

On Place and Space: The Ontology of the Eruv

BARRY SMITH, BUFFALO

On one walk he ‘gave’ to me each tree that we passed, with the reservation that I was not to cut it down or do anything to it, or prevent the previous owners from doing anything to it: with those reservations it was henceforth mine.¹

1. The Eruv is Up!

‘Eruv’ is a Hebrew word meaning literally ‘mixture’ or ‘mingling’. An eruv is an urban region demarcated within a larger urban region by means of a boundary made up of telephone wires or similar markers. Through the creation of the eruv, the smaller region is turned symbolically (‘halachically’ = according to Jewish law) into a private domain. Orthodox Jews may, so long as they remain within the boundaries of the eruv, and so long as these boundaries are undisturbed (the eruv is up!²), engage in activities that would otherwise be prohibited on the Sabbath, such as pushing prams or wheelchairs, carrying walking sticks, books, keys, gloves, or spectacles, wearing jewelry, including watches, and walking dogs.

There are eruvim in many towns and university campuses throughout the world. There are five eruvim in Chicago, five in Brooklyn, twenty three in Queens and Long Island, and at least three in Manhattan. There are also eruvim in Los Angeles, Berkeley, Venice,³ Gibraltar, Melbourne, Sidney, Toronto, and Vancouver. Different eruvim in the same city maintained by different Orthodox communities may intersect in different ways. The US Supreme Court is (like most other major US Federal Government buildings) located within the eruv of Washington DC.

To constitute an eruv, a given area of public space must be demarcated from its surroundings, either by wires or by some sort of wall or fence (or combination thereof), or by virtue of its topography (for example because it is all higher or lower than its surroundings). Because it is typically impractical to build continuous solid walls around a sizeable built-up area within an already existing residential zone, advantage is taken by eruv-

¹ Malcolm 1958, 31f.

² <http://laeruv.com/>.

³ <http://www.ghetto.it/>.

builders of the fact that Jewish law places no limits on the number of doorways which are permitted within a wall. This means, in effect, that eruv walls are allowed to consist entirely of doorways, which are themselves seen as consisting of two parts: vertical supports (for example utility poles) on either side, and a lintel, consisting for example of a cable or fishing line strung between them. And to accommodate a rule to the effect that the lintel, to constitute the horizontal completing plane of a doorway, must be positioned above the top of the doorposts, thin rods or tiny plastic strips called *lechis* are used to create surrogate doorposts attached onto the poles.⁴

Certain activities may still not be performed within the boundaries of the eruv because they are seen as being not in the spirit of the Sabbath. These include touching a pen, opening or carrying an umbrella, playing ball, riding a bicycle, or swimming. Similarly, there are certain types of location which cannot be included within an eruv, for example cemeteries, so that the outer boundaries of an eruv may surround exclaves which are not themselves private space when considered halachically.

Because of storms and other hazards, the eruv boundary must be inspected each week in order to ensure that it is still complete. This task is carried out, in the case of the University of Maryland eruv (whose website talks of a ‘metaphysical wall’⁵) through the use of laser beam technology.

In many cases, not all of those living within or near the area of an actual or proposed eruv will themselves be Orthodox Jews, and this has sometimes led to protests against the eruv creation. It is such protests which triggered the writing of this essay.

2. The Tenaflly Eruv

The proposal to establish an eruv in Tenaflly (New Jersey) gave rise to protests which culminated in a vote by the Tenaflly Council to have the US Supreme Court hear its case against the Tenaflly Eruv Association.⁶ Without permission from the borough, the association had attached *lechis* to utility poles, contravening a local ordinance prohibiting the placing of signs or advertisements in the public right of way without permission. (Such items as house numbers, political posters, and church signs had often

⁴<http://www.faqs.org/faqs/judaism/FAQ/04-Observance/section-43.html>. Last accessed September 20, 2006.

⁵ <http://www.umderuv.org>. Last accessed September 20, 2006.

