

Critique
of
“*Eruvin* in Brooklyn”

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I have reviewed the booklet “*Eruvin* in Brooklyn – An Overview of the Pertinent Halachic Issues”¹ as requested. I must admit that it leaves me with a sense of ambivalence. On the one hand, it is nice to know that there are those who seek to enhance not only the material, but also the spiritual, lot of the community. The construction of an *eruv*, where permissible, would certainly add to *oneg Shabbos*. It might serve, too, to minimize *chillul Shabbos* among those who, in any event, would be (י"ן) carrying. On the other hand, fine intentions alone cannot will into existence a more favorable reality. The facts on the ground present numerous obstacles to the facilitation of an *eruv*. Sadly, those facts have been largely ignored or explained away as trivial considerations of little importance. This leaves the uninformed bystander with the erroneous impression that there is a sound halachic basis for the construction of an *eruv* in Brooklyn. In the end, the hazard which this booklet presents far outweighs the obfuscation its absence might have engendered. Better ignorant refrain than an enlightened participation in folly.

Considering the aforementioned, and in earnest attempts to restore equanimity in this matter, I have agreed to critique this booklet in a linear fashion. Wherever deemed expedient, a footnote has been inserted to the actual booklet text in which a necessary clarification is offered. This means that the critique can only be fully understood when read in conjunction with the booklet. I should add that only a complete and careful reading of the entire critique will yield a proper understanding of its full intention.

I would like to commend the writers of this booklet for its lucid style and orderly composition. It is easy to read and may serve as a good introduction to the difficult laws of *eruv*. But there is an overarching flaw which taints their entire endeavor, their supporters, their benefactors, and their proponents. In the spring of 1962, a group of the most preeminent *halachic* authorities in the United States gathered to discuss the plausibility of an *eruv* for Manhattan. The meeting was chaired by HaGaon R' Aharon Kotler zt"l, in the presence of HaGaon R' Moshe Feinstein, HaGaon R' Yaakov Kamenetsky, and HaGaon R' Eliyahu Henkin zt"l among others. While there was (probably) no unanimity of opinion concerning the issue from an academic standpoint, an absolute consensus was reached toward an *halachic* prescription. They publicly declared that “it is impossible under any circumstances to erect an *eruv* in Manhattan and that it is forbidden to carry even after all the improvisations that have or will be implemented by any rabbi(s).” R' Moshe, who was a member of that convocation, maintained that although that prohibition was issued only with regard to Manhattan, its relevance extended to the whole city of New York, minus the clearly defined exceptions, i.e. Queens (Kew Gardens Hill) etc. The attempt to construct an *eruv* in Brooklyn flies in the face of that rabbinic consensus. This flagrant disregard for the sages of the past generation is unacceptable and inexcusable. If this was the only reason to oppose an *eruv* for Manhattan, Brooklyn, etc., it would be ample – and mandatory for all *bnei Torah*. The cities of Chicago and Los Angeles, with populations of approximately three million each,

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may very well construct an *eruv* if their *rabbanim* conclude *halachic* plausibility. That plausibility may well conflict with some of the *halachic* concerns of the sages who issued the 1962 ruling. In the cities of Chicago and Los Angeles, there was never any ruling; the *rabbanim* there will arrive at their *p'sak* through the standard channels of *halachic* formulation. But New York City already has its ruling. It must not be ignored!

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Page 3 #1: “[H]e commented on how someone who was obviously being stringent in *halachos eruv* by not carrying was at the same time diminishing the *mitzvah* of *kibbud av*.”

It is the nature of this booklet to advocate wholly for the permissibility of an *eruv*. If one is to accept the arguments put forth, it follows – directly – that there is no room at all to oppose the *eruv*. Rather, its accomplishment is a great *mitzvah*. In fact, the very end of this booklet finishes with that conclusion. In such a light, stringency is nothing other than self-destructive spiritual folly. Unless I may be faulted with too meticulous a reading, it appears, then, that from the outset a subtle insinuation regarding dissenters is suggested: Surely they must be ignorant! This is both unfair and one-sided.

