

A Sechirat Reshut for the Entire Country and Other Sechirat Reshut Challenges

As part of creating a community Eruv, one must rent the entire area from the local authorities. Sometimes this can prove challenging as some community leaders are somewhat resistant to the idea, which appears foreign to them. An idea occurred to me that could possibly solve this problem. Perhaps I could rent the entire country from President Trump, who has deep and extensive connections to the Orthodox Jewish community. For an explanation, we must first explain the concepts of Eruv Chatzeirot and Sechirat Reshut.

Eruv Chatzeirot

Even after a proper community eruv has been constructed and the area encompassed is thereby rendered a reshut hayachid, one may still not carry within it on Shabbat. Despite the fact that it is permitted on a Torah level to carry from one reshut hayachid (one's house) to another (in our case, the outside area enclosed by the eruv), Chazal prohibited this in many cases. Similarly, this rabbinic prohibition often precludes carrying from one household to another even within the same building. For example, this prohibition applies to an apartment building with at least two observant families. In such situations, it is required to make an eruv chatzeirot (referred to by Chazal as an eruv) in order to permit carrying.

An eruv chatzeirot (literally "mixing the courtyards") consists of every household in the reshut hayachid contributing some bread to the collective group of households. The bread is stored in one of the houses within the encompassed area. The Halachah then views the participants as if they all live in that one house, removing even the rabbinical prohibition against carrying (see Shulchan Aruch, Orach Chaim 366:1).

The Gemara (Shabbat 14b) records that King Shlomo instituted this requirement and a heavenly voice acknowledged the profound wisdom in it. The reason for this rule, as explained by the Rambam (Hilchot Eruvin 1:4), is that otherwise people would become confused about the laws of carrying. The process of the eruv chatzeirot is designed to familiarize the community with the laws of carrying. This goal seems to be a reason for the time-honored practice of storing the eruv chatzeirot in the synagogue (see Rama, O.C. 366:3). Rav Elazar Meyer Teitz told this author that his father, Rav

Pinchas Teitz (of Elizabeth, New Jersey), prominently displayed the eruv in a place within the synagogue where it was easily seen, noting that this was commonly done in Europe. Another advantage of storing the eruv in the synagogue is that community members have full access to the eruv, which is an important requirement (see Rav Moshe Shternbach's Teshuvot Vehanhagot 1:250).

In practice, we do not require every household in a reshut hayachid to contribute some bread for the purpose of the eruv. Instead, everyone in the community is granted a portion of the eruv by the process known as zachin le'adam shelo befanav, acquiring something on behalf of another person (see Shulchan Aruch, O.C. 366:9-10,15). This is accomplished by one person handing another the eruv food and the second person lifting the eruv into the air. It is lifted with the intention of acquiring the eruv on behalf of all present and future residents of the area encompassed by the eruv.

A blessing ("al mitzvat eruv") is recited prior to the procedure of acquiring the eruv on behalf of the community. Then, the formula of "behadain eruva" is recited, explaining the eruv's intended purpose (see Shulchan Aruch, Orach Chaim 366:15).

Sechirat Reshut

The procedure of eruv chatzeirot is effective solely for Jews who believe in the Oral Law and thus believe in the efficacy of an eruv. However, one must rent the apartments, homes, and common areas (such as streets and parks) from every non-Jewish and non-believing Jewish residents of the reshut hayachid. This procedure is known as sechirat reshut.

A Communal Sechirat Reshut

Renting every non-Jewish house within the tzurot hapetach is a virtually impossible task to accomplish in a community eruv. Fortunately, Halachah provides an alternative method of performing the sechirat reshut (see Shulchan Aruch, O.C. 391:1, based on Teshuvot Rivash number 710). The Jewish community may rent the entire enclosed area from the head of the city (sar ha'ir) or from one to whom this leader has delegated his authority. The Shulchan Aruch rules that the head of the city has the halachic ability to rent out not just the public property within the tzurot hapetach, but also the homes of its residents. His ability to rent out private homes stems from his

right to quarter soldiers and military equipment in those homes during a time of war without consulting the residents.

Communal Sechirat Reshut in a Democracy

The United States Constitution (Amendment 3), however, forbids quartering soldiers under most circumstances. This places the Sechirat Reshut in a democracy into grave doubt. In fact, Rav Kenneth Auman of Brooklyn, New York informs me that the Satmar Rebbe was willing to create an Eruv in the Williamsburg section of Brooklyn for the Shabbat of Sukkot, were it not for the problem of making a community wide Sechirat Reshut in a democracy. Rav Yosef Shalom Eliashiv is also quoted (The Laws of an Eruv page 156) as seriously questioning the validity of a community wide Sechirat Reshut in a democracy.

Nonetheless, Rav Zvi Pesach Frank (Teshuvot Har Zvi Orach Chaim 2:17) rules that a Sechirat Reshut in a democracy is even more valid than one conducted with a totalitarian regime. A government that is (in the iconic words of Abraham Lincoln in the Gettysburg Address) “of the people, by the people and for the people” is indeed the people’s government. Thus, a Sechirat Reshut from a government leader is fundamentally a rental conducted by the official on behalf of the people. It is for this reason, rules Rav Zvi Pesach, that the sechirat reshut need not be renewed when a new leader is installed in office (as we explain later). Rav Hershel Schachter and Rav Moshe Heinemann cite Rav Moshe Feinstein as also permitting a sechirat reshut in a democracy.

