

## *King Solomon's Takanah: Rambam's Eruv*

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Recently, a new *eruv* was established in Flatbush. The literature released upon the announcement of the *eruv* claims that this *eruv* is kosher according to “all halachic authorities, including the Rambam.” (See *The Community Eruv, Shevat* 5765, p. 4.) In our article, the author explains Rambam’s unique understanding of the laws of *eruv* and the reason why the *takanah* was made, and disputes the contention that Rambam would have approved of the Flatbush *eruv*. At the same time, he shows that Chazal intended that *eruv* always be made when possible, especially in urban areas, in order to create the proper Shabbos atmosphere. He thus questions why opposition has been raised to this *eruv* based on concerns for preservation of “the spirit of Shabbos.”

### **The Paradoxical Chazon Ish**

While explaining why he believes that an *eruv* cannot be constructed in Brooklyn, Rav Moshe Feinstein, זצ"ל, (*Iggeros Moshe Orach Chaim* 5:28:3) expresses his disagreement with a position of the Chazon Ish. The Chazon Ish (*Hilchos Eruvin* 107:5) had stated that the streets of our large cities, even though they may be sixteen *amos* wide, are not רה"ר. Since streets are lined with houses and the composite of any individual street or avenue has עומד מרובה על הפרוץ (the standing walls are more prevalent than the gaps), therefore each street is considered walled and the break created by the intersection of a cross-street is not significant. Rav Moshe objects (among other reasons) that according to the Chazon Ish, we find a counter-intuitive reality and something that Rav Moshe considers conceptually unsound and against the consensus of Jewish scholars. According to the Chazon Ish, large metropolitan centers with heavy populations would become

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self-constructed רה"י, while sparsely settled towns, whose streets are not עומד מרובה על הפרוץ, would be רה"ר. The widely-held opinion that only an area with 600,000 people can become a רה"ר is evidence to the principle that density in population is a factor that contributes towards making an area a רה"ר.<sup>1</sup>

### ***Reshus HaRabbim, Reshus HaYachid*—Natural Terrain**

Rav Moshe's viewpoint is indeed supported by the *shittah* that 600,000 people are needed to establish a רה"ר, and even those *Rishonim* who disagree would ostensibly believe that many people using an area contributes to the public nature of that area. However, Rambam not only disagrees with the requirement of 600,000 people, but with the concept that greater usage is a factor in an area becoming a רה"ר. The *gemara* resolves a contradiction about whether a desert (מדבר) is a רה"ר with the words כאן בזמן שישראל במדבר וכאן (מדבר) Rashi (*ibid.*) and all other *Rishonim* interpret this to mean that when the desert has a large amount of people in it, according to Rashi 600,000 in one place, then it is a רה"ר, and when it is sparsely traveled, it is not a רה"ר. This interpretation is the starting point for the belief that inflating the population causes an area to become a רה"ר. *Tosafos* (*ibid.*, ד"ה כאן בזמן) considers this the source for those who believe 600,000 are needed to make an area a רה"ר. Even those *Rishonim* who do not require 600,000 still learn from here the concept that the presence of a large population is a factor in making an area a רה"ר. But Rambam, in stating the *halachah* (*Hilchos Shabbos* 14:1) that a desert is a רה"ר, does not qualify that this is only in the time when the desert has a nomadic people traversing it in large numbers. Rambam's son<sup>2</sup> explains that Rambam interpreted the *gemara* to mean that when Israel is in the desert, then it is not a רה"ר, and when they are not there, it is a רה"ר. The settlement of an

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<sup>1</sup> הוא דבר תמוה, שנמצא שהכרכים היותר גדולים הם רה"י, ורק הכפרים ועיירות הקטנים ביותר שאין להם אלא רחוב מפולש אחד הוא בדין רה"ר, היפוך מכפי שכל ישראל סוברין שהכרכין שייכין להיות יותר רה"ר. (אג"מ או"ה ה:כח:ג)

<sup>2</sup> אחריני דמפרשי בזמן שישראל חונים במדבר והיו מחנותיהם, See *Kesef Mishnah*, *ibid.*, סדורין בו והוא מקום דירתן היה לגבן כמו בקעה. (ברכת אברהם סי' טו)

area in the desert can preclude that area from becoming a רה"ר.<sup>3</sup> An area without מחיצות which people settle and utilize is similar to a בקעה, a valley, which Chazal define as a כרמלית, and is neither a רה"ר nor a רה"י.

In contrast to other *Rishonim*, Rambam (ibid.) understands that one type of רה"י is an area jointly settled by a group of people. Bringing civilization to an area—settling it—turns it into a רה"י,<sup>4</sup> while the primary form of רה"ר is not an area that is shared by large multitudes, but an area that is not inhabited. "איזו היא רה"ר מדברות ויערים ושדות ושווקים ודרכים המפולשין להן" (הל' שבת יד:א).<sup>5</sup> Areas where all people have equal rights of passage but which are, in fact, not areas of human habitation, and perhaps even infrequently traveled—the deserts and forests—epitomize the רה"ר of the Torah. The fields, although privately owned but not inhabited, are also included. The roads and markets that were created by human effort but are areas where all people have equal rights of passage comprise another type of רה"ר, but are listed last.