Page 5 #2: “ומי לנו גדול ממה”ק האר”י זצוק”ל שמבואר בשער הכוונות שהיה נושא הטלית והחומש מביתו ולא היה מקפיד לחקור בענין העירוב הנעשה בצפת נעשה כהוגן.”

The implication is that no one has the right to question the validity of an *eruv* once it has been erected. All this, however, is abundantly irrelevant. New York is not צפת, nor are the *rabbanim* of today comparable to the רדב”ז, the ב”י, or the מבי”ט. Furthermore, there was no reason for the אר”י to question the *eruv* of צפת whereas great *halachic* authorities have publicly forbidden the construction of an(y) *eruv* in New York City. So there is every reason to question its construction. Also, the אר”י did not question the *eruv* in צפת after it had already been constructed; our present situation deals with – precisely – the *halachic* basis for such a construction.

Page 8 #3: “Our *eruv* is not based on *halachic* leniencies”

This is untrue. See note to **Page 12 #7** where an immediate treatment of leniency regarding the physical dimensions of *reshus ha’rabbim* is employed.

Page 10 #4: “This is proof to what extent the people who are against *eruv* will go, to collect from disparate sources even if they contradict each other.”

I am unaware of any serious objection to the construction of an *eruv* on the basis of *mocheh l’sechiras reshus*. But the logic that sees a contradiction because of the “collection of disparate sources” is untenable. Different aspects of any argument may be accepted or rejected, without having to accept the entire thesis. So long as one does not both partially accept and partially reject the same aspect, or selectively accept two aspects of the same argument that are contradictory, one may find one point valid and the other not.

Page 11 #5: “Once the walls are *omed merubeh al ha’parutz* on three sides nearly all *poskim* maintain that the multitudes (*rabbim*) don’t negate the enclosure, *lo asu rabbim u’mevatlei mechitzta...*”

The citation of an additional 100 *poskim* would still render this completely beside the point. Granted, the *halacha* is not like ר’ יהודה; rather, לא אתו רבים ומבטלי מהיצתא. But if the *pirtzah* is more than 10 *amos* (maybe 16) that is another matter. In such a case many *rishonim* would say that the entire *mechitzah* is invalid. R’ Aharon Kotler spends much time in his קונטרס showing this to be the position of the רמב”ם. This changes the entire

complexion of the discussion for so many of the streets in New York City – e.g. Ocean Parkway, Nostrand Ave., etc. – are so constituted.

Page 11 #6: “Since the requirement of *dalsos* is *me’d’rabbanan*, we can be lenient”

This is again a leniency, albeit of another nature.

Page 12 #7: “As a *sniff l’heter* there are *poskim* who maintain that our streets themselves, even those that are very wide, would not meet the criterion of *reshus ha’rabbim*...”

The true nature of this work is now clearly exhibited. A *sniff l’heter*? We are dealing here with a *s’fek d’oraysoh* which is always *l’chumrah*! And not just any *d’oraysoh*, but one of *chillul Shabbos*! If this alone was the objection to the *eruv*, it would be more than sufficient grounds for opposition! Note that although it is not here revealed, R’ Moshe Feinstein objected to all of these points. For instance, the point that streets are made for cars and not people, and therefore are not a legal part of a רה"ר, is complete nonsense! Chance a guess at who in fact is driving these cars. Monkeys, baboons, orangutans – of course, people! Failure to disclose to the reader R’ Moshe’s opposition is an act of dishonesty.

Page 12 #8: “So it would seem that if R’ Moshe had known our neighborhoods, he would agree that our communities would not be considered a *reshus ha’rabbim*”

This is not necessarily so. There is a fundamental distinction between a street that is itself covered, and a street that at a random juncture is bisected above its air-space, creating a covered area. The former is not דומה לדמ"ד and would therefore be invalidated as a רה"ר דאורייתא. The latter, on the other hand, would not.