Tikvat Zechariah (pp. 39-40), discussing the possibility of constructing an eruv in St. Louis in the 1890s, rules that a city government in America does have the right to lease private homes for sechirat reshut. He reasons that local governments may search and inspect private homes, in addition to maintaining the right to expropriate private land for public use (eminent domain).

Others, including Rav Hershel Schachter (in a lecture at Yeshiva University), strongly question this reasoning. They point out that the right of eminent domain is rarely used and is quite difficult to apply. According to their opinion, it is forbidden to carry on Shabbat (even within an eruv) from one's home to the private property of a non-Jew or non-observant Jew.

Nonetheless, they acknowledge that the mayor and police do possess the authority to close the public areas of the city.

Rav Mordechai Willig told me that in his assessment the basis for a Sechirat Reshut in a democracy is weak. Although he created and serves as the Halachic authority for the Riverdale Eruv, he refrains from using any community Eruv. I even saw Rav Willig remove his watch before leaving his home to walk into an area encompassed by an Eruv under his own auspices! Rav Willig's reservations about the validity of a sechirat reshut in a democracy seems to be a major reason why he refrains from using a community Eruv. Common practice in the Orthodox community, however, is to rely on sechirat reshut performed with the local government officials.

With Which Government Official Should the Sechirat Reshut be Performed?

Identifying the appropriate authority to lease the area from is challenging (see Mishnah Berurah 391:18 and Aruch Hashulchan Orach Chaim 391:4). In order to avoid this problem, rabbis often perform sechirat reshut from a number of local authorities, such as the mayor and the police chief. A particularly interesting situation occurred when Congregation Keshet Israel of Washington, D.C. established an eruv for the community. Due to the ambiguous nature of Washington's municipal authorities, the community performed sechirat reshut from United States President George Bush and Washington Mayor Marion Barry, along with the heads of the police and city council.

Rav Mordechai Willig told me that he prefers to use the chief of the fire department to perform a Sechirat Reshut as the fire department enjoys the right to enter a home without warning in case of a fire emergency. Rav Moshe Heinemann mentioned (in a talk delivered to a convention of the National Council of Young Israel rabbis) that at the insistence of one of the local Rabbanim he also conducted a sechirat reshut with the governor of the State of Maryland, when he created the community Eruv in Baltimore.

Rav Zvi Lieberman told me that when he created the Eruv for the Edgware section of London he conducted the sechirat reshut with the representative of the Queen of England for his area, in addition to other government officials. Rav Lieberman told me that the land in England is formally under the control of the queen and thus conducting the sechirat reshut with the

representative of the queen to Edgeware further strengthens the validity of the Eruv.

When expanding a community eruv, care must be taken to ensure that the sechirat reshut includes the expanded areas. It is for this reason it is worthwhile renting the entire area from the government official rather than the area encompassed by the borders of the Eruv.

Once when inspecting a community Eruv I discovered that a tiny portion of the eruv juts into the neighboring town from which a sechirat reshut was not performed. This disqualified the entire eruv since the eruv is Nifratz L'Makom HaAsur Lo, exposed to an area in which it is forbidden to carry. It is for this reason I prefer conducting a sechirat reshut with a county executive. In this manner one most often avoids the risk of overlooking a town that unexpectedly juts into the area encompassed by an Eruv. Both Rav Schachter and Rav Willig permit performing a sechirat reshut with a county executive. I know of at least six counties in the United States that were “rented” in such a manner.

Expiration of a Sechirat Reshut

In addition, a community sechirat reshut should not be allowed to expire¹. Unfortunately, I have encountered more than one community where the local Rabbanim unwittingly let the community's sechirat reshut expire. When conducting the sechirat reshut for the greater Teaneck Eruv I rented the area for twenty years (in conformity with Rav Schachter's standards²; other Poskim permit a Sechirat reshut of a much longer duration). In addition, I stipulated that the sechirat reshut would automatically renew in case we forgot to update the sechirat reshut which expires midnight June 30, 2016. Rav Willig told me that he thought this would be effective as a backup in case of failure to rent before July 2036.

Many authorities require renewing sechirat reshut when the non-Jewish official from whom it was performed leaves his office. The Netivot Shabbat (37:28 and notes 96-99) cites these authorities, but he argues that sechirat reshut remains effective in democracies even when the government changes. He reasons that a newly elected government is bound by agreements made

¹ See the shocking revelation reported in Techumin 37:23 footnote 23.

² Israel's Chief Rabbinate also conducts a sechirat reshut for a period of twenty years (Techumin 37:23). For further discussion regarding the term of the sechirat reshut, see Mishnah Berurah 382:68.

by its predecessors. In practice, Jewish communities today usually do not renew sechirat reshut every time the town government changes (also see Mishnah Berurah 382:26 and the aforementioned Teshuvot Har Tzvi, Orach Chaim 17), although Rav Mordechai Willig informs me that he makes an effort to renew the sechirat reshut for the Riverdale, New York Eruv when there is a change in local government leadership (Rav Willig serves as the Rav of the Young Israel of Riverdale).