Rav Yochanan is quoted at one point as suggesting that all of *Eretz Yisrael* should not be considered a רה"ר. "אמר רב יצחק בר יוסף. רה"ר. א"ר יוחנן ארץ ישראל אין חייבין עליה משום רה"ר" (ערובין כב.). The *gemara* suggests that he stated this because the land is surrounded by mountain ranges. While some *Rishonim* suggest that the intent of the *gemara* is to consider distant mountain ranges as מחיצות that would turn the areas within them to רה"י דאורייתא<sup>6</sup> according to Rambam's definition of רה"ר, the intent of the *gemara* can be more simply explained. The *gemara* was never suggesting that the שווקים ודרכים of settled areas—the latter type of רה"ר he lists (that created by man)—

<sup>3</sup> Outside of the מחנה לויה, the encampment of Israel, or at least parts of it, might very well have been a רה"י. See *Torah Sheleimab* 15:155–159, ועי' פרדר"א פמ"ד "רבי זכריה אומר והיה עמוד הענן סובב את מחנה ישראל כעיר מוקפת חומה". In order for מחנה לויה to be a רה"ר while the מחנה ישראל outside of it was a רה"י would require adopting the principle of Rashba, which will be discussed later, that the walls encircling a city may still leave the marketplaces inside as רה"ר.

<sup>4</sup> We will explain this concept at length in the next section.

<sup>5</sup> While some dispute the *girsas* that claim fields are a רה"ר, there is conclusive proof from *Hilchos Erwin* (1:4) that they are.

<sup>6</sup> עי' תוס' ד"ה אילימא וד"ה דילמא ובריטב"א שם.

would not be classified as a רה"ר. Human activity inside *Eretz Yisrael* is identical to that in the outside world, and its roads and markets are just as much a רה"ר as anywhere else. The *gemara* was addressing the question of whether the open unoccupied spaces in *Eretz Yisrael* qualify as the primary form of רה"ר. Deserts, forests, and fields are natural רה"ר, but perhaps this is only the case where the area is flat and open to the world; but *Eretz Yisrael* is to some degree like a בקעה (see *Hilchos Shabbos* 14:4), surrounded by mountain ranges and isolated from the outside world. As the isolation of the בקעה induced Chazal to classify it as a כרמלית, so, too, that status perhaps should attach to all of *Eretz Yisrael* as well.<sup>7</sup> To this the *gemara* responds (שם) "דכולי עלמא מקיף אוקיינוס" — if we perceived large stretches of land in this way then we would say that every continent is surrounded by sea and cut off from the access of the rest of the world, and no open terrain would ever be considered a רה"ר. Thus, the *gemara* concludes, Rav Yochanan's concern was with the terrain of *Eretz Yisrael* which is laced with mountainous turf— "מעלות ומורדות שבארץ — ישראל" — translated by Rabbeinu Chananel as תל וחריץ, mounds and ditches, which Rambam lists as his first examples of רה"ר. "ואי זו רה"ר"י רה"ר. תל שגבוה עשרה טפחים ורחב ארבעה טפחים על ארבעה טפחים או יתר על כן. וכן חריץ שהוא עמוק עשרה ורחב ארבעה על ארבעה או יתר על כן" (הל' שבת יד:א). The terrain of *Eretz Yisrael* does not allow for easy passage, and for that reason its open and unsettled areas should not qualify as רה"ר; unlike countries where the open areas are forest, fields, and desert. In the end the *gemara* concludes that areas that were hilly were distributed by Yehoshua as private property and settled, and that which was given to the public and not settled was ניהא תשמישתא—of easy access, and hence qualified as a רה"ר.

The natural, open, sparsely populated, reasonably flat and passable terrain of the deserts, forests, and fields are nature's רה"ר.

<sup>7</sup> See also *Erwin* 87a and *Yerushalmi Erwin* 8:8 which should also be interpreted as saying that limited access due to terrain and the settlement of cities around the Kinneret are reasons why it would not be treated as a רה"ר. When the *Yerushalmi* suggests that indeed there is no רה"ר in the entire world, a concept that nullifies the entire prohibition against carrying, it is only speaking of רה"ר made of natural terrain. Resh Lakish says that only in the World to Come will there be natural terrain open for passage from land to land with no division.

The ditches and mounds are nature's רה"י, thus the *braissa* (*Shabbos* 6a) introduces the four domains with the statement "ואיזו היא רה"י חריץ שהוא עמוק י' וכו' וכן גדר שהוא גבוה י' ורחב ד' זו היא רה"י גמורה" referring to the חריץ and תל<sup>8</sup> that are the גמורה רה"י of nature.<sup>9</sup> The semi-accessible בקעה, valley, is neither a רה"י nor רה"ר and is placed into a separate category called כרמלית.

### ***Reshus HaRabbim, Reshus HaYachid— Man's Handiwork***

To understand Rambam's stance on the four *reshuyos* (domains) of *Hilchos Shabbos*, it is important to take note of how Rambam presents them. Whereas in the standard texts of Rambam, he begins his presentation of the four domains with the statement ארבע רשויות לשבת, in fact all reliable manuscripts show that he does not make this statement until later in the chapter.<sup>10</sup> The fourteenth chapter of *Hilchos Shabbos* actually begins "איזו היא רה"ר מדברות וכו' ואיזו רה"י תל" ארבע רשויות לשבת, רשות היחיד שגבוה" before making the statement "ארבע רשויות לשבת, רשות היחיד וכרמלית ומקום פטור" in the fourth *halachah* of the chapter,

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<sup>8</sup> According to this explanation these structures are רה"י due to their physical structures, not because they have מחיצות, perhaps with the use of the principle of גוד אסיק. While *Erwin* 15a seems to imply that these are only a רה"י because of מחיצות, were this true, the *gemara* should have proved its point by citing the prominent *braissa* (*Shabbos* 6a) that these structures are a רה"י. The fact that it only adduces this law with regard to the concept of קונה שביטה rather than with regard to creating a רה"י is in fact proof to our position. Also see Rashi *Shabbos* 6b ד"ה קמ"ל who clearly states that גוד אסיק is the operable principle.

