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### **The Jewish symbolic fencing at the intersection between religious freedom and planning law**

**SUMMARY:** 1. The Jewish tradition and the law: preliminary remarks - 2. The features of the *eruv* according to *halakha* and the legal grounds for its contemporary contestation - 3. The Australian Judge: the *eruv* as a group of assembled poles and wires - 4. The American Judge: the *eruv* as a tool intended to identify certain permitted activities - 5. The Canadian Judge: the *eruv* as a means of exercising the right to religious freedom - 6. "Human rights start in the neighbourhood" (E. Roosevelt).

#### **1 - The Jewish tradition and the law: preliminary remarks**

Jewish identity, belonging and religiosity have been at the centre of a legal debate for decades. If we only consider the example of the Italian '*intesa*' with the Jewish community - a covenantal agreement between the Italian State and the Union of Italian Jewish Communities - a long tradition of overlapping areas of interest emerges<sup>135</sup>.

The case of ritual slaughtering (*shechita*), the accommodation of dietary requirements for Jews belonging to the armed forces, as well as those attending funerals and burials<sup>136</sup> are just some of the important aspects which ensure that Italian law<sup>137</sup> and more generally, 'secular law'

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<sup>135</sup> See Law no. 101 of 8 March 1989, "Norme per la regolazione dei rapporti tra lo Stato e l'Unione delle Comunità ebraiche italiane" (at [www.presidentza.governo.it](http://www.presidentza.governo.it)).

<sup>136</sup> See respectively, Art. 5, 6 and 7, 15 and 16 of Law no. 101 of 8 March 1989, quoted supra.

<sup>137</sup> In general, see **F. LUCREZI**, *Appunti di diritto ebraico*, Giappichelli, Torino, 2015; **G. SACERDOTI**, *Gli ebrei e la Costituzione*, in *Il ritorno alla vita: vicende e diritti degli ebrei in Italia dopo la seconda guerra mondiale*, edited by M. Sarfatti, Giuntina, Firenze, 1998, pp. 47 and ff.; **G. TEDESCHI**, *Il diritto ebraico nell'Italia contemporanea*, in *La Rassegna Mensile di Israel*, no. of 1938, pp. 145-63; **A. MORDECHAI RABELLO**, *Introduzione al diritto ebraico: fonti, matrimonio e divorzio, bioetica*, Giappichelli, Torino, 2002); **M.P. GOLDING**, *Jewish law and legal theory*, Aldershot, Dartmouth, 1994. See also the special issue titled *Gli ebrei tra Legge divina e Stato nazionale*, in *Quaderni di Diritto e politica ecclesiastica*, no. 1 of 2019.



attempt to guarantee the Jewish community the right to religious freedom<sup>138</sup>.

On the other hand, however, certain issues continue to raise constant legal challenges, which are not only brought before the Courts of different jurisdictions but are also far from being dormant questions. Consider, for example, that in 2020 the Grand Chamber of the European Court of Justice delivered a judgement which required Jewish and Muslim butchers to stun animals before slaughtering them, in accordance with *kosher* and *halal* religious rituals<sup>139</sup>. In addition, some years ago, the district Court of Cologne (*Landgericht Köln*), Germany, declared non-therapeutic male circumcision a criminal assault and in violation of both the right to bodily integrity and self-determination of the child<sup>140</sup>.

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<sup>138</sup> On a general and introductory perspective, see among many, *Introduzione al diritto comparato delle religioni: ebraismo, islam e induismo*, edited by S. FERRARI, il Mulino, Bologna, 2008; S. FERRARI, *Lo spirito dei diritti religiosi: ebraismo, cristianesimo e islam a confronto*, Il Mulino, Bologna, 2002; J. WITTE, M.C. GREEN, *Religion and Human Rights: An Introduction*, Oxford University Press, Oxford, 2010; *Religious Human Rights in Global Perspective: Religious Perspectives* edited by J. WITTE, J. VAN DER VYVER, vol. 1, Kluwer Law International, The Hague, 1996; *Religious Human Rights in Global Perspective: Legal Perspectives*, edited by ID., vol. 2, Kluwer Law International, The Hague, 1996; N. DOE, *Comparative Religious Law: Judaism, Christianity, Islam*, Cambridge University Press Cambridge, 2018; J. NEUSNER, T. SONN, *Comparing Religions Through Law: Judaism and Islam*, Routledge, London; New York, 2002; D. NOVAK, *Jewish Justice: The Contested Limits of Nature, Law, and Covenant*, Baylor University Press, Waco, 2017; ID., *A Jewish Theory of Human Rights*, in *Religion and Human Rights: An Introduction*, edited by J. WITTE, M.C. GREEN, Oxford University Press, Oxford, 2011, pp. 27-41.

<sup>139</sup> Court of Justice of the European Union (Grand Chamber), *Centraal Israëlitisch Consistorie van België e.a. and Others v. Vlaamse Regering*, Case C-336/19, 17 December 2020 (at [www.curia.europa.eu](http://www.curia.europa.eu)) commented by A. PIN, *Corte di giustizia e tutela della libertà religiosa? Il caso della macellazione rituale*, in *Quaderni costituzionali*, no. 41(1) of 2021, pp. 238-241. The case followed two other decisions: Court of Justice of the European Union, *Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v. Ministre de l'Agriculture et de l'Alimentation and Others*, Case C-497/17, 26 February 2019 and *Iga van Moskeeën en Islamitische Organisaties Provincie Antwerpen, VZW and Others v. Vlaams Gewest*, Case C-426/16, 29 May 2018 (at [www.curia.europa.eu](http://www.curia.europa.eu)). For a comment on these judgments, see A. PIN, J. WITTE, *Slaughtering Religious Freedom at the Court of Justice of the European Union*, in *Canopy Forum*, 16 February 2021 (at [www.canopyforum.org](http://www.canopyforum.org)).

On food and religious freedom, see N. MARCHEI, *Cibo e religione*, in *Cibo e acqua. Sfide per il diritto contemporaneo*, edited by B. BISCOTTI, E. LAMARQUE, Giappichelli, Torino, 2015, pp. 105-12; E. STRADELLA, *Ebraismo e cibo: un binomio antico e nuove tendenze alla prova del multiculturalismo*, in *Stato, Chiese e pluralismo confessionale*, Online journal (<https://www.statoechiese.it>), no. 28 of 2019, pp. 1-40.