Rental of an Entire Country

Now we are ready to discuss the question of renting the entire country from the United States president. Rav Willig's response was to investigate as to whether the federal government enjoys the right of eminent domain and whether the federal government enjoys the right to enter people's houses if they have an appropriate warrant. These are the two bases of how a sechirat reshut could work in a democracy.

Upon looking into these matters I discovered that there is no doubt that the federal government enjoys the power of eminent domain as made clear by the following authoritative website <https://www.justice.gov/enrd/history-federal-use-eminant-domain>. The following authoritative website, in turn, makes it clear that the federal government enjoys the right to enter houses after obtaining a warrant <https://www.fbi.gov/resources/victim-assistance/a-brief-description-of-the-federal-criminal-justice-process>. Thus, it would seem that the President of the United States as the head of the federal government enjoys the Halachic right to rent the entire country. Indeed, in Israel, the chief rabbis rent the entire country from both the Minister of the Interior, the Minister of Defense and the national head of the police. Interestingly, the rental was not made from the Prime Minister.

However, when I presented this idea to Rav Schachter he did not endorse the idea. Rav Schachter thought that, unlike a mayor, chief of police or county executive the president has little to do with the day to day functioning of a city or a county and thus not qualified (or perhaps overqualified) to conduct a sechirat reshut. We may add that even though Israel's chief rabbinate rents the entire country from the government, one cannot compare the United States and Israel since the United States is vastly larger and has a dramatically higher population. Thus, the Israeli officials

have much more involvement in the running of the area than the American President and even cabinet ministers.

Conclusion

There are also practical considerations (“Mah Yomeru HaGoyim” and Haseir Sone’Einu UmKatregeinu”) that make it unwise for the Jewish community to “rent” the entire country from the president. Thus, regarding this idea we apply the wise words of the Gemara (Pesachim 22b) ”K’Sheim Shemekabeil Sechar al HaDerishah Kach Mekabeil Sechar Al HaPerishah”, just as reward is granted for the investigation so too is reward extended for withdrawing a proposal when it is appropriate to do so.

Postscript - Foreign Embassies Within an Eruv

Muammar Gaddafi’s September 2009 visit to New York raised a serious question in regard to the validity of the Englewood, New Jersey Eruv. The Libyan Ambassador to the United Nations resides in the heart of the Englewood Orthodox Jewish community. During the summer of 2009, in anticipation of Gaddafi’s possible visit to the Libyan property in Englewood in September, extensive work was done on the property. The fences and gates that surrounded the property were temporarily removed, raising a serious question concerning the validity of the Englewood Eruv. The fences were not utilized as part of the Eruv – what could have the problem have been?

The Netivot Shabbat (chapter 37, note 93) notes that all would agree that the mayor and police cannot rent out a foreign embassy located within a city, as international law recognizes it as sovereign territory of the nation it represents. Thus, according to this opinion it would be forbidden to carry into a foreign embassy even in an area encompassed by an eruv, such as Jerusalem or Washington, on Shabbat.

Prior to the summer of 2009 the Libyan property did not pose a problem for the Englewood Eruv since it was fenced in and was thereby excluded from the Eruv. However, when the fences came down in 2009, the Englewood Eruv became “exposed” (Nifratz L’Makom Assur) to the Libyan property. This meant that the rabbis of Englewood would have had to conduct a sechirat reshut with Muammar Gaddafi or his representative in order for the Englewood Eruv to be valid!

Seeing that it was highly unlikely that we would be able to obtain the cooperation of Libyan officials, I (in my role as the Rav HaMachshir of the Englewood Eruv) consulted Rav Mordechai Willig, the Poseik for the Englewood Eruv. He told me that he confronted the same issue with the residence of the Russian ambassador to the United Nations located within the Riverdale Eruv.

Rav Willig informed us that he consulted with Professor Louis Henkin, son of the great Poseik Rav Yosef Eliyahu Henkin, who was a world renowned expert on international law. Professor Henkin explained that foreign embassies are not technically defined as foreign territory. Under normal circumstances, local authorities grant the embassies a great deal of autonomy as a courtesy. Thus, police would not usually enter a foreign embassy. However, in case of a serious emergency such as a fire, local officials do enter embassy property even if the foreign representatives protest such entrance. Local authorities would not be able to do so if the embassy area was truly foreign territory. Attorney Michael Wildes, formerly the mayor of Englewood, confirmed (in a personal conversation) that this is accurate and current information.

Conclusion

Embassy property is included in the sechirat reshut granted by the local authorities, since it is not technically defined as foreign territory (at least in the United States; it might differ elsewhere, such as in Israel where the author of Netivot Shabbat resides). Accordingly, the removal of the fences on the Libyan property in Englewood did not impinge on the validity of the Englewood Eruv and no separate sechirat reshut with Libyan officials was required.