach. During a 2000 Borough Council meeting in Tenafly, Albert Victoria said, “It’s just a group

14 Erica Jackson, “The Daily Show Spoofs Eruv Proposal in Westhampton Beach” at <http://westhampton-hamptonbays.patch.com/articles/john-stewart-show-spoofs-eruv-proposal-in-westhampton-beach>.

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of people who are trying to circumvent their own religious laws to erect a contrivance to get around it.”<sup>15</sup>

In the Westhampton Beach case, this argument that the *eruv* represents an unacceptable legal fiction was made by Arnold Sheiffer at a public hearing on the *eruv* held at the Village Hall of Quogue on March 19, 2012. Sheiffer said:

While I respect the rights of all Jews, and in fact all people, to worship God and practice their faiths in their own way, it is meaningful to me that the central Conference of American Rabbis (CCAR), which is the umbrella body for all Reform Rabbis in the United States, has taken an official position rejecting eruvs as kind of “legal fiction” which is inconsistent with the true spiritual observance of the Sabbath under Jewish law and tradition.<sup>16</sup>

In a responsum written in July, 1983 for the CCAR, Rabbi Amiel Wohl of Temple Israel in New Rochelle describes the Reform attitude towards to the *eruv* as follows:

It will be difficult to argue with the current Orthodox mood, which is one of further separation and strict adherence to the letter of the law. Certainly we, as Reform Jews, who are interested in the spirit of the law, would reject this kind of legal fiction for the observance of the *shabbat*, and we should discuss the matter in that spirit with our Orthodox colleagues.<sup>17</sup>

The introduction of this claim on the part of the *eruv* opponents reflects a fascinating development in the history of *eruv* disputes and, by extension, disputes between Orthodox Jews and the broader community. In this case, non-Jews or non-Orthodox Jews claim that Orthodox Jews misinterpret and

15 Tenafly Eruv Association v. The Borough of Tenafly, 218. Interestingly this argument was also made regarding a dispute about the erection of an *eruv* in Palo Alto, California. In one letter to the editor Raymond Feldman writes, “I’m philosophically opposed to the city helping the orthodox community evade their self imposed rigid rules. Orthodox Jews have always found ways to evade the spirit of these rules ... If the *eruv* petitioners have difficulty with the minutiae of orthodoxy, I suggest that they consider a more liberal form of Judaism.” See Raymond Feldman, *Palo Alto Readerwire*, August 25, 2000.

16 Transcript of Statement of Arnold Sheiffer, March 19, 2012.

17 <http://data.ccarnet.org/cgi-bin/respdisp.pl?file=178&year=carr>.

misuse the *halakhah*. The acceptability of rabbinic circumventions has been a matter of dispute within the religious Jewish community throughout the ages and many religious Jews have rejected such circumventions as the sale of *ḥameš* prior to Pesach and the sale of the land of Israel during the *shemittah* year. Yet, the rabbinic *eruv* finds its roots in early rabbinic Judaism, and there is no discussion in rabbinic literature over the past two thousand years questioning its legitimacy. The opponents of the *eruv* in the first decade of the twenty-first century have introduced the claim of rabbinic fraud in the rabbis' attempt to circumvent the laws of Shabbat through the creation of an *eruv*. Of course, the opponents of the *eruv* were interested in preventing these local *eruvim* and not in the legitimacy of the rabbinic system. Yet, their argument reflects an understanding and appreciation of the internal logic of the rabbinic system that allows them to identify the inherently "fraudulent" nature of the *eruv* argument.<sup>18</sup>

This criticism against the circumvention of *halakhah* as reflected in the *eruv* was popularized through its use in *The Daily Show* clip. The depiction of this idea on television led, as well, to the defense of the seeming circumvention inherent in the laws of *eruvim*. In a column in *The Long Island Jewish World*, Rabbi Leon Morris, spiritual leader of the Reform congregation Temple Adas Israel in Sag Harbor, a village on the East End of Long Island that neighbors Southampton, takes issue with the responsum of the CCAR on the *eruv*. He writes, "Additionally, while the responsum quoted refers to the *eruv* as a 'legal fiction,' I would maintain that every great legal system contains such 'legal fictions' which are vital in allowing the law to evolve and continue to be applicable in new situations."<sup>19</sup> In addition, in the Comments section of *The Daily Show* internet link, one of the comments reads,

Good report, but one correction: The word Eruv certainly does not mean 'loophole' as reported. God commands that Jews not carry objects in a public domain on the Sabbath, but

18 For a discussion of rabbinic circumventions, see Steven D. Fraade, *Legal Fictions: Studies in Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages* (Leiden: Brill, 2011), 3–16, and Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Tübingen: de Gruyter, 2002), 163–99. It is noteworthy that Alan Dundes, *The Shabbat Elevator and other Shabbat Subterfuges* (Lanham, MD: Rowman & Littlefield, 2002), 45–50 lists *eruv* as one of the Sabbath subterfuges.