<sup>140</sup> Landgericht Köln (Cologne District Court), Judgment no. 151 Ns 169/11 of 7 May 2012 (at [www.legallibrary.crin.org](http://www.legallibrary.crin.org)). For a comment, see R. MERKEL, H. PUTZKE, *After*



These issues are well-known and stem from centuries of religious observance of the Jewish community and traditions, and are interwoven with a variety of secular laws across many legal systems globally. However, these are not the only issues.

Indeed, during the Shabbath and other religious holidays, Jewish law (*halakhah*) prohibits certain specific activities: among others, it forbids anyone from taking objects from someone's own home and carrying them to public places and spaces. This prohibition places certain severe limitations on observant Jews: for example, a person cannot go to the synagogue on *Shabbath* carrying medicines or other essential goods, and children, the elderly or people with disabilities are not able to leave their home, since they are prevented from using baby strollers, wheelchairs, walkers and so on<sup>141</sup>.

The *eruv* is a symbolic fence - a passageway or a doorway - that redraws and reinterprets the distinction between private and public property: it expands the area identified as the private domicile by converting symbolically the public space into a private one<sup>142</sup>. In this way, the area enclosed within the boundaries of the *eruv* is ideally transformed into a private-communal sphere, therefore, building an *eruv* not only permits the transportation of objects, but also alleviates otherwise significant restrictions imposed by the observance of Jewish law<sup>143</sup>.

Although the *eruv*, as described below, is almost invisible and unnoticeable, disputes regarding this discrete Jewish practice touch upon

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Cologne: *Male Circumcision and the Law. Parental Right, Religious Liberty or Criminal Assault?*, in *Journal of Medical Ethics*, no. 39(7) of 2013, pp. 444-49. On male circumcision, see also **A. LICASTRO**, *La questione della liceità della circoncisione "rituale"*, in *Stato, Chiese e pluralismo confessionale*, Online journal (<https://www.statoechiese.it>), no. 22 of 2019, pp. 1-40; **A. BORGHI**, *Appunti sulla circoncisione rituale*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 11 of 2019, pp. 1-27. Other issues relate in particular to marriage and divorce, on which see, among many, *Il matrimonio: diritto ebraico, canonico e islamico: un commento alle fonti*, edited by S. FERRARI, Giappichelli, Torino, 2006; **L. SAPORITO**, *La fatale attrazione tra diritto sacro e diritto secolare nel modello israeliano: la giurisdizione dei tribunali rabbinici in materia di matrimonio e divorzio*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 9 of 2018, pp. 1-25.

<sup>141</sup> **A.A. ISRAEL-VLEESCHHOUWER**, *Jewish Law and Space: Symbolic Fencing (Eruv), Public Presence (Parhesia) and Borders*, 15 August 2016, p. 7 (available on SSRN at <https://doi.org/10.2139/ssrn.2823809>).

<sup>142</sup> **C.E. FONROBERT**, *Installations of Jewish Law in Public Urban Space: An American ERUV Controversy*, in *Chicago-Kent Law Review*, no. 90 of 2015, p. 74.

<sup>143</sup> **A.A. ISRAEL-VLEESCHHOUWER**, *Jewish Law and Space*, quoted *supra*, p. 7.



a wide range of legal issues, such as property rights<sup>144</sup>. Most importantly, they involve certain religious claims that are perceived by many as a misappropriation of common and public spaces. From a more general legal standpoint, they also call into question, on the one hand, the duty of the legal system with regard to respecting, promoting, accommodating and tolerating religious diversity and practices; on the other hand, they relate to the State's principle of religious neutrality which, according to its most basic definition, requires that no preferential treatment is given to certain religious denominations at the expense of others<sup>145</sup>.

This essay selects a small number of decisions regarding the *eruv* that have been issued by some Courts operating within the common-law, legal orders of Australia, the United States and Canada. The selected case studies belong to State-Religion systems that are defined by slightly different characteristics in terms of constitutional guarantees of religious freedom. However, at the same time, they share the State's commitment to forms of religious neutrality in the public space, as well as the State's intention to achieve religious accommodation in both public and private circumstances.

Which categories drive the common-law Courts in their decision-making process as regards the *eruv*? Did the Courts define the *eruv* according to legal secular criteria or also according to Jewish tradition? How is the *eruv* ultimately defined through the eyes of the Australian, Canadian and the US judges?

This essay answers these questions and starts by defining an *eruv* according to the provisions of Jewish law and by identifying certain

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<sup>144</sup> It is important to understand that "unlike consideration of a new mosque, churches or synagogue, the establishment of an *Eruv* does not raise issues such as the impact upon noise and traffic; nor does it require specific zoning": **D. KNOLL**, *Protecting Religious Freedom and Places of Worship-The example of the Eruv*, in *Solidarity: The Journal of Catholic Social Thought and Secular Ethics*, no. 1 of 2017, p. 11.

The *eruv* has been studied by many. Beyond all the essays referenced in this paper, see also **M. RAPOPORT**, *Creating Place, Creating Community: The Intangible Boundaries of the Jewish 'Eruv'*, in *Environment and Planning D: Society and Space* 29, no. 5 of 2011, pp. 891-904; **R.Y.G. BECHHOFFER**, *The non-territoriality of an eruv: ritual bearings in Jewish urban life*, in *Journal of Architecture and Urbanism*, no. 41(3) of 2017, pp. 199-209; **ID.**, *The Contemporary Eruv: Eruvin in Modern Metropolitan Areas*, Feldheim Publishers, Spring Valley, New York, 2002; **L. ENDELSTEIN**, *L'erouv, une frontière dans la ville?*, in *Ethnologie française*, no. 43(4) of 2013, pp. 641-49; **M. LEVY**, *The eruv: An-other dwelling within the city*, in *Thresholds*, no. 20 of 2000, pp. 89-94; **N. LEWIN**, *Protecting Jewish Observance in Secular Courts*, in *Tradition: A Journal of Orthodox Jewish Thought*, no. 38(1) of 2004, pp. 95-111; **M. LEWYN**, *The Law of The Eruv*, in *Real Estate Law Journal*, no. 48(4) of 2020, p. 473; **C. LOCK**, *Negotiating the eruv*, in *Journal of Modern Literature*, no. 44(4) of 2021, pp. 198-205.



critical issues that its installation on public land may raise. After having introduced the topic and having depicted the legal framework, the essay subsequently analyses the case-law which has emerged in the Australian, United States and Canadian legal orders, with the aim of identifying the strengths and weaknesses of the legal reasoning of the Courts across the three jurisdictions. Finally, this work offers some closing remarks in light of the case-law considered and concludes that recognizing the *eruv* within the realm of religious practices, as the Canadian case shows, facilitates its accommodation on religious grounds.