Page 12 #9: “Rav Moshe stated that a roofed roadway doesn’t bisect an area of *shishim ribuy* into separate parts of less than *shishim ribuy*; on the other hand, he admits that if the street is roofed it’s not considered *mefulash*”

By comparison of these two sources, the reader is supposed to infer the obvious contradiction. In fact, there is no contradiction. As explained above (Page 12 #8), a roofed area above a street may pertain to that section of the street which it covers. Hence, when judging the street one may conclude that it is no longer a רה"ר. But R’ Moshe already established that regarding ששים רבוא we are not concerned with any particular street but, rather, with the volume of active traffic throughout the city as a whole. It cannot be denied, irrespective of the status of the street, that it contributes to the volume of activity within the city.

Page 12 #10: “Rav Ahron Kotler זי"ל states, that it’s accepted that for a street to be a *reshus ha’rabbim* it has to be *mefulash u’mechuvanim me’shar le’shar*”

This is perhaps the most blatantly inaccurate statement in this entire booklet, the result of either outright deception or intellectual dishonesty. R’ Ahron does indeed quote the מג"א who maintains such a position, but devotes much energy and considerable time to refuting its *halachic* accuracy. Many of the diagrams which accompany the קונטרס are there solely to illustrate the point that להלכה, a רה"ר need not be מכון at all. This point was

an absolutely integral component of R’ Ahron’s *halachic* synthesis upon which he assured (אסור) an *eruv* for New York City. His last words on the subject are “the truest position is as stated above, that מכון is unnecessary” (6:13).

Page 12 #11: “and has 600,000 people traversing it daily”

The requirement of “daily” is not in accordance with R’ Moshe’s own view. He was of the opinion that since the *Poskim* who stipulate the requirement of ששים רבוא, i.e. Rashi, Tosafos, Rosh, etc., do not mention “daily”, it is not a necessary condition. Even ששים רבוא over a few days a year would be enough. Even if there is not ששים רבוא at one time but as a sum total of the days’ traffic. But he concedes that, possibly, one may disagree with him and uphold a contrary position that would admit leniency on this point.

Page 15 #12: “Rav Moshe would have agreed that our streets have to be *mefulash u’mechuvanim me’shar leshar.*”

This is untrue. We have already mentioned R’ Ahron’s position (Page 12 #10) that מכון is not a necessary condition. R’ Moshe raised objections similar to R’ Ahron’s and arrived at the same conclusion. This is all explicitly stated in Iggeros Moshe (Orach Chaim 1:140).

Page 15 #13: “in the name of Rav Elyashuv, *shlita*, that *shishim ribuy* has to traverse the street”

That there are those who disagree with R’ Moshe is beside the point. What is important is that R’ Moshe disagreed with them! This means that even after knowing the מ”ב etc., R’ Moshe when considering New York City still upheld his own *p’sak*. Why shouldn’t we? Especially since *halacha ke’basrai*.

Page 15 #14: “This is why in Eretz Yisroel they maintain *eruv* in Yerushalayim and in Bnai Brak with all its connected neighborhoods even though these cities also have *shishim ribuy*”

This information is incorrect. The approximate populations of Yerushalayim and Bnei Brak is in excess of 650,000 and 200,00 respectively (although unverified).

Page 15 #15: “He told them that since his *chiddush* doesn’t clearly say in the *Achronim* and that the *Aruch Ha’Shulchan* wouldn’t agree with him, they could do as they saw fit.”

This is untrue. R’ Moshe never said that they “could do as they saw fit”. In fact, he was dissatisfied and unhappy about the whole idea. What he did say was that, since his position was not mentioned by the early *achronim* and was contrary to the *Aruch Ha’Shulchan*, that he could not give forth a “definite opinion” on the matter. Meaning that he would not come out against them.