<sup>9</sup> See *Shabbos* 6b which explains what גמורה means. *Tosafos* (ד"ה ואמאי) does not accept Rashi's explanation of the *gemara*. According to our explanation, the *braissa* is telling us that while Rav Yehudah allows artificial and symbolic structures to constitute a רה"י even after Rabbinic strictures have been applied, the rabbis contend that even at the Torah level there is no רה"י without fundamental physical characteristics. The *gemara* goes on to say that the term גמורה used defining רה"ר does not teach us anything. Still, the usage is appropriate, for the *braissa* is defining the fundamental domains, not explaining what Chazal eventually defined when categorizing all physical area.

<sup>10</sup> See שינוי נוסחאות in the Frankel ed. and Rav Yosef Kapach's edition.

he first defines רה"ר and רה"י. The standard texts of Rambam were emended by editors who could not fathom why Rambam would first define רה"ר and רה"י and then go on to tell us that there are four domains of which רה"ר and רה"י are two.<sup>11</sup>

Clearly Rambam's intent is to convey that רה"ר and רה"י are objective entities that exist in nature and within civilization, which are not a function of *Hilchos Shabbos*, and he lists the areas that make up these *reshuyos* first. The Torah prohibited carrying from רה"י to רה"ר—between two entities that are physical and social entities whose definitions are unrelated to *Hilchos Shabbos*. Then Rambam explains that there are ד' רשויות לשבת, i.e., the parameters for these four *reshuyos* were defined by the Rabbis specifically for Shabbos. It was incumbent upon the Rabbis, for the functioning of *Hilchos Shabbos*, to categorize every unique physical area under one of these four *reshuyos*. Thus, later we are told of other רה"י that are defined as such specifically in *Hilchos Shabbos* (such as the קרפף described in chapter 16) that were not listed in the original presentation, for in categorizing all entities of space, even areas that are not the pure רה"י of nature and society are nevertheless classified as רה"י. As we noted above, Rambam first lists the fundamental natural רה"י: תל, mound, and חריץ, ditch. Next he gives a basic rule that applies to areas that have been created and defined by human construction. "וכן מקום שהוא מוקף ארבע מחיצות גובהן עשרה וביניהן ארבעה על ארבעה או יתר על כן אפילו יש בו כמה מילין אם הוקף לדירה" כגון מדינה המוקפת חומה שדלתותיה ננעלות בלילה, ומבואות שיש להן שלשה כתלים ולחי ברוח רביעית, וכן חצר ודיר סהר שהוקפו לדירה — כולן רה"י גמורה הן".

Whereas according to Rashi (*Erwin 2a*), the לחי of a מבוּי is only a Rabbinic requirement, to distinguish the מבוּי from the רה"ר that it abuts and to make us cognizant that this is not part of the רה"ר, according to Rambam, the לחי of the מבוּי transforms it into a רה"י and such a structure with a predominantly open fourth side is a רה"י defined by civilization. Rashi and the other *Risbonim*<sup>12</sup> believe that three מחיצות by definition constitute a רה"י דאורייתא, but

<sup>11</sup> Even Frankel's edition refuses to emend the text although they are well aware that the authoritative texts have this significant difference.

<sup>12</sup> See *Maggid Mishnah to Hilchos Shabbos 17:9, Tur 362*.

according to Rambam (*Hilchos Shabbos* 17:9) this is not the case. And although he defines a רה"י as a מקום שהוא מוקף ארבע מחיצות, it is incorrect to interpret this as meaning that he merely requires four מחיצות to constitute a רה"י. His position is, as he explains in the examples that follow, that individual societal, residential constructs—"שהוקפו לדירה", that are surrounded on all sides—constitute רה"י. And as he lists רה"י that are man made, he contrasts them with their counterparts—רה"ר that are man made—the "שווקים" מבוי מבוין, the marketplaces and highways.<sup>13</sup> The מבוין spoken of here is a walled dead-end street surrounded by and leading into courtyards of a residential area. It is, by definition, built for traffic while at the same time is meant to maintain an air of privacy, for it is designed to service primarily the courtyards that abut it. It is, in fact, to be viewed as the private street, or perhaps, more literally, "entryway," of those living on it. While one side is, of course, open to allow entry, still this entrance should not be too wide—not more than ten *amos*—and must be delineated as being private by means of a partial—at least symbolic—wall, a לחי.

Likewise, Rambam tells us, a walled city with four sides and gates that are closed at night qualifies as a רה"י since it is under the domain of those dwelling in the city. In a מדינה the criteria of דלתות ננעלות is part and parcel of the definition of שהוקפו לדירה that he requires.<sup>14</sup> Without putting a limitation on outside access via דלתות ננעלות, the element of privacy is stripped from the city and its walls will not be enough to make it a רה"י. In the case of חצר, the walls need not be as restrictive as those of a מדינה and therefore there is no requirement of דלתות ננעלות, and the mere existence of four complete walls is sufficient. But while its walls need not be as restrictive as those of a מדינה where the walls are charged with adding an element of privacy to a large metropolis, they must be more

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<sup>13</sup> A דרך would be defined as a road, constructed for travel, and even if this road rises through the mountains at a steep angle or if it is suspended in mid-air on a bridge, it remains a דרך. See *Iggeros Moshe OC* 1:139 that deals with the questions as to what status a bridge has. According to our understanding of Rambam, he would consider it a רה"ר.