## 2 - The features of the *eruv* according to *halakha* and the legal grounds for its contemporary contestation

Creating an *eruv* in modern cities can be very complex, due to the detailed requirements that *halakha* prescribes. The symbolic fence shall be at least 40 inches high (around 1 metre), without a roof and without any interruption. Therefore, the Jewish community is often obliged to ask the authorities for permission to fix some wires (*lechis*) along the city's power grid or street signs or, where walls, fences, creeks or other pre-existing urban elements are not sufficient, to install certain structures that allow the *lechis* to be affixed, thereby identifying the boundaries of the *eruv*<sup>146</sup>.

The involvement of the local authorities with secular jurisdiction is also essential for obtaining a legal measure that distinguishes the geographical area corresponding to the *eruv* as a *unicum* and grants the religious community, free of charge or for a modest fee, the right to use the urban facilities. The measure is functional to the establishment and operation of the *eruv* itself:

*"In order to create a valid eruv under Jewish law, a secular official with jurisdiction over the area in question must issue a ceremonial governmental proclamation 'leasing' the enclosed public and private property to the Jewish community for a small fee. Leasing is essential because it permits Orthodox Jews to treat a whole city, or the portion of a city that is enclosed in an eruv's space, as if it were a single household, symbolically converting the public domain into private domain"*<sup>147</sup>.

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<sup>146</sup> A.L. SUSMAN, *Strings attached: an analysis of the eruv under the religion clauses of the first amendment and the religious land use and institutionalized persons act*, in *U. Md. LJ Race, Religion, Gender & Class*, no. 9 of 2009, pp. 94-95.

<sup>147</sup> A.L. SUSMAN, *Strings attached*, quoted *supra*, p. 95.



The resolution obtained from secular authorities, therefore, expands the area identified as the private property and, in the eyes of Orthodox Jews transforms the public space into a private one. This is made possible thanks to the wires which, although almost imperceptible, are nonetheless crucial for *Sabbath* observance purposes<sup>148</sup>.

Both the involvement of the public authority and the use of public equipment, belonging to the public space for religious purposes, present certain critical elements.

Firstly, from a social point of view, the *eruv* is often perceived by its opponents as a “boundary-marking”<sup>149</sup> mechanism rather than an instrument that facilitates the integration of the community concerned. Often, there is the erroneous perception of creating a religious residential *enclave*<sup>150</sup>: this is often viewed with mistrust, as it is likely to generate a change in the city’s demographic distribution<sup>151</sup> by discouraging cohabitation between outsiders<sup>152</sup> and instead favouring the concentration of a religiously uniform population<sup>153</sup>.

From a legal point of view, despite its minimalist design, the *eruv* represents a microcosm<sup>154</sup> in which some of the most acute tensions

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<sup>148</sup> “To be precise, symbolic *Eruvs* depends on symbolically renting the actual, legitimate, ability of the government to enter and regulate”: **A.A. ISRAEL-VLEESCHHOUWER**, *Jewish Law and Space*, quoted *supra*, p. 7. The word *eruv*, in fact, means “combining” or “mixing together”: **R.Y.G. BECHHOFER**, *The non-territoriality of an eruv*, quoted *supra*, p. 199.

<sup>149</sup> **C.E. FONROBERT**, *Installations of Jewish Law in Public Urban Space*, quoted *supra*, p. 63.

<sup>150</sup> **A.L. SUSMAN**, *Strings attached: an analysis of the eruv*, quoted *supra*, p. 95.

<sup>151</sup> **M. SIEMIATYCKI**, *The Eruv as Contested Jewish Space in North America*, in *Oxford Research Encyclopedia of Religion*, 2017; see also **S. FERRARI**, *Religion in the European Public Spaces: A Legal Overview*, in *Religion in Public Spaces: A European Perspective*, edited by S. PASTORELLI, S. FERRARI, Routledge London; New York, 2016, pp. 139-58.

<sup>152</sup> **D. KNOLL**, *Protecting Religious Freedom and Places of Worship*, quoted *supra*, p. 11.

<sup>153</sup> “It is not simply a question of the construction of an eruv, rather it is the routinized and repetitive recognition of the boundary by its users and the vigilant maintenance required to keep it intact that maintain it and keep it alive. It is this perhaps that makes the eruv such a potent space, and explains why those opponents whose houses formed part of the eruv boundary were so vociferous in their objection to it”: **S. WATSON**, *Symbolic spaces of difference: contesting the eruv in Barnet, London and Tenafly, New Jersey*, in *Environment and Planning D: Society and Space*, no. 4 of 2005, p. 611.

<sup>154</sup> **M. RIEDEL**, *The difference a wire makes: planning law, public Orthodox Judaism and urban space in Australia*, in *International Journal of Law in Context*, no. 4 of 2020, p. 401. See also **A. WEISS**, *The Eruv: A Microcosm of the Shabbat Spirit*, in *Tradition: A Journal of Orthodox Jewish Thought*, no. 23(1) of 1987, pp. 40-46.



animating religious accommodation in the city's public space are fuelled<sup>155</sup>. On the one hand, there are the demands of those who, in the name of freedom *from* religion, do not wish to be associated with a religiously identified city neighbourhood<sup>156</sup>. On the other hand, since the *eruv* is installed on public land, the symbol questions the commitment of the State, the Government and other public authorities to religious neutrality<sup>157</sup> which, albeit with different constitutional canons, juxtaposes the three jurisdictions that this study places under the comparative lens<sup>158</sup>.

Finally, docket records indicate the existence of a dialectic issue within the Jewish community itself regarding the very notion of a 'religious symbol'. The opponents of the *eruv* (including non-Orthodox Jews)<sup>159</sup> generally qualify the imperceptible wires hanging along the city skyline as religious symbols<sup>160</sup>. In contrast, Orthodox Jews, who are interested in the *eruv*'s installation and maintenance, believe that they fulfil a more pragmatic rather than a cult-related need: to demarcate the area where certain activities are permitted<sup>161</sup>.

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<sup>155</sup> See for example **F. CHIODELLI, S. MORONI**, *Planning, pluralism and religious diversity: Critically reconsidering the spatial regulation of mosques in Italy starting from a much debated law in the Lombardy region*, in *Cities*, no. 62 of 2017, pp. 62-70.

<sup>156</sup> **M. SIEMIATYCKI**, *Contesting sacred urban space: The case of the Eruv*, in *Journal of International Migration and Integration/Revue de l'integration et de la migration internationale*, no. 2 of 2005, p. 257; **M. RIEDEL**, *Law and the construction of Jewish difference*, in *Journal of Law and Society*, no. 2 of 2021, p. 166.