⁶ Jewish Week. July 2, 2003.

been posted on the same poles without complaint.) In *United States Court of Appeals for the Third Circuit No. 01-3301, Tenaflly Eruv Association, Inc. v. Borough of Tenaflly* a brief from the Agudath Israel of America refers to ‘anti-Orthodox paranoia’, which saw what was, after all the creation of a ‘virtually invisible boundary line indistinguishable from the utility poles and telephone wires in the area,’ as variously threatening to destroy Tenaflly’s public school system, close its shopping malls on Saturdays, put the butchers at Grand Union out of business, lead to the establishment of many small synagogues and stores that cater to Orthodox Jews, turn all of the eruv-enclosed area into a private Orthodox ghetto, give non-Orthodox Jews an inferiority complex, and impose Orthodox Judaism on all of Tenaflly’s residents.

3. The Barnet Eruv

In 1992 the Orthodox Jewish community of Barnet, as part of its project to create an eruv, submitted a request for planning permission to erect some forty pairs of metal poles with strands of nylon fishing line stretched between them at a height of 10 meters. Ten years later, after many protests, permission was granted for the erection of the poles, allowing the creation of an eruv comprehending a six-and-a-half square mile area of North London, in which the portions of fishing line close off gaps in a boundary otherwise composed of already existing telephone lines stretched between wooden poles together with portions of railway fencing and walls of terraced housing.

The importance of this case turns not least on the kinds of objections raised by protesters. Some Orthodox Jews objected because they saw the restrictions on carrying as necessary to maintain social order. More modernist Jews objected because they feared ‘the re-creation of ghettos’.⁷ Most intriguing, however, are the arguments of secular liberals, who objected that the eruv impinges on their ‘human rights to freedom of thought, conscience, and religion’ and who proposed taking these objections to the European Court of Human Rights, which itself lies within the Strasbourg eruv.

⁷ Valins 2000.

4. The Outremont Eruv

In 2001 the proposal to establish an eruv in the Montreal neighborhood of Outremont gave rise to considerable public controversy:⁸

A dispute over barely visible fishing line that Orthodox Jews say is vital to the practice of their religion landed in court yesterday as the city of Outremont argued it cannot allow the six-metre-high filament to cross public land.

Opponents of the eruv argued that public property cannot be designated for the use of a particular group, and that Orthodox Jews ‘are able to practise their religion in their homes and do not need use of the streets as well.’ One secular group, the Mouvement Laïque Québécois,⁹ opposed the establishment of the eruv on the grounds that it runs counter to the separation of church and state. The group’s president asserted that public space must be kept free of all religious symbols in order to guarantee everyone’s freedom of religion. Establishment of an eruv, he said, ‘amounts to privatizing public space because the Hasidim consider the enclosed space their own.’ One municipal councilor asserted that the string in front of her home is ‘a constant reminder of a religious boundary across public space. Against my will, because of the location of my apartment, I find myself living in a territory identified with a religion that is not my own.’ Another Outremont resident said she feels excluded by the presence of an eruv: ‘I love everybody. I adore eating Jewish food. I love matzo ... But I want to live in peace.’

5. Ways of Worldmarking

Such liberal opponents perceive the eruv to be a challenge to ideas of secularism, the public–private divide, and enlightenment rationality. For them, the eruv seems to ‘symbolically stain space’¹⁰:

Eruv-believers would happily pass through their symbolic gateways in the streets, but everyone else would be compelled to do so without such a benefit, even if the compulsory passage through the Eruv structures is offensive to a person’s beliefs. (Letter to the Editor, Local London, December 5, 2000)

⁸ Graeme Hamilton, Montreal enclave, Hasidic residents fight ‘turf war’: Fishing line fence seen as encroaching on public land. National Post, June 7, 2001.

⁹ <http://www.mlq.qc.ca/>

¹⁰ Cooper 1996.