<sup>14</sup> This is clear from a *balachab* in *Hilchos Shchenim* (6:1) זה את זה בני העיר זה את זה לעשות חומה דלתים ובריח לעיר.

restrictive than those of a מבוי where a joint quality of openness to traffic is coupled with the privacy of a רה"י.

Only with respect to a מבוי is a לחי sufficient to comprise the fourth side, when it is less than ten *amos*. For a חצר, the fourth side must have a fuller wall of two להיים or a פס of four *tefachim*. (*Hilchos Shabbos* 17:7–8, 15:15).<sup>15</sup> Only with regard to מבוי is the concept of openness so integral to the definition of the structure. In a single statement, the *gemara* (*Eruvin* 11a) questions the validity of a מבוי whose open side is יתר מעשר and a חצר with a side that is not עומד צורת הפתח על הפרוץ (doorframe) can be added as rectification to the gap. *Tosafos* (ד"ה מה (יתר) brushes aside the difficulty inherent in the fact that both issues could have been raised with regard to either מבוי or חצר. However, according to Rambam the statement is clear, for the concept of a פס replacing an entire wall which is larger than ten *amos*, is only relevant to a מבוי, while עומד מרובה is a חצר issue since there, four full walls are needed.<sup>16</sup> In the case of a דיר וסהר (stables), the functionality of these structures is such that we can assume that the שם סהר and שם דיר do not come without four complete מהיצות, and even the פס ארבע that is sufficient to complete a חצר would be insufficient to make them a רה"י.

Many *poskim* (see *Orach Chaim* 363:29 and *Mishnah Berurah*) consider river banks valid מהיצות because the *gemara* says that when an ocean bank is one side of a מבוי that side needs no *tikun* (*Eruvin* 8a, *Hilchos Shabbos* 17:5.) Rashi interprets the *sugya* to mean that the ocean

<sup>15</sup> ולולי מסתפינא הייתי טוען דלא לכל חצר התיר רבינו פס ד' ברוח רביעי. וכונתו דחצר כעין מבוי ניתר בפס ד' ולהיים.

<sup>16</sup> While others (see *The Contemporary Eruv*, pp. 82–83) assume that a לחי is needed to close any gap in a wall that is used as a pathway, probably because of the case of מבוי העשוי כנדל, there is no such concept according to Rambam in regard to חצר. Only the fourth wall is subject even to a פס and that is because we do recognize the need for an entrance but we do not consider a חצר designed for many entrances. In a חצר, even if the openings lead to paths off the side walls they are only פרצות and need no *tikun* if less than ten *amos* wide. Only by a מבוי is there recognition of all intersections as being פתחים and thus requiring *tikun*.



bank is one of the side מחיצות, but according to Rambam<sup>17</sup> the *gemara* only allows the sea to take the place of a לחי (or צורת הפתח), as a substitute for one of the walls that is meant to be open for passage. Never could the sea or the sea wall be eligible as a מחיצה for a חצר or מדינה. Every structural רה"י has different parameters for deciding what makes it a מדאורייתא; there is no reason to draw inferences from תקון מבוי to the concept of walls encircling a מדינה. Likewise, when the Chacham Tzvi (*siman* 5) considers The Hague a walled city because of the canal that surrounds it, he does not speak for Rambam. According to Rambam, only a walled gated city qualifies as the מדינה that Chazal considered a רה"י, and as we shall see later, it is this מדינה they were addressing when they instituted the *mitzvah* of *eruv*. While according to other *Rishonim* (see *Eruvin* 6b, Rashi and Ritva) the gates of cities are necessary to make them רה"י because they cancel the main road from constituting a רה"ר, according to Rambam דלתות ננעלות is a portion of the שם that makes up מדינה מוקפת חומה. Likewise, even if bridges over walls do not negate those walls,<sup>18</sup> in a city accessible by bridges at all hours we are not dealing with the structure of דלתות ננעלות ודלתות חומה. This is not a gated city that keeps out traffic at night.<sup>19</sup>

Since רה"י is not solely a function of objective מחיצות, but rather a status granted to unique structures, we can then understand why פסי ביראות, corner poles surrounding a well, are sufficient to turn the area into a דאורייתא רה"י (Hilchos Shabbos 17:27–34, *Eruvin* 17b, 81b). This encircling of the well by פסין is a means of extending the area of the well.<sup>20</sup> The well itself is a רה"י and the area around it is one of public gathering in a cooperative fashion and thus its essential nature is similar to a חצר. Hence, it is susceptible to becoming a רה"י and does not require full מחיצות but merely a process of delineation

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<sup>17</sup> See also Rabbeinu Chananel, *Eruvin* 8a.

<sup>18</sup> See our later discussion of מבטלי מחיצתא.

<sup>19</sup> On this point, perhaps Rashi is in agreement, explaining that the doors disqualify Yerushalayim from being a רה"ר because שאינה כדגלי מדבר שהוא דרך פתוח כל שעה (ערובין קא. ד"ה הייבין).

<sup>20</sup> See *Hilchos Succah* (4:10) where Rambam refers to putting the סכך on the פסים around the well as "על גבי באר שיש לה פסין", i.e., he identifies roofing the פסים as roofing the well itself.



such as mountains, create no structure and hence what they encircle is not a רה"י. A בקעה indeed becomes a כרמלית, but this is a function of its accessibility rather than considering the area as surrounded by מחיצות (as explained in the first section). In fact, there is no reason to believe, according to Rambam, that mountains actually constitute מחיצות at all.<sup>25</sup> Thus, the natural or halachic walls that recent *poskim* have co-opted for *erwin* that surround a city at a distance are irrelevant according to Rambam, for they are not the walls of the city.