<sup>157</sup> **M. RIEDEL**, *The difference a wire makes: planning law, public Orthodox Judaism and urban space in Australia*, in *International Journal of Law in Context*, no. 16 of 2020, pp. 403-421.

<sup>158</sup> For Australia: *Constitution of Australia, Section 116* (1901); for the United States: *Constitution of the United States of America, First amendment* (1789, 1791); for Canada: *Canadian Charter of Human Rights and Freedoms, Section 2* (1982).

<sup>159</sup> **M. RIEDEL**, *The difference a wire makes*, quoted *supra*, p. 14.

<sup>160</sup> **E. KORNFELD**, *The Eruv: An Accommodation of Free Exercise for Orthodox Jews or an Establishment of Religion?*, In *Seton Hall Law School Student Scholarship*, 2021, p. 2.

<sup>161</sup> Moreover, in some way, the *eruv* creates a tension that has also the effect of reiterating very ancient prejudices: **S. WATSON**, *Symbolic spaces of difference*, quoted *supra*, p. 611. **M. RIEDEL**, *The difference a wire makes*, quoted *supra*, p. 401: "As a form of public religiosity, the *eruv* serves as a microcosm in which broader concerns about religious and cultural diversity in Western societies play out, including the contested place of religion in public space, the challenges of planning in multicultural cities and the spatial dimension of the formation of collective identities. The *eruv* makes visible the difference of the Jewish neighbour - a difference that some residents do not wish to be confronted with and that they seek to contain through recourse to the law".



### 3 - The Australian Judge: the *eruv* as a group of assembled poles and wires

After having introduced the theme, it is now possible to delve into a comparative reading of the selected case-law, illustrating certain significant case studies, triggered either by the desire to erect an *eruv* in the city or by the dismantling of an existing *eruv* ordered by the public authorities.

One of the most controversial attempts to install an *eruv* occurred in the suburban area of Sydney (St Ives): the city had rejected several requests filed by the Jewish community for the installation of poles, wires and other necessary elements. The community had, therefore, taken the matter to the Courts to obtain a judicial review of the refusal issued by the city authorities<sup>162</sup>.

Although in the case of *The Northern Eruv v Ku-ring-gai Council*, the Court dismissed the appeal on procedural grounds, the judgement is noteworthy for having presented the *eruv* within the framework of urban and planning law. The Court, in particular, adopted a strictly materialistic approach<sup>163</sup> on the premise that the *eruv* was a set of “physical features”<sup>164</sup>, made by distinct components, individually identified and, moreover, subject to different legal regimes depending on the specific place where each element has to be installed - on private or public land, on street parcels, fields or in city centres.

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<sup>162</sup> Land and Environment Court of New South Wales (Australia), *The Northern Eruv v. Ku-ring-gai Council*, no. [2012] NSWLEC 1058, 16 March 2012; Land and Environment Court of New South Wales (Australia), *The Northern Eruv Incorporated v. Ku-ring-gai Council*, no. [2012] NSWLEC 249, 30 November 2012 (at [www.austlii.edu.au](http://www.austlii.edu.au)).

<sup>163</sup> “The court thereby took a strictly material approach to the poles as individual developments, without considering the symbolic meaning of each of the poles as contributing to the whole of the *eruv* space”: M. RIEDEL, *The difference a wire makes*, quoted *supra*, p. 411.

<sup>164</sup> Land and Environment Court of New South Wales (Australia), *The Northern Eruv Incorporated v. Ku-ring-gai Council*, quoted *supra*, para 8: “According to orthodox Jewish law, the boundary of an *Eruv* must be an unbroken line defining that area, made up of either physical partitions or virtual partitions. A variety of physical features can mark the boundary of an *Eruv*, including existing power poles, utility cabling strung between those poles, fences, walls and the like. The intent is to identify and use these elements in order to form a circle or perimeter identifying the boundary of the *Eruv*”.





The *eruv* planned in St Ives, being subjected in part to the *Roads Act 1993*<sup>165</sup> and in part to the *Environmental Planning and Assessment Act 1979*<sup>166</sup>, required each owner affected by the installation of some element to apply individually to the relevant authorities. Only if all applications were successful, would it have been possible to constitute the *eruv* as a whole. In the present case, since only one application had been rejected, the procedure ceased to exist<sup>167</sup>:

*It is not possible for nine individual development applications to create the Eruv. That requires separate approval and is outside the power of this Court as to do so must be a matter that is the subject of the appeals. For the reasons stated above, that is not the case. Therefore, I determine that the Court cannot grant consent to the works within the road reserve that include the attachment of conduit to the 574 poles, the intermittent wire connections or the replacement of the pole in Lynbara Avenue*<sup>168</sup>.

The failure to recognize the symbolic dimension of the *eruv* as a *unicum* and the religious nature of the demands fostered by the Jewish community<sup>169</sup> are symptomatic of the difficulties that the Court encountered in carving out, among the applicable urban planning regulations, sufficient space for potential religious accommodation<sup>170</sup>. This

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<sup>165</sup> *Roads Act 1993* (updated to 23 September 2020), no. 33 of 1993 (at [www.austlii.edu.au](http://www.austlii.edu.au)).

<sup>166</sup> *Environmental Planning and Assessment Act 1979* (updated to 22 June 2021), no. 203 of 1979 (at [www.austlii.edu.au](http://www.austlii.edu.au)).

<sup>167</sup> **D. KNOLL**, *Protecting Religious Freedom and Places of Worship*, quoted above, p. 17: "Because an Eruv involves different properties, a series of development applications were made in the first northern Eruv case. The *Eruv* could only be established if all of the applications were approved. Yet the Court determined that the applications were not part of an integral whole. They could rise and fall separately. All but one of them was successful, but because one was unsuccessful, the Eruv was not established".

<sup>168</sup> Land and Environment Court of New South Wales (Australia), *The Northern Eruv Incorporated v. Ku-ring-gai Council*, quoted above, para 73.

<sup>169</sup> **D. KNOLL**, *Protecting Religious Freedom and Places of Worship*, quoted above, p. 15: "By looking at the parts and not the whole, the Court was able to avoid addressing the religious need that had resulted in multiple development applications being lodged for a single *Eruv*". See also **J. CONNELL, K. IVESON**, *An Eruv for St Ives? Religion, identity, place and conflict on the Sydney north shore*, in *Australian Geographer*, no. 45(4) of 2014, pp. 429-46.