Page 15 #16: “when it comes to issues concerning walking in a *reshus ha’rabbim*... we see that Rav Moshe maintained that we rely on the *heter* of *shishim ribuy* in all cities”

This is untrue. R’ Moshe (Iggeros Moshe, Orach Chaim 3:94, 5:19) was not discussing the laws of *eruv* and made mention of ששים רבוא only as it was tangentially

pertinent. He therefore did not see a need to clarify its intricacies. However it may be worth noting that he refers to “*makomos*” of ששים רבוא – places, rather than the more exact term “*derachim*” – streets, roads, etc. This may be an intentional allusion to his own thesis.

Page 16 #17: “*shishim ribuy* is dependent on the street”

This is untrue, as explained in our previous notes.

Page 16 #18: “the *Chazon Ish* allowed the establishment of an *eruv* in Paris (1936, population 2,829, 746) with the same exact conditions”

I am unaware of the circumstances which surrounded the *eruv* in Paris. But the information provided herein proves, ostensibly, that the authors of this work are not better informed. No meaningful point can be extrapolated from this case until all its specifics are revealed.

Page 16 #19: “This *Chazon Ish* is the *heter*, according to many *poskim*, for *eruv* in *Eretz Yisroel*”

This position of the *Chazon Ish* was rejected by R’ Ahron and R’ Moshe.

Page 17 #20: “Many detractors of *eruv*”

There are no detractors of *eruv* – a rabbinic precept promulgated by the court of *Shlomo Ha’Melech*. There are only those – as in this case – who feel that many cities do not meet the necessary conditions within which the construction of an *eruv* would be plausible.

Page 17 #21: “the population of the city would have to be five times *shishim ribuy*”

This is inaccurate.

Page 17 #22: “approximately 8.5 by 8.5 miles”

This is inaccurate.

Page 17 #23: “he nevertheless maintained that Brooklyn has the status of a *reshus ha’rabbim* because he was led to believe that a million people come in to the borough to work”

This is inaccurate.

Page 18 #24: “Had Rav Moshe known these facts he would concur that Brooklyn doesn’t have the status of a *reshus ha’rabbim* of *shishim ribuy*.”

This is untrue. Now, I shall endeavor to explain why this entire section is inaccurate and even untrue. R’ Moshe lived for 90 years and published 5 volumes of responsa without giving any (written) number for what today would constitute ששים רבוא. It wasn’t until his very last volume of responsa that he suggested a general, but not absolute, number. The reason for this was simple. The determination of a mobile ששים רבוא is the product of an educated estimate, subjected to fluctuating contingencies. What needs to be determined is: how many people must reside in a city for the human traffic to be

600,000? There is no fixed number! It depends on demographics, climate, the health of the inhabitants, and other factors. Even before giving a general numerical range, R’ Moshe says this explicitly: “It would seem as probable that not all cities are equal in this matter” (Iggeros Moshe, Orach Chaim 4:87). However, in that very responsum, he does formulate the ratio of inhabitants to traffic as 4:1 or 5:1. This translates precisely to 2,400,000-3,000,000. Brooklyn then (2.6 million in 1970) and now (2.5 million in 2000) would qualify for ששים רבוא. Queens then (1.9 million in 1970) and now (2.2 million in 2000) would not. R’ Moshe never, never said 3 million! He said (Iggeros Moshe, Orach Chaim 4:88) close to 3 million. This means anywhere from 2.4-3.0 million as he had clearly stated in his 1978 responsum (4:87). Keep in mind that at that time, the known census for the borough of Brooklyn was 2.6 million making his statement in full concordance with Talmudic locution – see Tractate Kiddushin 12a. As for the issue of population movement into and out of the borough, the entire point is meaningless as previously explained in the note to **Page 12 #11**. If it could and sometimes did accommodate traffic of ששים רבוא, that would be sufficient.

Page 18 #25: “This *gezeira* wasn’t considered a serious enough issue to impede the construction of *eruv* at that time.”