19 Leon A. Morris, "Reform Rabbi Endorses Eruv," *Long Island Jewish World*, June 1–7, 2012, p. 9.

we are allowed to carry in a private domain. The *Eruv* 'combines' multiple private domains into one big domain using an almost-invisible string to mark the boundary. In Israel, entire cities are surrounded by such string, enabling everyone to carry. God made this mechanism available, but asks us to use some elbow-grease to actualize it.<sup>20</sup>

Although not the intention of *The Daily Show*, the clip gave rise to a discussion about the role of circumventions in rabbinic Judaism.

### Role of Rabbis in These Disputes

Although in the traditional history of the *eruv* the rabbis played the central role in building the *eruv* and determining its continuous validity, in the cases presented, the rabbis played a different kind of role. In the Long Branch case, Rabbi Tobias Roth of the Brothers of Israel Synagogue in Long Branch testified in court in support of the *eruv*.<sup>21</sup> In the Tenafly case, Rabbi Shmuel Goldin, rabbi of Ahavath Torah, the Orthodox synagogue in neighboring Englewood, gave an affidavit supporting the *eruv*.<sup>22</sup> In Westhampton Beach, Rabbi Marc Schneier of the Hampton Synagogue submitted the request for the creation of an *eruv* in Westhampton Beach and then withdrew the request when opposition became vocal against the *eruv*.<sup>23</sup>

The traditional role of the rabbi as the halakhic authority, however, does reflect itself in two aspects of these cases. First, the *eruv* associations in both Tenafly and Westhampton Beach consulted recognized halakhic authorities who designated the *eruv* boundaries and determined the necessary *eruv* boundaries that needed to be constructed. Yet, these rabbinic authorities are never mentioned in any of the court proceedings. The need for the *eruv* to be constructed in the fashion determined by the Orthodox Jews in each of the communities is accepted, and there is no suggestion by the opposition or the court that the rabbinic authority needs to find another less intrusive way in which to build the *eruv*.

20 <http://www.thedailyshow.com/watch/wed-march-23-2011/the-thin-jew-line>.

21 *ACLU of New Jersey v. City of Long Branch*, 4.

22 *Eruv Association of Tenafly v. Borough of Tenafly*, 54.

23 *East End Eruv Association v. The Village of Westhampton Beach, The Village of Quogue, and The Town of Southampton*, February 3, 2012, 12–13.

In addition, the rabbis were consulted in order to determine from whom the town must be leased in order for the *eruv* to be valid. In Tenafly, the members of the Orthodox community first approached the mayor in order to lease the city. This was done at the suggestion of Rabbi Hershel Schachter, a leading rabbinic scholar and *eruv* expert who teaches at the Rabbi Isaac Elchanan Theological Seminary of Yeshiva University. After the mayor refused to grant permission, Rabbi Schachter suggested that the Eruv Association lease the area from the Bergen County Executive. This suggestion was based on the halakhic acceptability of leasing from an official other than the mayor.<sup>24</sup> Rabbi Schachter also gave an affidavit affirming the importance of the *eruv* for the Orthodox community, especially those families with young children.<sup>25</sup>

In Westhampton Beach, several members of the Hampton Synagogue approached Rabbis Yosef Carmel and Moshe Ehrenreich, both of the Eretz Hemdah Institute for Advanced Jewish Studies in Jerusalem. Rabbis Carmel and Ehrenreich head the rabbinic court at Eretz Hemdah and answer halakhic questions from around the world. They were asked for guidelines to determine from which governmental authority the Orthodox community may lease the area which would be enclosed by the *eruv*. This was an especially sensitive issue in Westhampton Beach where there was so much opposition to the *eruv* from the local community. The rabbis responded in a *teshuvah* dated May 31, 2009 explaining that even though the Jewish tradition had developed to lease the town from the mayor, one could also lease the town for the purposes of the *eruv* from "a member of the state or federal government who has jurisdiction in that region." Based on this *teshuvah*, the members of the East End Eruv Association were able to lease the area from a member of the state police who had authority in the East End of Long Island and was not involved in the controversy.<sup>26</sup>