<sup>170</sup> "The application clearly proposes to create an *Eruv*. There is no *Eruv* at the present time. The approval of all of the development applications does not create an *Eruv*, nor does it create any nexus to that work within roads that are not in proximity to the individual sites. Whilst the applicant's intention is that all of these works are related and it is the focus of the applications, there is no nexus between the individual components of



is not a mere theoretical observation, devoid of practical consequences: on the contrary, the intrinsic rigidity of the administrative law provisions obliged the religious community to incur enormous costs and deal with numerous bureaucratic procedures to overcome (in vain) the existing regulatory obstacles<sup>171</sup>.

#### 4 - The American Judge: the *eruv* as a tool intended to identify certain permitted activities

In contrast to the Australian legal system, the US case-law record not only demonstrates a more open attitude towards the installation of the *eruv*, but also considers the authorization of the apposition of the *lechis*, granted by the public authority, as compatible with the Establishment clause, enshrined in the First Amendment of the US Constitution<sup>172</sup>.

In the case of *Tenaflly Eruv Association, Inc. v. Borough of Tenaflly*<sup>173</sup>, the US Court of Appeals for the Third Circuit ruled on the dismantling of an *eruv*, in execution of a municipal injunction that prohibited the affixation of:

“any sign or advertisement, or other matter upon any pole, tree, curbstone, sidewalk or elsewhere, in any public street or public place, excepting such as may be authorized by this or any other ordinance of the Borough”<sup>174</sup>.

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the applications”: Land and Environment Court of New South Wales (Australia), *The Northern Eruv Incorporated v. Ku-ring-gai Council*, quoted above, para 72.

<sup>171</sup> D. KNOLL, *Protecting Religious Freedom and Places of Worship*, quoted above, p. 18.

<sup>172</sup> Another aspect, that falls outside the scope of this paper, relates to the violation of the Free Speech Clause: see S.J. SCHLAFF, *Using An Eruv To Untangle the Boundaries of the Supreme Court’s Religion-Clause Jurisprudence*, in *University of Pennsylvania Journal of Constitutional Law*, no. 5 of 2002, p. 833 and ff.

<sup>173</sup> U.S. Court of Appeals, Third Circuit, *Tenaflly Eruv Ass’n v. Borough of Tenaflly*, 309 F.3d 144 (3d Cir. 2002), 24 October 2002 (at [www.law.justia.com](http://www.law.justia.com)). See comments by E. GREENBAUM, *First Amendment Inversions: Tenaflly Eruv Ass’n v. Borough of Tenaflly*, 155 F. Supp. 2d 142 (D. N. J. 2001), in *The Yale Law Journal*, no. 111(7) of 2002, pp. 1861-67; S.H. LEES, *Jewish Space in Suburbia: Interpreting the Eruv Conflict in Tenaflly, New Jersey*, in *Contemporary Jewry*, no. 27(1) of 2007, pp. 42-79.

<sup>174</sup> Borough of Tenaflly (New Jersey, U.S.), Ordinance no. 691 of 1954, Art. VIII (at <https://ecode360.com/36195007>).



The public authorities had dismantled the *eruv* but, at the same time, had maintained other signs, such as directional signs pointing to local churches and advertising flyers and posters depicting lost animals.

Given these circumstances, the Court of Appeal held that the municipal ordinance was essentially neutral and generally applicable; however, its application was deemed discriminatory and its enforcement was considered selective, being detrimental to the *eruv* but not to other signs with similarly religious or even secular content<sup>175</sup>.

A further point of departure from the Sydney case is that not only the Tenafly judgement, but also other decisions delivered by the US Courts<sup>176</sup>, paved the way for an interpretation of the *eruv* inspired by a 'functionalist criterion'. In other words, the US Courts gave more specific weight to the scope of the *eruv*, rather than to its constituent components, both individually and as a whole:

*“There is no evidence that Orthodox Jews intend or understand the eruv to communicate any idea or message. Rather, the evidence shows that the eruv-like a fence around a house or the walls forming a synagogue-serves the purely functional purpose of delineating an area within which certain activities are permitted”<sup>177</sup>.*

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<sup>175</sup> U.S. Court of Appeals, Third Circuit, *Tenafly Eruv Ass'n v. Borough of Tenafly*, quoted *supra*, para 2: “Therefore, the Borough has no Establishment Clause justification for discriminating against the plaintiffs' religiously motivated conduct. Accordingly, the plaintiffs are reasonably likely to prevail on their free exercise claim”.

<sup>176</sup> U.S. Court of Appeals, Second Circuit, *Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, no. 778 F.3d 390 (2d Cir., 2015), 6 January 2015, (at [www.law.justia.com](http://www.law.justia.com)); U.S. District Court - Eastern District of New York, *E. End Eruv Ass'n, Inc. v. Town of Southampton*, no. CV 13-4810 (AKT)(E.D.N.Y., 2014), 24 September 2014 (at [www.law.justia.com](http://www.law.justia.com)); U.S. Court of Appeals, Second Circuit, *Verizon N.Y. Inc. v. Jewish People for the Betterment of Westhampton Beach*, no. 556 F. App'x 50 (2d Cir.), 3 March 2014, (at [www.law.justia.com](http://www.law.justia.com)); U.S. District Court for the District of New Jersey, *American Civil Liberties Union v. City of Long Branch*, 670 F. Supp. 1293 (D.N.J., 1987), 2 October 1987 (at [www.law.justia.com](http://www.law.justia.com)); Supreme Court, Special Term, Queens County, *Smith v. Community Bd. No. 14*, 128 Misc. 2d 944, 491 N.Y.S.2d 584 (N.Y. Sup. Ct., 1985), 8 July 1985 (at [www.law.justia.com](http://www.law.justia.com)). For comments on the *eruv* and the US legal order see **A. MINTZ**, *The Community Eruv and the American Public Square*, in *Diné Israel*, no. 31 of 2017, pp. 211-30; **S.J. SCHLAFF**, *Using An Eruv To Untangle the Boundaries of the Supreme Court's Religion-Clause Jurisprudence*, in *University of Pennsylvania Journal of Constitutional Law*, no. 5 of 2002, pp. 831-99; **J.J. MARSHALL**, *Selective Civil Rights Enforcement and Religious Liberty*, in *Stanford Law Review*, no. 72(5) of 2020, pp. 1421-65.

<sup>177</sup> U.S. Court of Appeals, Third Circuit, *Tenafly Eruv Ass'n v. Borough of Tenafly*, quoted *supra*. Emphasis added.



