

Highways and Eruvin

Many community Eruvin must grapple with the issue of intercity highways that are included within the Eruv. For example, the Jerusalem-Tel Aviv highway is within the Yerushalayim Eruv, Route 4 runs through Teaneck, New Jersey and the Henry Hudson Parkway enters the Eruv of the Riverdale section of The Bronx, New York. Different communities grapple with this issue in varying manners and we shall explain the basis for the variety of practices.

Reshut Harrabim Limitations

A most fundamental point is that an Eruv consisting of Tzurot Hapetach (doorframes = poles connected by wires above both of them) may be constructed only in an area within which it is forbidden to carry only on a rabbinical level. Such an Eruv is disqualified from enclosing an area defined as a Reshut Harrabim (public domain). For many centuries many Jews have relied on Rashi's (Eruvin 59a s.v. Ir) opinion that an area is not defined as a Reshut Harrabim if less than 600,000 people reside within the area. Rashi explains that a city in which fewer than 600,000 people live is too dissimilar to the manner of the Digei Midbar (our ancestor's Biblical desert encampment), the paradigm of an area where it is forbidden to carry on a Biblical level.

An Intercity Road

The Gemara (Shabbat 6a) states that a road that one travels when going from city to city (Seratya) is categorized as a Reshut Harrabim. This passage in the Gemara is codified by the Magen Avraham (345:5) and Mishnah Brurah (345:17) without dissent. The question is whether even Rashi would agree that an intercity is defined as a Reshut Harrabim even if 600,000 people do not regularly travel on that road.

Ramban (Eruvin 59a) writes that "it is possible" that Rashi's leniency does not apply to an intercity road, since such a road is a public domain similar to the Digei Midbar, even if 600,000 people do not regularly travel the road. Rav Hershel Schachter (Journal of Halacha and Contemporary Society 5:13 and Kol Tzvi 5765 page 84) explains that this approach views an intercity road as the paradigm of a Reshut Harrabim (the aforementioned passage in Shabbat 6a seems to support this assertion) and that the various conditions to constitute a Reshut Harrabim (such as Rashi's requirement of 600,000 people) are not necessary to define an intercity road as a Reshut Harrabim. A city or street must have 600,000 people, according to this approach, in order for it to match a highway and constitute a Reshut Harrabim.

The Biur Halacha (345:s.v. Veyeish Omrim) cites the suggestion of the Ramban but it is not clear whether he rules in accordance with it. There is no straightforward statement in either the Mishna Berurah or Biur Halacha stating that those who rely on Rashi's lenient approach should refrain from doing so in regards to an intercity road. The Aruch Hashulchan (Orach Chaim 345:17) rules that 600,000 people are required even in regards to intercity roads. However, he explains the 600,000 people rule as not referring

to 600,000 people passing on this road every day (as implied by the manner in which the Shulchan Aruch, *ibid.*, presents the 600,000 people position) but rather that 600,000 people pass through the road “in the course of time”. Teshuvot Maharsham (3:188) and Rav Moshe Feinstein (Teshuvot Igrot Moshe O.C. 1:139:5) rule that the 600,000 people requirement applies even to an intercity road. It is clear that Rav Moshe considers the 600,000 people rule to refer to daily passage (Maharsham even writes explicitly that the 600,000 people requirement refers only to a city where it is usual to have 600,000 people within it on a daily basis). He does not regard the bridges that connect Brooklyn and Manhattan as a Reshut Harrabim since 600,000 people do not travel on this road daily, even though 600,000 people definitely pass on these very heavily traveled bridges in the course of time. Netivot Shabbat (3:1 note 9) writes that Machatzit Hashekel (357:11) seems to agree with the Maharsham and Rav Moshe.

Rav Mordechai Willig (personal communication) infers from the fact that both the Shulchan Aruch (O.C. 303:18) and Rama (O.C. 346:3) present Rashi’s requirement by saying “there is no Reshut Harrabim in our times” without stating that intercity roads constitute an exception, seems to show that these leading authorities regard Rashi’s leniency to apply even to an intercity road. Indeed, Rav Willig does not exclude the Henry Hudson Parkway from the Riverdale Eruv (Rav Willig is the Rav of the Young Israel of Riverdale) and Rav Eliezer Waldenburg (cited in the Contemporary Eruv page 54 note 119) supports the fact that the Jerusalem-Tel Aviv highway is not excluded from the Yerushalayim Eruv since the 600,000 people requirement is not satisfied by this road. Rav Hershel Schachter, on the other hand, rules in accordance with the Ramban and this is followed in the Teaneck Eruv, which meticulously excludes Route 4.

Defining an Intercity Road

Rav Willig (personal communication) argues further that the Henry Hudson Parkway is not included in the Ramban’s definition of an intercity road since Riverdale residents commonly use this highway as a convenient and quick manner to travel from one section of Riverdale to another. Indeed, a careful reading of Ramban seems to support this contention. The Ramban speaks of roads “that are outside the city which people use to travel from the city to another city and from one country to another until the end of the entire world”. Ramban seems to be speaking of a major highway such as the New Jersey Turnpike that lies for the most part outside city boundaries and which is used almost exclusively as an intercity road.