The changing role of the rabbis in these *eruv* cases is not surprising. These *eruv* became matters of American legal dispute and the rabbis could only serve as expert witnesses in the area of the laws of *eruv* and the importance of *eruv* for the members of the Orthodox community. The critical role played by Rabbis Schachter, Carmel, and Ehrenreich in determining

24 Personal conversation with Chaim Book, February 23, 2012.

25 Tenafly Eruv Association v. The Borough of Tenafly, Affirmation of Rabbi Hershel Schachter.

26 Personal communication with a member of the East End Eruv Association, May 16, 2012.

the party from which the Eruv Association was permitted to lease the area reflects the unique interplay of the laws of *eruv* and the role of American Orthodoxy in the American public sphere. In these two cases, the halakhic decisions from whom to lease the area were impacted by and played a role in the development of the legal case. The movement of the center of the *eruv* process from the rabbi's study to the courthouse reflects a changing reality in which the rabbis are no longer the sole arbiters in this basic halakhic matter. In many ways, this is a reflection of the changing role of the rabbis in the modern era, where the rabbis are forced to interact with the members of the broader society in determining even matters of Jewish law and tradition.

### Opposition to the *Eruv*: Tenaflly and Westhampton Beach

These court cases, although framed in the context of First Amendment arguments, opened up a previously untouched area of sensitivity between the Orthodox *eruv* communities and the broader Jewish communities whose members do not observe the Sabbath and therefore have no need for the communal *eruv*. Although the process of leasing the property of the non-Jewish residents for the sake of the *eruv* had been practiced since talmudic times, the symbolic nature of the lease process allowed for little interaction between the two groups. However, in these four communities, the non-Orthodox and non-Jewish residents were not satisfied with the symbolic nature of this lease and saw the *eruv* as representative of a broader set of issues between the Orthodox residents and the general population.

This opposition was most pronounced in the cases of the Tenaflly and Westhampton Beach *eruv* in which the court cases were preceded and accompanied by contentious community meetings. The most prevalent type of complaint against the establishment of a community *eruv* revolved around the perceived negative impact that would be caused by the influx of Orthodox Jews into the community. In Tenaflly, a resident, Charles Agus, submitted an affidavit supporting the *eruv* in which he described the arguments of the opposition group as follows: "[T]he establishment of the *eruv* would lead to an influx of Orthodox Jews and, eventually, to the deterioration of the public schools."<sup>27</sup> Although not explicitly stated, Mr. Agus was presenting the view,

27 Tenaflly Eruv Association v. The Borough of Tenaflly, 64.

which he rejected, that an influx of Orthodox Jews who send their children to Jewish parochial schools would lead to the busing of students from less affluent neighborhoods into the Tenafly schools and would affect the tax base of the local school system. Furthermore, a letter sent to the mayor of Tenafly by Barbara Golden claimed that, "Once the wire is put up on public property, that will be the signal for many more orthodox people to move into Tenafly and the value of the property in Tenafly will go down and welfare will go up."<sup>28</sup> Finally, in a public meeting about the *eruv*, another resident, Ms. Burn, claimed, "They're [Orthodox Jews] not going to buy their meat in the Grand Union, they're going to want to open up businesses in Tenafly."<sup>29</sup> According to Agus' testimony, the mayor herself expressed concern about the local businesses as follows: "Mayor Moscovitz indicated that members of the community had expressed to her their belief that when Orthodox Jews move in, stores close and go out of business because Orthodox Jews do not patronize stores that remain open on Saturday."<sup>30</sup> A similar argument was made against the proposed *eruv* in Westhampton Beach. Arnold Schieffer, who has lived in Quogue and Westhampton Beach for over fifty years, is quoted as saying the following: "The *eruv* will attract Orthodox Jews to the area just as a similar *eruv* did in Lawrence, NY. Lawrence was once a vibrant community. Now, it is mostly Orthodox. Schools have shut down and property values were destroyed."<sup>31</sup>

These arguments reflect the belief that the *eruv*'s symbolism goes far beyond the laws of the Sabbath. According to these residents, the *eruv* symbolizes the desires of the Orthodox Jewish community to establish private enclaves within larger communities. These enclaves, while providing for the