This approach is crucial in ascertaining whether city authorities, by permitting the affixing of *lechis* and other elements constituting the *eruv*, integrate a conduct qualifying as an establishment of a religion or an endorsement of a religion - both prohibited by the First Amendment to the American Constitution<sup>178</sup>.

It is precisely in this respect that the *eruv*'s detractors have been quite incisive in defining it as "religious in nature"<sup>179</sup>, a "permanent"<sup>180</sup> symbol that creates a "religious aura" and would even produce a "metaphysical impact" on the lives of residents<sup>181</sup>. In response, its defenders argued instead that it "has no religious significance or symbolism and is not part of any religious ritual"<sup>182</sup>.

Some Courts have tended to conclude that "no religious symbol has been erected"<sup>183</sup> since the *eruv* is a "virtually invisible boundary line indistinguishable from the utility poles and telephone wires in the area"<sup>184</sup>. It would not be regarded as a symbol, as it is modest, discreet and inconspicuous<sup>185</sup> and, therefore, before the *lechis*, a "reasonable, informed observer [...] would not perceive an endorsement of Orthodox Judaism"<sup>186</sup>.

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<sup>178</sup> The most famous tests to evaluate the establishment or the endorsement of a religion are the *Lemon test* and the *Endorsement test*. See respectively U.S. Supreme Court, *Lemon v. Kurtzman*, no. 403 U.S. 602, 91 S. Ct. 2105, 28 June 1971 (at [www.law.justia.com](http://www.law.justia.com)) and U.S. Supreme Court, *Dennis M. Lynch, et al. v. Daniel Donnelly, et al.*, no. 465 U.S. 668, 104 S. Ct. 1355, 5 March 1984 (at [www.law.justia.com](http://www.law.justia.com)).

<sup>179</sup> U.S. Court of Appeals, Third Circuit, *Tenaflly Eruv Ass'n v. Borough of Tenaflly*, quoted *supra*.

<sup>180</sup> U.S. District Court for the District of New Jersey, *American Civil Liberties Union v. City of Long Branch*, quoted *supra*.

<sup>181</sup> U.S. Supreme Court, Special Term, Queens County, *Smith v. Community Bd. No. 14*, quoted *supra*.

<sup>182</sup> U.S. Court of Appeals, Third Circuit, *Tenaflly Eruv Ass'n v. Borough of Tenaflly*, quoted *supra*. See also U.S. Supreme Court, Special Term, Queens County, *Smith v. Community Bd. No. 14*, quoted *supra*: "the *eruv* is not a religious symbol or device but a legal fiction".

<sup>183</sup> U.S. District Court for the District of New Jersey, *American Civil Liberties Union v. City of Long Branch*, quoted *supra*.

<sup>184</sup> U.S. Supreme Court, Special Term, Queens County, *Smith v. Community Bd. No. 14*, quoted *supra*: "the *eruv* is a virtually invisible boundary line indistinguishable from the utility poles and telephone wires in the area".

<sup>185</sup> M. RIEDEL, *The difference a wire makes*, quoted *supra*, p. 410.

<sup>186</sup> U.S. Court of Appeals, Third Circuit, *Tenaflly Eruv Ass'n v. Borough of Tenaflly*, quoted *supra*.



It is interesting to note that, in some cases, the Jews themselves, in particular, those belonging to the liberal denomination, resorted to litigation as an attempt to prevent the *eruv* from being installed. This detracts from the assumption that the *eruv* itself constitutes a religious symbol and, therefore, an endorsement of Orthodox Judaism at the expense of those who are affiliated neither with Judaism *tout court* nor with Orthodox Judaism specifically<sup>187</sup>.

From this perspective, the fact that disagreement over the nature of the *eruv* as a 'symbol' runs within the religious community itself should perhaps have oriented the Courts towards an attitude of more judicial restraint. Proceeding with deference, without taking a position on the symbol (i.e., denying or appreciating the *eruv* as a religious symbol) would have precluded the judges from dealing with disputes within these religious groups<sup>188</sup>.

Secondly, concluding that a "reasonable observer", who comes across the *lechis*, does not perceive them as an endorsement of Orthodox Judaism assumes that their meaning is mostly unknown to the general public, and acknowledged only to those who observe the *Shabbath*<sup>189</sup>. The premise of this argument seems rather fragile, since it could be (and already has been)<sup>190</sup> easily overturned by some forms of publicity, by the involvement of the public authority in the process of the *eruv*'s installation or by the activities related to its maintenance.

## 5 - The Canadian Judge: the *eruv* as a means of exercising the right to religious freedom

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<sup>187</sup> M. RIEDEL, *The difference a wire makes*, quoted *supra*, p. 414.

<sup>188</sup> On the so-called *Principle of Non-Interference*, with specific reference to the UK legal system, see R. SANDBERG, *Law and Religion*, Cambridge University Press, Cambridge, 2011, pp. 74-76.

<sup>189</sup> On this see extensively C.E. FONROBERT, *The Political Symbolism of the Eruv*, in *Jewish Social Studies*, no. 3 of 2005, p. 72; ID., *From Separatism to Urbanism: The Dead Sea Scrolls and the Origins of the Rabbinic 'Eruv*, in *Dead Sea Discoveries*, no. 11(1) of 2004, pp. 43-71; ID., *Neighborhood as Ritual Space: The Case of the Rabbinic Eruv*, in *Archiv für Religionsgeschichte*, no. 10(1) of 2008, pp. 239-58.

<sup>190</sup> For example, in Westhampton, opponents of the *eruv* papered the light poles, street signs, and so on, on which the *lechis* leaned, hanging illustrative leaflets explaining what they were: J. O'DWYER, *UCLA Law Prof Says Eruvim Are Unconstitutional*, in *O'Dwyer's Daily PR News Blast*, 12 January 2015 (at [www.odwyerpr.com](http://www.odwyerpr.com)).



In Outremont, Quebec, the city had started to dismantle pre-existing *eruvim* since the early 2000s. In contrast to the Australian and the American jurisprudence, the Superior Court of Quebec, called upon to rule in the case of *Rosenberg v. Outremont (City)*, dealt with the matter using a different approach, which could be defined as significant.

The Canadian Court did not conceive the *eruv* as a religious symbol, nevertheless, it identified in it a clear element of religiosity, defining it as a “notional concept”<sup>191</sup>, which is “firmly established in the precepts of the Orthodox Jewish faith”<sup>192</sup>.

This approach made it easy to read the *eruv* within the constitutional protections relating to religious freedom<sup>193</sup>, and guided the Court to recognize the city of Outremont’s “constitutional duty to provide accommodation for religious practices that do not impose undue hardship on its residents”<sup>194</sup>.