All the above mentioned is entirely wrong. No one is making any *gezeira!* For that, a *Sanhedrin* or the like is necessary. R’ Moshe had a concern, which he felt was talmudically sanctioned, that precluded the construction of an *eruv* in any megametropolis. That concern was based on the conceived perception of the unsuspecting and unlearned individual who resided outside the jurisdiction of the would-be *eruv*. It had nothing to do with the *eruv* itself! On the last point I would like to say the following: Reb Dovid Feinstein’s name is mentioned in this booklet a few times. But, all that is quoted in his name is anecdotal and must therefore be discounted. I would, however, ask this of those who see him as support for their cause: If what you are saying of Reb Dovid Feinstein is true, then surely he must be an ardent supporter of the *eruv* in Brooklyn? But to the best of my knowledge only the contrary is true.

Page 18 #26: “Rav Moshe *paskened* that an *eruv* as permissible in Kew Gardens, Queens”

Because Queens is mentioned in this booklet a number of times but is never accurately portrayed, it is worthwhile to set the record straight. Queens is both larger in size and smaller in population than Brooklyn – much smaller. Its population current to the time of the responsum (1974) was 1.9 million, making the number of people living in Brooklyn in excess of those living in Queens greater than the entire population of both Boston (589,141) and Denver (554,600). Queens was the last borough of New York City to be developed, hence the many cemeteries and park, e.g. Shea Stadium, Arthur Ash, etc. It is the most spacious of the boroughs. More importantly, Queens was incorporated into the city not as a whole unit, but as a set of disparate neighborhoods that was then absorbed. As a popular travel guide (2004 ed.) put it: “... a vestige to the borough’s past as a collection of unincorporated villages.” This also explains the open spaces between different neighborhoods, a phenomenon found nowhere else in New York City. This alone was the decisive factor upon which R’ Moshe permitted the Kew Gardens (Hills)

eruv, as stated in his 1974 *teshuvah* to R’ Peretz Steinberg. None of this has any relevance to Brooklyn.

Page 18 #27: “It’s undeniable that Rav Moshe *zt”l* was under the impression that independently Boro Park and Flatbush have populations of *shishim ribuy* (or 3,000,000 people according to his *chiddush*).”

This is bona-fide nonsense! New York City is comprised of close to 100 neighborhoods; Brooklyn, of nearly a score. Red Hook, Sunset Park, Bergen Beach, Bay Ridge, Carol Hills, Dyker Heights to mention just a few Brooklyn neighborhoods. Boro Park is one small part of one borough out of five, which comprises New York City. No marginally informed semi-educated individual would entertain the notion that, between the two neighborhoods of Boro Park and Flatbush, six million out of eight million New York City inhabitants reside. Certainly not a man as sagacious and responsible as R’ Moshe. All that R’ Moshe meant was that Flatbush/Boro Park are neighborhoods whose *halachic* identity extends beyond their geographic borders, encompassing the entire Brooklyn, as concerns the numerical reckoning for 600,000.

Page 19 #28: “Had Rav Moshe known these facts he surely would have allowed an *eruv* to be constructed in these communities to set them off from their borough just as he allowed an *eruv* to be erected in Kew Gardens, Queens.”

The issue of Queens and the populations of Boro Park/Flatbush have already been discussed in the two previous notes.

Page 20 #29: “As we have established previously, there is significantly less than 3,000,000 people in Brooklyn so the borough wouldn’t be classified as a *reshus ha’rabbim*.”

This is incorrect; see note to Page 18 #24.

Page 20 #30: “Following this line of reasoning, Rav Moshe *parkened* that an *eruv* was permissible in Kew Gardens, Queens because the community was only a small part of the borough”

This is incorrect; see note to Page 18 #26.

Page 20 #31: “the definition of *platya* is an unroofed area 16 *amos* wide that is a gathering place for commerce. It’s obvious that there isn’t an area in Brooklyn today that fits this definition”

If it is obvious that there is no *platya* in Brooklyn, then R’ Moshe’s raising of the issue was pointless. He was just outright wrong! This is the fifth or sixth time that this work, although claiming to explain R’ Moshe’s *shitah*, instead discounts it as erroneous. However, in truth there are many *platyos* all over New York City. Union Square in Manhattan and the Fulton Mall in Brooklyn Heights are two examples. As to the assertion that the Shulchan Aruch and the Achronim have not accepted this *shitah*, that, unfortunately, is untrue. This *shitah* is none other than the Rashba’s *shitah* – and none of the other Rishonim disagree. Had the writers of this work been familiar with the Nishmas

Adam (49:2), they would not have mistakenly penned these few lines. In general, I think they have not fully understood the concept of *platya*.