28 Ibid., 49.

29 Ibid., 193.

30 Ibid., 64.

31 Erica Jackson, "Eruv Proposal Sends Villages Scrambling for Legal Advice," at <http://westhampton-hamptonbays.patch.com/articles/eruv-proposal-sends-villages-scrambling-for-legal-advice>. This argument is also found in Jennifer Barrios, "Nonprofit Gets Preliminary OKs for Hamptons Eruv," *Newsday*, October 31, 2010. The argument that an influx of Orthodox Jews into a community will lead to falling real estate prices and inferior public schools is also found in cases not involving the *eruv*. Regarding the controversy about building Orthodox schools and synagogues in Beechwood, Ohio, see Samuel G. Freedman, *Jew vs. Jew: The Struggle for the Soul of American Jewry* (New York: Simon & Schuster, 2000), 316.

needs of the Orthodox community, have a negative impact on the economy and general well-being of the larger community.

This argument was expanded in several instances to include the more graphic and explosive fear that the *eruv*, and by extension the Orthodox community, would transform the town into a ghetto. A letter sent to the mayor of Tenafly by one of its residents complaining about the potential falling real estate prices and rising welfare concluded, "This will be the making of a ghetto."<sup>32</sup> More poignantly, Albert Stone, an elderly Jewish citizen, claimed,

I've lived in Tenafly for 73 years ... My great grandfather came to Tenafly in 1880 to be a farmer, a resident and a good neighbor ... I want to say that the Jews of Europe were forced to live in communities within communities from which they tried desperately to escape. I personally disapprove of this ... to manufacture a symbolic wall to separate people. I do not want to live in someone else's domain, also known as a ghetto.<sup>33</sup>

In this instance the existence of the *eruv* wires conjured up in the minds of these residents the memory of Jewish ghettos. The historical implications of the ghetto are emphasized by Borough council member Richard Wilson who wrote:

From my own knowledge of medieval history I am aware that one of the main reasons the first *eruv* was approved was because the authorities of the day, including the Catholic Church, were very happy for Jews of all kinds to restrict themselves to activities within a confined area. Indeed, these first steps were the beginning of what was later known and characterized as ghettos. The most famous of these is the Warsaw ghetto in Poland, where the authorities created physical walls, which still existed into the 20<sup>th</sup> century.<sup>34</sup>

This final pseudo-historical analysis sheds light on the fear that the *eruv* would create a ghetto. Mr. Wilson explained, albeit historically inaccurately, that the first *eruv* led to the creation of Jewish ghettos. Although this is incorrect, it gives the impression that just like the medieval *eruv* led to ghettos

32 Ibid., 49.

33 Ibid., 235.

34 Ibid., 135.

so too the Tenafly *eruv* will lead to the creation of a ghetto. Furthermore, he made another important factual error. He presented the Warsaw ghetto as the model of the Jewish ghetto. In truth, the Jewish ghetto originated in Italy and served to both limit the freedom of the Jews and to protect them. The Warsaw Ghetto was created by the Nazis to exterminate the Jews. The Holocaust imagery was also evident in a *New York Times* article about the Tenafly *eruv* controversy in which a Holocaust survivor is quoted as saying, "They are building their own ghetto."<sup>35</sup>

The ghetto imagery is also found in the dispute surrounding the Westhampton Beach *eruv*. Arnold Schieffer claimed that the *eruv* is "like social engineering. We [the Jewish people] fought like hell to get out of the ghetto and now they want to create that again. The opposition in the village here is very, very high."<sup>36</sup> The same argument was made by an opponent of the *eruv* at the public hearing on the *eruv* held at the Village Hall of Quogue on March 19, 2012, where one of the residents argued that we have worked so hard to abolish segregation and ghettoization and the *eruv* would reverse those gains.<sup>37</sup> Rabbi Marc Schneier was quoted in a 2008 article in *The New York Times* about the controversy and said, "Every suggestion that there's some master plan to convert Westhampton Beach into an Orthodox ghetto is ludicrous and offensive."<sup>38</sup>

The unpleasantness of the claim that Orthodox Jews would build ghettos or discriminate against other Jews is expressed in the highly emotional testimony of a resident of the Orthodox community of Englewood, New Jersey, who explained at a meeting of the Tenafly Borough Council,

It really saddens me to hear a lot of the things I've been hearing tonight. I hear a group of people who have been living in Tenafly for many years... who are saying they're welcoming, they're

35 "Our Towns: A Wire-Thin Line Sharply Divides a Suburb's Jews," *The New York Times*, March 25, 2001.