The Court itself understood the drive towards accommodation and the obligation of State religious neutrality, as linked by a relationship of “natural antagonism”<sup>195</sup>. However, given that the *eruv* facilitates activities that are also secular, and that the Quebec legal system is not completely indifferent to the religious factor<sup>196</sup>, the authorization to affix *lechis* on public land should not be read as an endorsement of a religion but as a

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<sup>191</sup> Quebec Superior Court, *Rosenberg v. Outremont (City)*, no. 500-05-060659-008, 6 September 2001, para 7.

<sup>192</sup> Quebec Superior Court, *Rosenberg v. Outremont (City)*, quoted *supra*, para 33.

<sup>193</sup> *Canadian Charter of Human Rights and Freedoms, Section 2*, 1982. According to *Section 1*, the rights and freedoms guaranteed by the Charter are subjects “only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

<sup>194</sup> Quebec Superior Court, *Rosenberg v. Outremont (City)*, quoted *supra*, para 46. Emphasis added.

<sup>195</sup> “That being said, the concept of accommodation to the exercise of guaranteed freedoms, including freedom of religion, is very much a part of the constitutional fabric in this country, as Prof. Woehrling points out in his learned study of the subject- *L’accommodation raisonnable et l’adaptation de la société à la diversité religieuse*. When instruments of the State are called upon to implement a measure of accommodation of a religious practice, there is at a minimum the potential for conflict between the duty to accommodate and the obligation of neutrality. Prof. Woehrling cites American authors who describe this phenomenon as one of natural antagonism”: Quebec Superior Court, *Rosenberg v. Outremont (City)*, quoted *supra*, para 29.

<sup>196</sup> For example, in relation to weekly rest and vacations, tax benefits granted to religious denominations, and so on.



“tolerance of a religious practice”<sup>197</sup> - an attitude that is constitutionally due:

*“There is no doubt that the City has an interest in regulating the use of the public domain, including the air over City streets. In this instance, however, the City declined to exercise its regulatory authority because of the position it took that Quebec law mandated absolute religious neutrality and thus prevented it from acceding to the Petitioners request for accommodation. The Court holds and emphasizes that it considers the City’s position in this regard to be wrong as a matter of law. On the contrary, the City has a constitutional duty to provide accommodation for religious practices that do not impose undue hardship on its residents. The City can quite properly regulate the erection of eruv in a manner that facilitates the exercise of the right while all the while prescribing the means by which the right is exercised. This would undoubtedly include matters such as the height of the structures and the number of eruv that might be erected on each street within the affected area. It remains an option for the City to exercise such regulatory control”<sup>198</sup>.*

The Canadian judges make the point that, in the eyes of most, the meaning of the *eruv* remains mysterious, stating that “the area within an *eruv* is only a religious zone for those who believe it to be one”. However, on the other hand, they add that affixing wires in public spaces is a religious matter, which therefore deserves to be treated as such<sup>199</sup>.

## 6 - “Human rights start in the neighbourhood” (E. Roosevelt)

From the comparison carried out between the Australian, the US and the Canadian litigation regarding the *eruv*, it is possible to draw some final remarks regarding the practice of the *eruv* itself, its qualification under constitutional categories and, more in general, the relationship between religious liberty and urban planning law.

Firstly, although these Jewish signs are almost indistinguishable and intangible on the city skyline, they nonetheless bring to the fore certain latent and visceral tensions which, from a social perspective, relate to what some perceive as an inappropriate manifestation of a religious practice in a public space.

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<sup>197</sup> Quebec Superior Court, *Rosenberg v. Outremont (City)*, quoted *supra*, para 42.

<sup>198</sup> Quebec Superior Court, *Rosenberg v. Outremont (City)*, quoted *supra*, paras 46-47.

<sup>199</sup> Quebec Superior Court, *Rosenberg v. Outremont (City)*, quoted *supra*, para 37.



From a legal point of view, moreover, they are regarded as providing the necessary level of protection for religious freedom and religious pluralism, since the *eruv* itself shifts the barrier between manifestations of religion in the private sphere and manifestations of religion in the public sphere, calling into question what Berger termed “the aesthetics of religious freedom”:

*In disrupting this border, the eruv also challenged the liberal commitment to confine religion to the private sphere, by symbolizing a spilling-over of private religion into public spaces. [...] Within the range of distinctive religious beliefs and practices within this community, the eruv became a contested site precisely because it came into conflict with the law’s orienting spatial intuitions. This is the aesthetics of religious freedom at play. In this case, resolving the religious freedom question would require clarifying and redrawing the lines between private and public, the realm of government authority and that of religious expression<sup>200</sup>.*

Against this background, it is noteworthy that none of the Courts and decisions considered in this paper have defined the *eruv* and its constituent elements as a religious symbol: the *eruv* has been perceived as a set of physical elements (in relation to the Australian case), a fence and a *fictio iuris* (in relation to the US cases) or a religious practice (in relation to the Canadian case) - but it has not been defined *de plano* as a religious symbol.

From the Court records, it is impossible to identify whether the supporters of the *eruv* tried to avoid the qualification of the *eruv* as a religious symbol as part of a strategic choice, i.e., to increase the likelihood of litigation success or, on the other hand, to circumvent any possible complications regarding the display of religious symbols in urban public spaces, as related to the issue of State neutrality.

Moving from the courtrooms and shifting the question to a theoretical level, it is fitting to consider the definition of a ‘religious symbol’ provided by the theologian Paul Tillich in his seminal paper, *The Religious Symbol*. According to Tillich’s analysis, there are certain essential elements that characterize the symbol itself and the religious symbol, in particular: having its own figurative and expressive quality; presenting an element of extrinsic perceptibility; enjoying innate power and, in general, encountering a high degree of social recognizability<sup>201</sup>.

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<sup>200</sup> **B.L. BERGER**, *The Aesthetics of Religious Freedom*, in *Comparative Research in Law & Political Economy*, no. 33 of 2012, pp. 10-12.

<sup>201</sup> **P. TILlich**, *The Religious Symbol*, in *Daedalus*, no. 3 of 1958, pp. 3-5. For other literature on religious symbols, see also, among many: **S. BACQUET**, *Religious Symbols*





Given this analytical framework, it is probably reasonable to conclude that the *lechis* and other elements of the *eruv* - in the three jurisdictions considered - escape the expressive semantics of the symbol. Above all, they seem to lack what Tillich has considered the essential characteristic of the religious symbol<sup>202</sup>: its innate communicative power which, according to the theologian, is exactly the aspect that distinguishes the sign from the symbol. The *lechis*, at least in the jurisdictions considered here and at the time the decisions were issued, do not seem to have reached a sufficient universal, socially recognized and generally evident communicative power<sup>203</sup>.