Recall that the creation of an eruv consists, in the worst case, in the erection of poles connected by a fishing line at a height which makes the fishing line itself invisible to passers by. Or it consists in the affixing of small plastic strips at a similar height to existing telephone poles. In many cases such creation consists in no more than the fact that certain existing items of street furniture are *deemed* by one group of residents to constitute the boundaries of a certain space. The protests by non-believers to these deemings and/or to the tiny adjustments to the physical landscape made by believers in order to bring about slight enhancements in their convenience in following religious laws seem, particularly when viewed from the perspective of the objectors' own belief-systems, to rest on some sort of mistake. But what is the nature of this mistake?

First, and most neutrally, let us address the question as to the real reason for these protests. Two potentially attractive answers to this question we shall, for different reasons, dismiss from the very start. A first answer would be that some of the protests derive from property owners within the vicinity of the eruv. A tempting practical argument is the fear that the creation of the eruv would lead to a decline in property value. In fact, however, the creation of an eruv is more likely to have a positive effect on property value, since it attracts potential Orthodox Jewish homebuyers to move into a given area (and the numbers of non-Orthodox who are even aware of the existence of an eruv is, outside the immediate circle of the protestors, typically very small). This may in the long term have the effect of bringing more Jewish residents into a given area, which leads us to a second set of arguments, which turn on the hypothetical presence of strains of antisemitism on the part of the protesters.

Analogous protests, as far as we know, were never directed against comparable deemings involved where Catholic or Protestant diocesan or parish boundaries are at issue. This is so, even in spite of the fact that such boundaries often ride roughshod over established political boundaries (as when, for example, the diocese of the Anglican Bishop of Gibraltar is deemed to comprehend not only the area of Gibraltar but also all of mainland Europe, Morocco, Iceland, and the territory of the former Soviet Union¹¹). Antisemitic beliefs may themselves give a special (symbolic, irrational) significance to the inserted *lechis*. Some might even go so far as to see the creation of an eruv as just the first step in bringing about a real

¹¹ While the *see* is in the City of Gibraltar, the *seat* is located at the Cathedral Church of the Holy Trinity in Crawley, West Sussex. See: <http://www.europe.anglican.org>.

physical enclosure, rather than a purely symbolic boundary. (From Sydney: “My wife and I were stunned to discover we were now living in a real, fair-dinkum Jewish Ghetto.”¹²)

We think, however, that there is a further common reason for the other kinds of protests, which turns on the presence of intellectual errors of a spatio-ontological sort.

X counts as Y in context C

Since the *lechis* and associated boundaries are for all practical purposes invisible, why is their presence disturbing to some non-Jewish residents of the relevant areas? Not, we presume, because the boundaries of the eruv are perceived by the latter as possessing any special halachical powers, but rather (if we interpret the protesters’ reasoning correctly) because the *lechis* and the associated connectors are *believed by others* to have such special powers. But how, then, should the existence of such beliefs bring it about that the relevant spatial regions are seen by non-believers as becoming transformed in such a way that ‘the compulsory passage through the Eruv structures is offensive to [a non-religious] person’s beliefs’.

In *The Construction of Social Reality* John Searle develops a sophisticated account of institutional facts as resting on special sorts of ‘status functions’ which certain physical objects (for example buildings, a region within a residential area) acquire in virtue of cognitive acts or states which are directed towards them in certain contexts.¹³ To this end Searle employs the formula *X counts as Y in C* (*X* = the physical object or region, *Y* = what it counts as, e.g. an eruv, *C* = the ontologically relevant context). He even applies this formula to a case which comes very close to that of the eruv:

Consider for example a primitive tribe that initially builds a wall around its territory. ... suppose the wall gradually evolves from being a physical barrier to being a symbolic barrier. Imagine that the wall gradually decays so that the only thing left is a line of stones. But imagine that the inhabitants and their neighbors continue to *recognize* the line of stones as marking the boundary of the territory in such a way that it affects their behavior. ... The line of stones now has a *function* that is not performed in virtue of sheer physics but in virtue of collective intentionality. ... The line of stones performs the same function as a physical barrier but it does not do so

¹² “Jews show the way forward towards racial/cultural/ethnic/religious/economic/social apartheid in Australia”, <http://www.adelaideinstitute.org/Australia/eruv.htm>.