36 Sumathi Reddy, "Hamptons Eruv Dispute Heads to Court" at <http://blogs.wsj.com/metropolis/2011/01/13/hamptons-eruv-dispute-heads-to-court/>.

37 Personal communication with person present at the meeting, May 15, 2012.

38 Joseph Berger, "Orthodox Jews' Request Divides a Resort Village," *The New York Times*, June 22, 2008. The ghetto imagery was also evident in the London *eruv* controversy with Holocaust survivors claiming that the poles and wires of the *eruv* evoked for them visions of concentration camp fences. See Cousineau, "Rabbinic Urbanism," 52.

wonderful neighbors, et cetera. Yet, all I hear from them is—or what I’m hearing as I sit here trembling is bitterness, hatred and anger towards one group of people... I am an observant Jew and I don’t think that I look different from anyone else and I don’t think that anyone would point me out in the City of Tenafly and say, oh, she’s one of the observant Jews coming to take over our town and ruin it... And whether I look different or not, the hate and bitterness in this room is overwhelming.<sup>39</sup>

The ultimate irony is found in the testimony of then-mayor of Westhampton Beach, Conrad Teller. Teller reported that he phoned he mayor of Tenafly who told him, “It [the *eruv*] is invisible and has made no change [in the community] in the three years it has been up.”<sup>40</sup>

The bitterness and anger reflected in the opposition of fellow citizens, many of them Jews, to the erection of the *eruv* in Tenafly and Westhampton Beach and the passionate defense of the *eruv* by its supporters reflects an important development in the place of Jews, and in this case Orthodox Jews, in the American public square. This can be seen by tracing the history of Orthodoxy in America as it is reflected in the evolution of the *eruv* in this country. During the peak years of Jewish immigration from Eastern Europe, 1881–1924, the Jewish immigrants, many of them initially Orthodox, struggled to find their place in American society. While they integrated successfully in many areas, these Jews, often still with their Yiddish accents and Eastern European mindsets, stood at the periphery of the American public square. This is reflected in the story of the creation of the first *eruv* in America, in St. Louis in 1894, where Rabbi Zechariah Rosenfeld, a recent immigrant from Poland, leased the city of St. Louis in order to complete the *eruv* process from the local policeman. While Rabbi Rosenfeld justified this lease agreement based on halakhic considerations, it is evident that he did not feel comfortable or confident enough to request this lease from a recognized government official and, therefore, utilized the local policeman who was available to complete the *eruv*.<sup>41</sup>

39 Tenafly Eruv Association v. The Borough of Tenafly, 237.

40 Stewart Ain, “Eruv Plan Roils Tiny Town in Hamptons,” *The New York Jewish Week*, June 4, 2000.

41 For a discussion of the emergence of the shared public sphere in democratic culture, see Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004), 203–24. For the role of religion in the American public sphere,

Over the course of the first half of the twentieth century, Jews worked to integrate into the American mainstream. The New Deal and the aftermath of the Great Depression served as springboards for many Jews who found entry into the professional and political mainstream of American society. This integration was further strengthened in the post-World War II generation, when educational and professional opportunities became available to American Jews for the first time. As a reflection of Jewish prominence in American politics, between 1949 and 1965 Jewish representation in Congress was between twelve and sixteen members at any one time. This was almost double the number of Jewish representatives who had served in Congress at any one time prior to World War II. Jews were beginning to achieve a place in the mainstream of the American public sphere.<sup>42</sup>

The American Orthodox also played an important role in the growing involvement of American Jews in the political sphere. In 1965, the National Jewish Commission on Law and Public Affairs (COLPA), a voluntary association of attorneys whose purpose was to represent the observant Jewish community on legal, legislative, and public-affairs matters, was founded by Dr. Marvin Schick. It served to protect and expand the rights of Orthodox Jews in the American public and political spheres. This political influence was recognized and respected by elected officials. 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 as follows: "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."<sup>43</sup>

see Noah Feldman, *Divided by God* (New York: MacMillan, 2005), 4–17. For the description of the lease of St. Louis in 1894 for the sake of the *eruv*, see Zechariah Rosenfeld, *Tikvat Zechariah II* (Chicago: Shur, 1896), 39–40.