Secondly, although through the eyes of the common-law judge it may be hard to recognize the *eruv* as a proper 'religious symbol' - at least adopting Tillich's theoretical definition - it is nonetheless vital to

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*and the Intervention of the Law: Symbolic Functionality in Pluralist States*, Routledge, Oxon, UK, 2020; **D.J. HILL, D. WHISTLER**, *The Right to Wear Religious Symbols*, Palgrave Macmillan, London, 2013; **I. LEIGH, A. HAMBLER**, *Religious Symbols, Conscience, and the Rights of Others*, in *Oxford Journal of Law and Religion*, no. 3(1) of 2014, pp. 2-24; **J. MARTÍNEZ-TORRÓN**, *Institutional Religious Symbols, State Neutrality and Protection of Minorities in Europe*, in *Law and Justice*, no. 171 of 2013, pp. 21 and ff.; **E.A. POSNER**, *Symbols, signals, and social norms in politics and the law*, in *The Journal of Legal Studies*, no. 27(2) of 1998, pp. 765-97; **I. RORIVE**, *Religious Symbols in the Public Space: In Search of a European Answer*, in *Cardozo Law Review*, no. 30 of 2009-2008, pp. 2669-98; **A. STEINBACH**, *Burqas and Bans: The Wearing of Religious Symbols under the European Convention of Human Rights*, in *Cambridge Journal of International and Comparative Law*, no. 4 of 2015, pp. 29 and ff.; **E. HOWARD**, *Law and the wearing of religious symbols: European bans on the wearing of religious symbols in education*, Routledge, London, 2013; **H. VAN OOIJEN**, *Religious symbols in public functions: Unveiling state neutrality*, Intersentia, Cambridge, UK, 2012; **P. CAVANA**, *I simboli religiosi nello spazio pubblico nella recente esperienza europea*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 28 of 2012, pp. 131-186; **S. MANCINI, M. ROSENFELD**, *Sotto il velo della tolleranza. Un confronto tra il trattamento dei simboli religiosi di maggioranza e di minoranza nella sfera pubblica*, in *Ragion pratica*, no. 2 of 2012, pp. 421-452; **S. MANCINI**, *Il potere dei simboli, i simboli del potere: laicità e religione alla prova del pluralismo*, CEDAM, Padova, 2008; *I simboli religiosi nella società contemporanea*, edited by A. NEGRI, G. RAGONE, L.P. VANONI, M. TOSCANO, Giappichelli, Torino, 2022; **S. TESTA BAPPENHEIM**, *I simboli religiosi nello spazio pubblico: profili giuridici comparati*, Editoriale scientifica, Napoli, 2019; **M. TOSCANO**, *Il fattore religioso nella Convenzione Europea dei Diritti dell'Uomo*, Edizioni ETS, Pisa, 2018.

<sup>202</sup> According to the Author, "the pictorial symbols of religious art were originally charged with a magical power, with the loss of which they became a conventional sign-language and almost forfeited their genuine symbolic character": **P. TILlich**, *The Religious Symbol*, quoted above, p. 4.

<sup>203</sup> Although they still belong to a ritual system. On this see extensively **C.E. FONROBERT**, *The Political Symbolism of the Eruv*, quoted *supra*, pp. 9-35.



appreciate *at least* its dimension of religiosity. On the one hand, recognizing the *eruv* as a 'religious practice', by following the Canadian approach to the issue, would facilitate religious accommodations in those circumstances where there occurs a minimal impact on the urban landscape, such as the case at stake. On the other hand, it would prevent the practice of the *eruv* from being entirely stripped of constitutional protections pertaining to religious freedom, though it is a practice that is firmly anchored in the precepts of Orthodox Judaism.

Thirdly and lastly, the *eruv* shows once again that the protection of human rights starts in the neighbourhood, and this resonates with Eleanor Roosevelt's seminal words, spoken in 1958 at the United Nations:

*Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman and child seek equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere*<sup>204</sup>.

Not only erecting buildings of worship, but also installing any kind of facilities in the city which have a religious purpose, is a matter "by its very nature suspended between the protection of religious freedom - even in its extrinsication as a collective right - and urban planning regulations"<sup>205</sup>. It intercepts both the level of the constitutional right to religious freedom and the more pragmatic aspect of the implementation of

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<sup>204</sup> The quotation is available at [www.un.org](http://www.un.org).

<sup>205</sup> **N. MARCHEI**, *La legge della Regione Lombardia sull'edilizia di culto alla prova della giurisprudenza amministrativa*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 12 of 2014, p. 1; see also **EAD.**, *Il «diritto al tempio». Dai vincoli urbanistici alla prevenzione securitaria. Un percorso giurisprudenziale*, Editoriale Scientifica, Napoli, 2018; **EAD.**, *Le nuove leggi regionali 'antimoschee'*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 25 of 2017, pp. 1-16. On city planning and religious pluralism see also **M. BURCHARDT**, *Religion in urban assemblages: space, law, and power*, in *Religion, State and Society*, no. 47(4-5) of 2019, pp. 374-89; **D. COOPER**, *Out of Place: Symbolic Domains, Religious Rights and the Cultural Contract*, in *Land and Territoriality*, edited by M. Saltman, Routledge, London, 2002; **M.L. VAZQUEZ**, *End of Secular City Limits? On Law's Religious Neutrality in the City*, in *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique*, 2020, pp. 1-28; on the Jewish *eruv* and urban spaces in particular, see **B.E. MANN**, *Space and Place in Jewish Studies*, Rutgers University Press, Piscataway, 2012; **R.Y.G. BECHHOFFER**, *The Contemporary Eruv: Eruvin in Modern Metropolitan Areas*, Feldheim Publishers, Spring Valley, New York, 2002.



a specific religious accommodation - something that perfectly embodies Roosevelt's words: "Human rights start in the neighbourhood"<sup>206</sup>.

In conclusion, all things considered, the *eruv* should be accommodated as a practice relating to the concrete exercising of freedom of religion, not because it is an unnoticeable sign for many passing by, but because freedom of religion is a constitutional right of everyone living within the community.

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<sup>206</sup> See **R. BARITONO**, *Eleanor Roosevelt. Una biografia politica*, Il Mulino, Bologna, 2021.