The *Maggid Mishnah* is perplexed that Rambam (*Hilchos Shabbos* 17:10) requires only open doors in order to convert a heavily traveled רה"ר pathway between two other רה"ר into a רה"י. שני כתלים ברשות הרבים והעם עוברים ביניהם כיצד מכשיר ביניהם עושה דלתות מכאן ודלתות מכאן ואחר כך יעשה בניהם רה"י. ואינו צריך לנעול הדלתות בלילה אבל צריך שיהיו ראיות להנעל ... אבל צוה"פ או לחי אינן מועילין בהכשר רה"ר (הלכות שבת יז:).

From here, the Chazon Ish (*Erwin* 74:1–3) and others<sup>26</sup> deduce that the דלתות ננעלות required for a walled city is only a Rabbinic requirement and that צוה"פ מדאורייתא suffices. But, in fact, Rambam is merely being consistent with his overall *shittab* that different types of מחיצות are required for different areas. For this particular case, where there are no residential courtyards lining the route and thus the area is not a מבוז, it does not suffice to have צוה"פ on both sides, but something stronger—open doors—are needed to clearly delineate this area as private. With this delineation the Rabbis considered it a רה"י. But a מדינה normally encompassing a much larger area with שווקים and רחובות requires דלתות ננעלות to qualify.

Rambam (*Hilchos Shabbos* 17:18, 33) follows the majority opinion of *Rabbanan* (*Erwin* 22a) that לא אתי רבים ומבטלי מחיצתא meaning that even heavy traffic will not effect halachic, non-solid walls such as those of פסי ביראות. However, the *gemara* (*ibid.*) suggests that Rav Yochanan disagrees on this point, and that he follows the dissenting opinion of Rav Yehudah, when he says ירושלים אלמלא דלתות since even without דלתות בלילה חייבין עליה משום רה"ר

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<sup>25</sup> And while a garden encircled by small תלים would probably be considered a רה"י (*Hilchos Shabbos* 16:9), it is difficult to believe that surrounding mountains would have a similar effect.

<sup>26</sup> See also *The Contemporary Eruv*, p. 58.

the walls around Yerushalayim should block out any traffic. Nevertheless, as we well know, Rambam too requires דלתות around a מדינה to make it a רה"י, and thus many question this seeming contradiction.<sup>27</sup> The answer is, as we have explained, that according to Rambam, the requirement of closed gates around the city are in order to transform the area in question into the structure we identify as a רה"י גמורה, not because they are needed to prevent the area from being a רה"ר. On the other hand, it is only after an area has become a רה"י via its מחיצות that we ask the question whether these מחיצות are considered breached by incoming traffic.<sup>28</sup>

Rambam's interpreters<sup>29</sup> deduce, based on his requirement of only דלתות פתוחות for a רה"ר, that he is *posek* that no matter how wide and traveled a street is, when it crosses within the borders of "halachic" מחיצות it ceases to be a רה"ר מדאורייתא since לא אתי רבים ומבטלי מחיצתא. However, in fact, Rambam recognizes no "halachic"

<sup>27</sup> And, as noted above, the Chazon Ish assumes the requirement of דלתות ננעלות is only Rabbinic.

<sup>28</sup> The *gemara* (*Eruvin* 22a) itself is probably making this point as well when it follows its equation of Rav Yochanan and Rav Yehudah by pointing out that Rav Yehudah and *Rabbanan* both have positions that seem to contradict their stand on מחיצתא ומבטלי רבים אתי and thus, the *gemara* explains, their stands on the issue are modified according to the individual structures into which the traffic flows. "דרבנן אדרבנן נמי לא קשיא, הכא איכא שם ארבע מחיצות התם ליכא שם ארבע מחיצות" Only when there are four מחיצות around a well or חצר, constituting what *Rabbanan* consider a fully constructed רה"י, do they then say לא אתי רבים ומבטלי רה"י, even though a large physical gap is left wide open to traffic. But in different cases, such as in the case above where the area is a רה"ר that we are trying to close off and make private while at the same time still leaving it open on two sides with the intent of facilitating passage, then we need something stronger to define the area as closed: gates, though they will remain open. So, too—and this is perhaps the *gemara's* intended implication—for the highways leading into the city that Rav Yochanan was addressing, a much stronger type of closure is needed to subsume the entering highway into the רה"י of the מדינה—gates that close at night. Rav Yochanan may very well accept the concept of לא אתי רבים ומבטלי מחיצתא, but the application of this concept is contingent on there being in place the proper מחיצות for each unique structure.

<sup>29</sup> See *Biur Halachah* OC 364:2. See also *Arvei Nezer* OH 266 and *Chazon Ish Eruvin* 74:1–3.