42 For a discussion of the place of American Jews during the Great Depression and the opportunities that the experiences of the 1930s provided for them, see Beth Wenger, *New York Jews and the Great Depression* (New Haven: Yale University Press, 1996), 10–79. An analysis of the rising number of Jews in Congress as a reflection of growing Jewish prominence can be found in Rafael Medoff, *Jewish Americans and Political Participation: A Reference Handbook* (Santa Barbara, CA: ABC-CLIO, 2002), 267–318.

43 Quoted in the obituary for Rabbi Sherer, *The New York Times*, May 19, 1974, B11. For a history of COLPA, see <http://www.jlaw.com/LawPolicy/colpa.html>.

As Orthodox Jews were gaining status in the political and public spheres of American life, they were also becoming more religiously observant. The immigration of Eastern European Jews precipitated by the Holocaust led to the creation of a new generation of observant and educated Orthodox Jews. Between 1940 and 1965, the number of Jewish day schools in America grew ten-fold, and by 1975, every American city with a population of 7,500 Jews had at least one day school. This new group of Orthodox Jews, while initially isolated within the American public square, quickly appreciated the value of outward involvement. Agudath Israel maintains a full-time office in Washington, DC and lobbies the local, state, and federal governments on issues they feel are important to the Jewish community.<sup>44</sup>

Within the Modern Orthodox community, a combination of the increased popularity of Yeshiva College for men and the creation of Stern College for Women in 1954 served to strengthen an Orthodox community that had struggled in the first half of the twentieth century.<sup>45</sup> In addition, in the aftermath of the Six Day War in June, 1967, American Jews, especially the Modern Orthodox, intensified their relationship with the State of Israel and the recaptured Old City of Jerusalem. Over the next decade, Modern Orthodox students began to spend six months or a year studying in *yeshivot* in Israel following high school. These students often returned to the United States with a strengthened sense of commitment to the State of Israel and Jewish tradition.

The creation of this new group of religiously committed young Orthodox men and women led to the need for *eruv* in the neighborhoods where these people chose to live. In the 1950s and 1960s, members of many Orthodox synagogues in America, including some in the Ultra-Orthodox community, were ignorant of the prohibition of carrying on the Sabbath, and baby carriages, which are included in the prohibition of carrying on the Sabbath, could be found in the lobbies of Orthodox synagogues despite the absence of a neighborhood *eruv*. This began to change in the early 1970s as

44 Chaim Waxman, "From Institutional Decay to Primary Day: American Orthodoxy Since World War II," *American Jewish History* 91 (2003): 405–21, esp. 412 and 418.

45 See Jeffrey S. Gurock, *The Men and Women of Yeshiva: Higher Education, Orthodoxy and American Judaism* (New York: Columbia University Press, 1988), 163–212. For the history of Orthodoxy in America during the post-World War II period, see Jeffrey S. Gurock, *Orthodox Jews in America* (Bloomington, IN: Indiana University Press, 2009), 199–255.

communities of young Orthodox couples began to flourish. In Kew Gardens Hills in Queens, a suburban New York community that attracted these Orthodox couples in the early 1970s, two Orthodox men with young children, one a graduate of Yeshiva College and the other of a more Ultra-Orthodox yeshiva, decided that an *eruv* needed to be built around their neighborhood. However, they lacked the political clout to gain permission for the erection of poles and strings to enclose the area and to lease the community. One Sabbath morning in synagogue, these two men encountered an Orthodox attorney who had just moved to Kew Gardens Hills and served as Counsel to Borough President Donald Mannes. Recognizing that he had the political access that they lacked, they asked him to approach the Borough President and ask for permission to build the *eruv* and to issue a proclamation leasing the neighborhood to the Orthodox community for the purposes of the *eruv*. This attorney, uncertain of the outcome, approached Mr. Mannes, who gladly granted his permission and issued the proclamation found on the first page of the Eruv Booklet that was compiled as a guide to the new Kew Gardens Hills *eruv*. This *eruv* was but one example of the interplay between the new young members of the Orthodox community and their recently achieved status in the mainstream of the American political sphere that allowed for the growth of Orthodoxy in cities across America and the creation of *eruvim* in many of those cities and towns.<sup>46</sup>