Page 22 #32: “Accordingly the *mechitzos* encircling Brooklyn are sufficient even if they had a *pirtzos esser*.”

It is true that such an opinion is maintained by many *poskim*. But it is far from unanimous. R’ Ahron devotes much space in his קונטרס to proving the veracity of the contrary position. Therefore, a primary concern of those who opposed the *eruv* was that Brooklyn remained a רה"ר since the *pirtzos* in its *mechitzos* were larger than 10 (or 16) *amos*.

Page 23 #33: “he told them that since his *chiddush* doesn’t clearly say in the *Achronim* and that the *Aruch Ha’Shulchan* wouldn’t agree with him, he didn’t want to give them an unequivocal *p’sak* and they could do as they saw fit.”

This is untrue; see notes to **Page 15 #15**.

Page 23 #34: “Rav Moshe ends this *tshuva* by saying that today we rely on the fact that there is almost not true *reshus ha’rabbim*.”

All that is stated in this paragraph and the following one is meaningless. R’ Moshe was not *matir*; rather, he felt that it should be *assur* but conceded that today it is generally done. He agreed to leave that practice because “generally” there is no רה"ר.

Page 23 #35: “Rav Moshe stated... that no *posek* would allow an *eruv* in Brooklyn because Brooklyn, unlike Manhattan, wasn’t surrounded by *mechitzos*. This isn’t pertinent today because as we have established previously Brooklyn does have *mechitzos*.”

This assertion is incomprehensible! R’ Moshe definitively states: “... regardless of all the improvements that certain rabbis have or will implement.” The language could not be clearer that the matter is closed for discussion.

Page 23 #36: “In addition, this addendum’s authenticity may be questionable since”

With this suggestion, the apex of absurdity has been achieved. R’ Moshe was alive and well when he published this addendum as a portion of his *sefer* in 1982. He never had a problem with it. No one ever had a problem with it. R’ Schwab considered it authentic, for he cites it authoritatively. I understand that the writers of this booklet have a big problem with it. But wishing it out of existence only exposes the great desperation that is driving their whole enterprise.

Page 24 #37: “we see [Rav Henkin] was a proponent of the Manhattan *eruv*”

R’ Schwab (*Maayan Beis Ha’shoeva, Va’yakhel*) lists R’ Henkin as a signatory in opposition to the *eruv* (Manhattan). I trust R’ Schwab.

Page 24 #38: “in order to establish the veracity of the 1979 kol korah”

I do agree that a *kol korah* by itself carries little weight. It is what is behind the *kol korah* that is important. In this case, it is public knowledge that R’ Moshe was against any *eruv* for Brooklyn or Manhattan.

Page 25 #39: “Why is the issue of *eruv* any different?”

The obvious difference is that in seeking to establish an *eruv*, one takes a position which is contrary to the status quo, whereas the cases cited, e.g. shavers, uphold the status quo. However, in no circumstance should physical harassment or verbal abuse be condoned.

Page 27 #40: “Even Rav Shimon Schwab *zt”l* who was against erecting an *eruv* in Manhattan at that time (1962), stated (*Mayan Beis Ha’Shoeiva*, p. 234) that hopefully the future generations would be strong in Torah and at that point, with great joy, everyone would take part in erecting *eruv* in all cities.”

This is a grossly inaccurate presentation of R’ Schwab’s views. He expressly states that no part of Manhattan, Brooklyn/Flatbush can affect the construction of an *eruv*. The oblique reference here cited is to all cities in which the implementation of an *eruv* **would be possible!**