מחיצות as functional for enclosing large areas that would be classified as cities or parts of cities. A מדינה can only be enclosed with full walls and דלתות ננעלות, otherwise the road that passes through it remains a רה"ר. Indeed, לא אתי רבים ומבטלי מחיצתא, but according to Rambam there are no מחיצות around Brooklyn, for in order for Brooklyn to have מחיצות it must be made into a מדינה, a walled city with gates that close at night. In addition, while the Chazon Ish (*Eruvin* 74:1–3) struggles to determine why Yerushalayim would become a רה"ר via עומד מרובה על made in its walls (*Eruvin* 101a) while it remained הפרוץ, according to our understanding, there is a simple explanation. If a major city does not have the enclosure it requires, all the שווקים within it retain their original status of רה"ר.<sup>30</sup>

The Chazon Ish (*Eruvin* 107:5) is apparently also in agreement with the principle we have stated, that in order to say לא אתי רבים ומבטלי מחיצתא, we must be dealing with walls that independently form a רה"י structure. Thus he creates his famous matrix beginning with a dead-end street that has three sides and has formed a רה"י דאורייתא, and only then does he go on to create imaginary walls to close off even major thoroughfares. On the other hand, Rav Moshe Feinstein is quoted as saying (*Iggeros Moshe OH* 5:28:3, see editor's notes) that imaginary walls created by filling in the gaps of פרוץ when עומד מרובה על הפרוץ do not suffice to create a wall to fence in a road that is a רה"ר. In this, Rav Moshe is in agreement with Rambam, who certainly requires real walls to enclose a רה"ר.<sup>31</sup>

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<sup>30</sup> We will see later that in fact there is another answer to his question.

<sup>31</sup> It is also important to note that the Chazon Ish bases his matrix solution on the principle that a פרצה greater than ten *amos* is only a פסול in a מחיצה, whereas it seems clear that Rambam considers it מדאורייתא (see *Mishkenos Yaakov*.) Rambam also rules that an opening at the corner does not qualify as a פתח and thus even a פ"פ in the corner would become a פרצה הפוסלת מדאורייתא if greater than ten *amos*.

### ***Eruvin and Hilchos Shabbos***

Until this point, we have seen that with regard to the definitions of רה"י and רה"ר, Rambam has a profoundly different viewpoint from that of the majority of *Rishonim*. These differing definitions, in turn, have a major impact on how Rambam and other *Rishonim* interpret the laws of *erubin*. But even without these differences, there is fundamental disagreement between Rambam and this other school of thought on how to understand the *takanah* of *erubin*.

After Rambam concludes a thirty-chapter *sefer* on *hilchos Shabbos*, of which seven and a half chapters are devoted to the אסור הוצאה, he follows it with a second *sefer* on *erubin* in which the first five chapters deal with ערובי הצרות ושתופי מבואות. The *mitzvah* of *erubin* is a distinct concept according to Rambam, not part of *hilchos Shabbos*. In contrast, the *Tur Shulchan Aruch* begins the laws of carrying on *Shabbos* with a description of the four *reshuyos* in *siman* 345, and already in *siman* 346, when defining the Rabbinic prohibitions, includes carrying from one רה"י to another when “there is no *eruv* between them.” Throughout the *Shulchan Aruch*, the laws that Rambam has separated into *Hilchos Shabbos* and *Hilchos Eruvin* are fully integrated.<sup>32</sup> That Rambam’s outlook on this issue differs from the standard understanding of other *Rishonim* can be discerned further by noting a dispute between him and Ramban in *Sefer HaMitzvos* (*Shoresh* 1). Rambam questions *Baal Halachos Gedolos*’ judgment in counting among the *Taryag Mitzvos* such Rabbinic laws as נר חנוכה and מקרא "וכמו שמנו נר חנוכה ומקרא מגלה היה להם למנות נטלת ידים ומצות — מגלה עירוב כי הנה אנו מברכים אשר וכו' וצונו על נטלת ידים ועל מצות עירוב כמו שנברך על מקרא מגלה וכו'" If מצות דרבנן are to be counted, why not count *erubin* as well, which merits a ברכה upon its performance just as these other two מצות דרבנן. To this Ramban argues that the reasoning of the *Baal Halachos Gedolos* is obvious. "לפי שאין בכל עניני הערוב מצוה חדשה מדבריהם שתמנה, אלא אם אמרו במצות הערוב לאו, כלומר שיהא אסור להוציא מרשות היחיד לחצר המשותף בלי ערוב, הרי העובר עליו עבר על ל"ת מלאכה מדבריהם וכו' וכי נבא בכלל החשבון המצות המוציא לכרמלית שהוא מדבריהם וכו' אלא כולן בכלל עשה ול"ת של שבת הן" (הגהות הרמב"ן לספר המצוות שרש א). He does not count *erubin* as an independent *mitzvah*

<sup>32</sup> See especially *simanim* 362 and 363.

because “there is nothing in *eruv* that makes it a new *mitzva*... it is merely part of the שבות that was legislated with regard to the אסור דאורייתא of הוצאה... Would Rambam expect *Baal Halachos Gedolos* to count the prohibition of carrying in a כרמלית as an independent *mitzva*? ... All such [Rabbinic] prohibitions are a part of the [Torah's] positive and negative laws regarding doing work on Shabbos.” According to Ramban, just as Chazal extended the laws of הוצאה to include carrying in a כרמלית, so, too, they included within the Rabbinic dimensions of הוצאה a prohibition against carrying from “the private domain to a חצר jointly owned that has no *eruv*.”