¹³ Searle 1995.

in virtue of its physical construction, but because it has been collectively assigned a new status, the status of a boundary marker. (Searle 1995, 40)

The crucial phrase for our purposes here is: ‘imagine that the inhabitants and their neighbors continue to *recognize* the line of stones’ as marking a boundary. For the Tenafly and Barnet eruv cases reveal that the collectivity of those living in the vicinity of an eruv may associate divergent beliefs with such recognition, so that there is no common context *C* and no common set of status-function-imputing beliefs in relation to which we are able to understand the eruv and its boundary from the perspective of those involved. This problem is addressed in “The Construction of Social Reality: An Exchange”,¹⁴ which addresses the problems for the *X* counts as *Y* in context *C* formula which may be seen as arising through the existence of such conflicting belief systems.

The contested eruv is a case of the form:

X counts as *Y* in context *C* and *X* counts as *Y1* in context *C1*,

where neither *C* nor *C1* has priority over the other. Thus it is comparable to the case of an area *X* on the Indo-Chinese border that is claimed by India as Indian and by China as Chinese. *X* counts as Indian territory in India-friendly contexts, and as Chinese territory in China-friendly contexts. What is the correct account of the ontology of this piece of territory, on Searle’s account?

In his response to this question, Searle insists that the *X* counts as *Y* is ‘merely a useful mnemonic’ that is intended to remind us that institutional facts only exist because people are prepared to regard things or treat them as having a certain status and with that status a function that those things cannot perform solely in virtue of their physical structure. The creation of institutional facts requires that people be able to *count something* as being more than just what its physical structure indicates.

Searle’s idea is that the ‘counts as’ formula is in the end ontologically misleading, since it suggests that there are social objects in addition to the physical objects which serve as the targets of acts of status function imputation. In my “John Searle: From Speech Acts to Social Reality”¹⁵ I respond to this charge by arguing that we need, in fact, to distinguish two cases: the first, which receives almost all of Searle’s attention, is illustrated

¹⁴ Smith and Searle 2003a.

¹⁵ Smith and Searle 2003b.

by the examples of president, cathedral, dollar bill, where physical object and social object are indeed one and the same – exactly in keeping with Searle’s naturalistic inclinations. For these cases, certainly, talk of ‘social objects’ or ‘institutional objects’ is misleading to the degree that, as Searle fears, it would imply that there may be multiple social objects in addition to the physical object which serves as their ontological basis. The second case, however, is one in which there is no physical object to serve in this way as basis. These objects, which I have proposed to call ‘free-standing *Y* terms’ are illustrated by examples such as debts, permissions, rights, and so forth – examples which certainly fall within the scope of Searle’s theory of institutional reality, indeed they form its very heart, but to which he has addressed too little careful attention.

6. Cognitive Geometry

When Searle addresses the issue of disputes concerning institutional facts, for example disputes about the ownership of a piece of property, he points out, correctly,

that in order for us to even have an analysis of the nature of the dispute we have to understand that what is in dispute is the assignment of status functions. That is, [disputes] about the Nazi expropriation of property, or disputes about the ownership of a painting, or about the boundary line between two countries, are real life disputes among people competing for the right to assign status functions to objects. (Searle, in: Smith and Searle 2003)

Searle insists that such disputes ‘are not problems for philosophical analysis of the ontology of institutional facts, they are real life problems to be settled by judges and lawyers, and in the end perhaps by armies and political movements.’

Not so, however. For the very idea of *competing for the right to assign status functions* itself presupposes that this right – which is itself (presumably) a status function – would somehow have to have become assigned (presumably on some lower level in the *counts as* hierarchy). And then the question arises once more: by whom, and under what auspices? The respective roles of judges and political authorities on the one hand and of armies on the other in effectuating such lower-level assignments would itself therefore seem precisely to be a matter for philosophical analysis. Indeed, as concerns judges and political authorities, precisely the same problems will arise as in the mentioned cases as concerns *their* contested juris-

dictions; and if, as a last resort, we fall back on the role of armies in resolving such contests then we seem to be left only with a version of the formula *might is right*.