On the other hand, there are communities in North America that exclude even intercity roads that are fully integrated into the city with traffic lights and parking for automobiles on its sides. This approach seems to run entirely counter to the aforementioned words of the Ramban.

Rav Hershel Schachter adopts a very reasonable approach to this issue. Rav Schachter argues that only a limited access highway is defined as an intercity road for this purpose. Only such a highway can be described as being “outside the city” (even if it runs within municipal boundaries, such as Teaneck’s Route 4), since it is set apart from

the rest of the city. Thus, Rav Schachter (personal communication) ruled that Route 34 may be included in the Matawan, New Jersey Eruv and that Route 46 is permitted to be encompassed by the Parsippany, New Jersey Eruv.

Railroads

The Aruch Hashulchan (ad. loc.) rules that heavily traveled railroads are defined as a Reshut Harabbim and thus railroad tracks must be excluded from an Eruv (though he maintains an unique view that a road is defined as a Reshut Harabbim only if it is the only major road in the area, see ad. loc. number 20; Rav Moshe Feinstein, Teshuvot Igrot Moshe, O.C. 4:87, dismisses this view as entirely unreasonable). This ruling is somewhat surprising since the Gemara (Shabbat 6a) states that a street must be sixteen cubits (approximately twenty eight feet) wide to qualify as a Reshut Harabbim and railroad tracks are not this wide. Indeed, the Chafetz Chaim (Sha'ar Hatziyun 345:18) following the Rambam (Hilchot Shabbat 14:1) rules that even an intercity road must be sixteen Amot wide to be classified as a Reshut Harabbim.

The Maharsham (ad. loc.) in fact rules that a railroad does not qualify as a Reshut Harabbim since they are not sixteen Amot wide and do not usually have 600,000 people traveling on it each day. Rav Yeshayahu Bloi (Netivot Shabbat 3:1 footnote 3) raises an additional point that since railroads are made only for train travel and are not accessible to pedestrians, it might not qualify as a Reshut Harabbim. He compares railroad tracks to a sea which is not defined as a Reshut Harabbim (Shabbat 6a) even if many ships transverse it. The Shulchan Aruch Harav (345:19) explains that even though the seas are traveled by many it is not defined as a Reshut Harabbim since it differs so much from the Diglei Midbar where there was ready access to all traffic. We may add that the Rav Bloi's point also applies to a limited access highway where there is no room for pedestrian traffic (and civil laws often prohibit walking along such highways).

I asked Rav Schachter if the train tracks that are used only by freight trains (and are not excluded from the Teaneck Eruv) constitute a Reshut Harabbim. He replied that it might not, since the Ramban's intercity road seems to refer to roads where people commonly travel. Indeed, the Mishnah Berurah (345:17) writes that intercity roads constitute a Reshut Harabbim since "many people are often there". Indeed, it is highly counterintuitive to label a road as a Reshut Harabbim if very few people travel on that road.

Ground Levels

Even for those who do not exclude an intercity road from an Eruv often must address the fact that the highways run above or below the local streets upon which the Eruv runs. Rav Yechezkeil Landau (Teshuvot Noda Beyehudah 1: O.C. 42) rules that if a community uses a seawall as a border for its Eruv and a bridge is constructed above the seawall, then the bridge constitutes a breach (Pirtzah) in the Eruv and the bridge must be excluded from the Eruv. This authority believes an Eruv on one ground level is ineffective for a ground level below or above it. If the other ground level is not excluded,

the entire Eruv is disqualified according to the Noda Beyehudah since the area is not completely enclosed and is thus exposed to an area that is not encompassed by the Eruv (Nifratz L'Makom Ha'Assur Lo). The Mishnah Berurah (363:118) and the Chazon Ish (O.C. 108:1-2) rule in accordance with the Noda Beyehudah, although Rav Moshe Feinstein (ad. loc.) rules that above ground Eruvs are effective for a second ground level. The Riverdale Eruv encounters this problem and Rav Willig created Tzurot HaPetach to ensure that the Henry Hudson Parkway, while not excluded from the Riverdale Eruv, does not cause a problem of Nifratz L'Makom Ha'Assur Lo.

Conclusion

It is sometimes difficult to fully exclude intercity roads from an Eruv. Some communities are blessed with the infrastructure to do so but in some communities the cost to exclude intercity highways is exorbitant, as some intercity highways run at ground level and are not separated from local roads with a fence. Communities which follow a lenient approach in regard to moderate sized intercity roads such as the Henry Hudson Parkway have ample basis for their practice in the rulings of Maharsham and Rav Moshe Feinstein and the practice in Yerushalayim Ir Hakodesh, although it is best (when practical) to exclude such highways from an Eruv. It is certainly advisable to effectively manage a problem posed by a highway running at a different ground level.