Ramban's viewpoint is certainly shared by Rashi (*Eruvin* 6b, 101a), as he explains that דלתות ננעלות are effective in turning Yerushalayim into a רה"י in two steps. Without them, the city has a מפולש with passage of 600,000 that makes the city a רה"ר. The doors make it a כרמלית, then ערוב converts the כרמלית to רה"י. "ירושלים ... ואילמלא שנועלין דלתותיה בכל לילה חייבין עליה בשבת משום רה"ר, אבל נעילת דלתות משויא ליה כחצר של רבים ומערבין את כולה — וכל זמן שלא ערבו הויא כרמלית ולא מחייבי עליה והכי נמי אמרינן בפרק בתרא (קא.) דירושלים כרמלית היא" (ערובין ו:). Hence the definition of רה"י and ד' are dependent on the ערוב—the Rabbinic definitions of the רשויות are dependent on ערובין דיני. Rashi is based on *Eruvin* 101a in which, according to the simplest reading of our text, Yerushalayim, at the time it had דלתות ננעלות, was considered a כרמלית until the residents made an *eruv*. Both the *Maggid Mishnah* (*Hilchos Eruvin* 1:1) and *Kesef Mishnah* (*Hilchos Shabbos* 14:1) downplay the significance of the *gemara's* and Rashi's use of the term כרמלית for רה"י משותפת and accept it as a “borrowed” analogous term. Nevertheless, Rashi's ready acceptance and usage of the term demonstrates his attitude that, in fact, the רה"י משותפת is conceptually the same as a כרמלית, while, in contrast, Rambam is careful to strictly differentiate between them. Moreover, from the *Peirush HaMishnayos* (*Eruvin* 10:9) it appears that Rambam learned the *sugya* (*Eruvin* 101a) differently and only considered Yerushalayim a כרמלית in the era when פרצות in the wall left it with many openings, which were obviously not closed with דלתות ננעלות. Thus, many areas in Yerushalayim at that time would have been a כרמלית, and the *sugya* is referring only to them, and the *gemara* would not use the term with regard to a חצר המשותפת.

In addition, Rashi defines the Rabbinic laws of *eruv* as a הרחקה from carrying from a רה"י to another רה"י lest one then carry

"לא עורבין אסורין: מפני שהבית מיוחדת לבעלים. רה"י to a רה"ר" from a והחצר רשות לכולן ונמצא מוציא מרשות לרשות אע"פ ששתיהם רה"י, ולעשות סיג לתורה להרחיק שלא יוצא מרה"י לרה"ר" (שבת ו) This is similar to the reason for the prohibition of carrying in a (מבוי) as well — רובנן גזור עליה משום דאתי לאחלופי ברה"ר ושרייה בתקנתא דלחי וקורה — Thus, in fact, דלהוי הכירא דלא ליתי למשרי ברה"ר גמורה (רש"י ריש ערובין) there is no conceptual novelty in the *halachos* of *erubin*. According to Rashi, *erubin* and carrying on Shabbos is an integrated issue, and all the Rabbinic הרחקות are of a practical nature to prevent an individual from errantly carrying on Shabbos because he does not understand that the area is a רה"ר. The requirement to place a superfluous לחי on the fourth side of a מבוי is to make clear that in areas of public traffic, one cannot simply assume that carrying is permitted. Along with legislation permitting carrying in a מקום פטור which is subject to public traffic such as a מבוי, came the requirement of delineation of the area with a לחי וקורה. Were they to allow carrying without any *tikun*, it would not be clear that in a similar area which actually qualifies as a רה"ר it is prohibited to carry, and therefore people might carry there. According to Rashi, after doors have been placed on the main road of Yerushalayim, the environment still resembles a רה"ר, therefore Chazal maintained the prohibition of carrying there until the community was מערב with פת. By instituting the *eruv* process it was made clear to the inhabitants that one cannot take for granted the right to carry in public, but they may only carry when the area has been converted to a רה"י.<sup>33</sup>

In contrast, Rambam clearly distinguishes between the ד' discussed in שבת רשויות דרבנן and אסורי ערובין and הל' שבת. In *Hilchos Erubin*, the target of Rabbinic legislation is a segment of what comprises רה"י

<sup>33</sup> According to Rashi, so integrated are the laws of *erubin* with the laws of Shabbos, that although he believes the laws of Shabbos require that in a city that is a רה"ר it is necessary to make *tikunim* (לחי וקורה) on all its מבואות המפולשין, this requirement is suspended if the city was originally עיר של יחיד (i.e., it did not have 600,000 people). Since the people of the city had been accustomed to be מערב together, even after the city has become a רה"ר, they may continue to do so and rely on only one general *tikun* on the main street which is the only actual רה"ר of the city. (See Rashi *Erubin* 59a, 60a ובעו תקנתא מדרבנן) "דכל מבואות המפולשין הוו כרה"ר ובעו תקנתא מדרבנן (נט. ד"ה לחי מאכא). (דמיחלפי ברה"ר אבל בעיר של יחיד מוכחא מילתיה")



and these areas had been unaffected by the first set of Rabbinic laws that are detailed in *Hilchos Shabbos*. "חצר שיש בה שכנים הרבה כל אחד מהם בבית לעצמו דין תורה הוא שיהיו כולן מותרין לטלטל בכל החצר ומבתים לחצר ומהחצר לבתים מפני שכל החצר רה"י אחת ומותר לטלטל בכלה. וכן הדין במבוי שיש לו לחי או קורה שיהיו כל בני המבוי מותרים לטלטל בכלו ומחצרות למבוי וממבוי לחצרות שכל המבוי רה"י הוא. וכן הדין במדינה שהיא מוקפת חומה גבוה עשרה טפחים שיש לה דלתות ננעלות בלילה שכולה רשות היחיד היא. זו היא דין תורה" (הל' ערובין א:א).