The eruv disputes are marked by some further philosophically significant differences from the disputes about ownership or sovereignty mentioned above, differences which seem to be significant even where eruv disputes were indeed settled, in the end, by judges and lawyers. For while one group is here indeed competing for the right to assign status functions to objects (more specifically to a certain region of space), the protest groups are competing for the right to prevent such assignment.

And so again the question arises: Why, given that the highly esoteric status functions in question pertain to matters which lie entirely outside the world in which the protestors live, do they protest so much? One answer to this question turns on what we might call the *confusion of space and place*.

An eruv, like a parish, a village, a neighborhood, a legal jurisdiction, and a military district, occupies space. But it is not identical with any region of space, and in particular it is not identical to the region of space through which non-eruv-believers pass when going about their daily business. The source of the confusion (the ontological running together of space and place) is associated with a deeply rooted assumption to the effect that there is one single division of space into subregions, corresponding to the standard geopolitical division, for example of a continent into countries, countries into states, states into counties, and counties into towns or communes, in a simple hierarchical nesting.¹⁶ Departures from such hierarchical nesting, even when we consider only the restricted dimension of political-administrative sovereignty, are more common than we are disposed to think. There are non-contiguous nations (including the United States) whose sovereign territory is broken up into separate pieces by the interspersed territory of other sovereign nations. The Belgian village of Baarle-Hertog, lying some 5 kilometers North of the Dutch-Belgian border in the region of Turnhout (and thus entirely surrounded by Dutch territory) is a conglomeration of 20 small parcels of land lying interspersed with the small parcels of land which form the Dutch village of Baarle-Nassau.¹⁷ Some parts of Baarle-Nassau are counter-exclaves, which is to say exclaves of the Netherlands surrounded by Belgian territory which is in turn surrounded by territory of the Netherlands. In the region of Cooch Behar in West Bengal, where India and Bangla Desh are topologically intervolved

¹⁶ Bittner and Smith 2003.

¹⁷ <http://ontology.buffalo.edu/smith/baarle.htm>.

in almost miraculously complex ways, we find examples of counter-counter-exclaves.¹⁸

There is, however, a powerful force in history which manifests itself in a desire by human groups for exclusive control over topologically compact and connected regions, so that, ideally at least, the world would be subject to a jointly exhaustive and pairwise disjoint partition into separate regions, with each one of which there would be associated one single ethnic (and religious and linguistic) group and within each of which there would reign one single sovereign.¹⁹ Traces of this force underlie the suspicion of gypsies in Western societies. It is manifested also in the still common political use of phrases such as ‘rape’ or ‘mutilation’ or ‘dismemberment of the motherland’, and in the willingness of people to give their lives in the cause of establishing borders having certain favored shapes or features (for example that they coincide with rivers or coastlines).

The ideal of a mathematically perfect tessellation is given concrete form for example in the rectangular shape of the boundaries of Colorado and Wyoming. It serves as one philosophico-ontological basis of the Peace of Westphalia and of Napoleon’s and Woodrow Wilson’s successive attempts to rearrange the map of Europe, and in its most extreme form it manifests itself in the doctrine of *Dar al-Islam* (literally: house of submission), through the realization of which the whole world will fall under the dominion of Islam.

The Treaty of Westphalia asserts that ‘the governments of sovereign states are free to structure their relationships with their citizens independent of all external interference’. The king has ‘all Rights...without any reserve...with all manner of Jurisdiction and Sovereignty,’ rights which are to obtain for all eternity. Yet even today, where nearly all national boundaries have been precisely demarcated along Westphalian lines, there remain a variety of overlapping jurisdictions, including the exclaves and counter-exclaves referred to above, and as well as a variety of temporary departures from the ideal of perfect tessellation (as for example when Camp Zeist in the Netherlands was declared from 1999 to 2002 a Scottish enclave, in order to allow the UK authorities to bring two Libyans accused of the 1988 Lockerbie bombing to trial on Scottish soil). But the latter are treated as exceptions. The intricate intervolvement of Belgium and the Netherlands in Baarle is impossible to detect on maps of the Low Countries – in part, we

¹⁸ Whyte, 2002.