In the last two decades of the twentieth and the beginning of the twenty-first centuries, Jews have continued to achieve even greater status in the American public sphere. In the 111<sup>th</sup> Congress that convened in 2009, there were thirteen Jewish Senators and thirty one Jewish Congressmen. Orthodox Jews have played an important role in this rise to prominence, and the selection of Senator Joseph Lieberman as the Vice Presidential nominee in 2000 is often identified as the defining moment of Orthodox prominence in the American public sphere.<sup>47</sup> Yet, these achievements in the political sphere have not led Orthodox Jews to compromise their religious observance. On the

46 Personal interview with Rabbi Dovid Fuld, Steven Savitsky, and Steven Orlow on Wednesday October 24, 2012.

47 For a list of the Jews in the 111<sup>th</sup> Congress, see <http://www.jta.org/news/article/2009/07/01/1000795/the-chosen-jewish-members-in-the-111th-us-congress>. For an example of the prominence that the Lieberman candidacy served for American Jews, see the Introduction to *Jews in American Politics*, edited by L. Sandy Maisal (Lanham, MD: Rowman and Littlefield Publishers, 2001), xxv–xxvii.

contrary, Orthodox Jews have become religiously strident in their views and practices. Samuel Heilman's volume on contemporary Orthodoxy, entitled *Sliding to the Right*, reflects a general consensus that the Orthodox are indeed becoming either more religiously observant or right-wing.<sup>48</sup>

Susan Lees, in an article analyzing the Tenafly *eruv* controversy, argues that the increased strength and self-confidence of the Orthodox community led to a conflict with members of the non-Orthodox community based on their different definitions and understanding of American diversity. For Jews in the post-civil rights movement era, she writes, diversity meant two things. For the majority of secular or non-Orthodox Jews, diversity meant the opportunity to blend into American society while maintaining a modicum of ethnic identity. For the Orthodox, diversity provided the opportunity to be more distinctively different. These two meanings of diversity created serious tension, as the non-Orthodox Jews felt that the building of the *eruv* and the subsequent ability to express distinctiveness within the community infringed upon their ability to blend into the broader community. The identification of the enclosed *eruv* community as a ghetto reflects an era where lack of diversity and discrimination were the norm.<sup>49</sup>

## Conclusion

In 1990, on the occasion of the inauguration of the first *eruv* in Washington, DC, President George H.W. Bush wrote a letter to the Jewish community of Washington in which he stated, "There is a long tradition linking the establishment of erubin with the secular authorities in the great political centers where Jewish communities have lived ... I look upon this work as a favorable endeavor. God bless you."<sup>50</sup> This enthusiasm has been shared and expressed by secular residents and governmental officials in cities and towns through the United States, and the great increase in the number of

48 Samuel Heilman, *Sliding to the Right: The Contest for the Future of American Jewish Orthodoxy* (Berkeley, CA: University of California Press, 2006). Interestingly, this is also reflected in the refusal of many Ultra-Orthodox to utilize communal *erubin*. See Adam Mintz, "A Chapter in American Orthodoxy: The Eruvin in Brooklyn," *Hakirah* 14 (2012): 21–59.

49 Susan H. Lees, "Jewish Space in Suburbia: Interpreting the Eruv Controversy in Tenafly, New Jersey," *Contemporary Jewry* 27 (2007): 67–69.

50 Proclamation from the White House, dated Eruv Sabbath [sic.], 1990.

*eruv* in the United States is in no small measure a result of this acceptance on the part of the broader American community.

The exceptions to this rule, as highlighted in the cases discussed in this article, reflect a small, yet vocal minority of the American people. The groups that have opposed the *eruv* in these communities have combined constitutional arguments with sociological and cultural claims against the Orthodox Jews in these towns. Although the cases that have been resolved were decided in favor of the *eruv* supporters, the divisive battles in each case reflect the unresolved nature of this issue.

The development of court and community battles in the establishment of local *eruv* has introduced an unexpected element into the history of community *eruv*. No longer is the *eruv* merely the purview of the rabbis and their local congregations. No longer can the rabbi determine how to address the case of the non-Jew residing within the *eruv* community. This issue has been moved to the court rooms and village town halls to be debated and resolved based on the principles of American law and the determination of the role of Orthodox Jews and their religious practices in American society. Although the rabbis of the Talmud could never have envisioned such a debate, their laws and principles stand at the center of much of the argument and ultimately the resolution of this issue. It is this interplay between rabbinic law and American law and society that lies at the heart of the Jewish experience in the United States.