¹⁹ Smith 1997.

may suppose, because it represents so considerable a departure from the post-Westphalian expectations of map-makers.

7. The Arguments Surveyed

Some of the objections brought forward by protestors are not addressed, or are touched upon only partially, by such spatio-ontological considerations. This applies in particular to the objections of the Orthodox Jews who see restrictions on carrying as necessary to maintain social order, and to the argument which sees the eruv as a ‘first step towards the re-creation of ghettos’, and which thus forecasts a causal effect from eruv creation. But we believe that all of the other objections rest in one way or another on the presupposition that multiple *places* cannot be associated with a single region of *space*, so that eruv creation would imply somehow exclusive use over a public region of space by one single privileged group.

These objections can be summarized as follows:

- a) the eruv impinges on the ‘human rights to freedom of thought, conscience and religion’ of the protestors,
- b) the creation of an eruv ‘runs counter to the separation of church and state’ (because it involves local council administrations in the approval process),
- c) public property cannot be designated for the use of a particular group,
- d) eruv creation ‘amounts to privatizing public space because the Hasidim consider the enclosed space their own.’
- e) public space must be kept free of all religious symbols in order to guarantee everyone’s freedom of religion,
- f) newly erected portions of the eruv boundary (strands of fishing line) are ‘a constant reminder of a religious boundary across public space.’

As to a), whence the impingement, if multiple activities can take place side by side within a single region of space? As to b) and c), the eruv does not, of course, restrict use of any region of public space to a single group. As to d), the deemings of the Hasidim have no causal powers (though they may be believed to have such powers except against the background of certain strange spatial-ontological views) and thus such deemings can (rationally) influence outsiders only if they share the beliefs which underlie them. As to e) and f), many church steeples are more prominent (and more conspicuously religious) than tiny strands of fishing line. Perhaps, then, the

crucial issue has to do with the fact that the church steeple is itself erected on private land. (One wonders what would be the likely reaction of our objectors to a proposal to buy a narrow circular strip of land around a given residential area, and to create a private eruv boundary, made of strands of fishing line, encircling the included region of public space.)

8. Appendix on Virtual Philadelphia

To see why we resist overlapping, interpenetrating segmentations of space, it is useful to imagine, finally, a Nozickian virtual reality machine²⁰ which generates three-dimensional visual and tactual simulations of landscapes and architectural works. So impressive is the illusion, that those inside the machine feel that they are experiencing ordinary reality.

We could even imagine a community of individuals connected to a single machine that coordinates their experiences in such a way that they seem to be moving around together, meeting in, say, Philadelphia, walking hand-in-hand along the sidewalk. A travel agent might advertise trips to Virtual Philadelphia. A real estate agent might offer to sell land there. Virtual Philadelphia might in all sorts of ways be *better than real Philadelphia*.

But if we discovered at some later point that we were living not in real Philadelphia but in Virtual Philadelphia, then we would be disappointed. Why? In Virtual Philadelphia you can live in the same building with Madonna. But so can one million other people. They can all show photographs of themselves in the elevator with Madonna and chatting with her baby.

And it is precisely this possibility which tells us what is missing from Virtual Philadelphia as opposed to its real counterpart. Living in the same building with Madonna, *really* living in the same building with Madonna – which means exerting real control on a quite specific region of space – is an achievement. It is something highly valued precisely because not everyone can do it. What space, the real space we share in common, provides is the possibility of such achievement, because it provides the presupposition of competition, and thus of economizing, of taking responsibility, and of overcoming the legal, political and physical obstacles which stand in the way of our manifesting our personality in *free acts which leave traces on reality*.

²⁰ Nozick 1974.

It is such acts which provide our lives with meaning,²¹ and the (to some) disturbing effect of the eruv comes about in part, I believe, because it seems to interfere with our freedom to exercise exclusive jurisdiction over the region of space in which we live.

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²¹ Brogaard and Smith 2005.