According to Rambam, the *takanah* relates only to a רה"י that is shared by multiple dwellers—מחולק בדיריין—hence resembling a רה"ר. Those societal structures of חצר, מבוי, מדינה that Rambam lists as exemplifying what a רה"י is, are the areas affected by *eruv* legislation. Rashi, however, as we have noted, defines the *issur* as carrying from one רה"י to another. "שאסור להוציא מרשותו לרשות חבירו. ואע"פ ששניהם רה"י" (שבת יד:).<sup>34</sup> According to Rashi, the primary prohibition is against carrying between two separate רה"י, and the *takanah* applies not only from the house to the חצר but between two private houses as well.<sup>35</sup>

Besides מדינה, מבוי, חצר, Rambam (*Hilchos Eruvin* 1:3) does define one other place where the *takanah* of *eruv* was made, that of "יושבי אהלים או סוכות או מחנה שהקיפוהו מחיצה", for this encampment comprises yet one more societal structure. When the members of this group make up a שיירה there is no need for *eruv* since מעורבין

<sup>34</sup> He explains the reasoning behind the *takanah* as follows: "הצירות של רבים. שפתוחין בתים הרבה לחצר ואסרין בני הבתים זה על זה שאין יכולין להוציא מן הבתים לחצר בלא עירוב מפני שהבית רשות מיוחדת לו וחצר רשות חבירו מושל בה ונמצא מוציא מרשות לרשות, ורבנן גזור שלא להוציא מרשות היחיד לרשות היחיד גזירה דילמא אתי לאפוקי מרשות היחיד לרשות הרבים" (ערובין יב:).

<sup>35</sup> Actually, according to Rambam it would be expected that there be no prohibition in carrying between two private houses. (See *Tosafos Yom Tov, Eruvin* 7:1.) However, in many places he does speak of an *eruv* being made to allow carrying between two houses (see *Hilchos Eruvin* 2:15, 3:5, 4:3, 5:18; also see 3:17, 4:9, 4:15, 4:24–26) as the Talmud implies. It appears that this requirement is only for cases where the houses share a joint חצר or מבוי and the primary means of movement between the two houses is through the joint courtyard. In this event the houses are included in the *takanah* of *eruv* but through the existence of a window between the adjoining houses an *eruv* can be made directly.

already, but when the relationship is looser they need an *eruv* to define the camp as a joint societal structure. Understanding that a *מהנה* is an example of the *רה"י* that is a societal structure helps us understand another *balachab*. In *Hilchos Shabbos* (16:12), Rambam discusses the making of *מהיצות* around an encampment made in a *בקעה*. When three persons encircle themselves they comprise a *שיירה* and can carry without limitation, but one or two people can only carry when the camp is less than two *סאה*. The explanation for this limitation is in accordance with what we have learned—the status of *רה"י* is only granted here when a *מהנה* has been created, and the making of *מהיצות* around a single person in a wilderness does not constitute the fundamental societal structure of a *מהנה*. Once the societal structure is created it is permitted to carry there, but then the laws of *eruv* become applicable as well. Other *Risbonim* take an entirely different approach to explain why only three people, not less, may encircle themselves in an encampment, assuming that the *gemara* is speaking of making *מהיצות גרועות* and contending that with full *מהיצות* no such distinction need be made.<sup>36</sup> Rambam is consistent in saying that *מהיצות* do not objectively create a *רה"י*, but the status is granted based on the existence of a societal structure.<sup>37</sup>

### Shlomo's *Takanah*

"בשעה שתקן שלמה עירובין ונטלת ידים יצתה בת קול ואמרה  
בני אם חכם לבך ישמח לבי גם אני ... בתחלה היתה תורה דומה  
לכפיפה שאין לה אזנים עד שבא שלמה ועשה לה אזנים."  
(ערובין כא:)

The *gemara* says of Shlomo's *takanos* of עירובין וערושים לקדשים ונטלת ידים that he added handles to the Torah, which, prior to his enactments, was like a basket without handles. Rashi explains that these "handles" were a means of making a faithful practice of *mitzvos* feasible. "ועל ידי כך אוזנין ישראל במצות שנתרחקו מן העבירה, כדרך שנוח לאחוז בכלי שיש לו

<sup>36</sup> See *Maggid Mishnah* and *Hasagos Baal HaHashlamah* (ibid.).

<sup>37</sup> The other *Risbonim*, believing that *מהיצות* should objectively create a *רה"י*, are forced into their explanation that we are dealing here with inferior *מהיצות*, in a case of *שעת הדחק*.

בית יד משאין לו" (ערובין כא: ד"ה ועשה). The *mitzvos* of the Torah have such exact parameters that it is hard to do that which is permitted without transgressing. It would seem that Rashi attributes the beginning of *takanos*, the concept of a fence around the Torah, to Shlomo. However, as we noted earlier, Rambam viewed these two *takanos* as unique *mitzvos*, not merely intended to prevent transgression of related Torah laws. Therefore he suggested that the *Baal Halachos Gedolos*, who counts the Rabbinic law of reading the *megillah* as one of the *Taryag Mitzvos*, should also count these two *mitzvos* (*Sefer HaMitzvos, Shoresh 1*—see above). This implies another explanation as to what these “handles” are, and as to how these *takanos* reflect the special wisdom that was Shlomo's.

Shlomo, the idealized king of Israel, sought to unify the people around the *Bais Hamikdash* that he had built, and thus instituted Rabbinic enactments to strengthen the מלכות ישראל that he was perfecting. His enactment of נטלת ידים לקדשים required that one approach קדושה with an act of טהרה. In this way, he created amongst the people an awareness that טהרה is a prerequisite for קדושה. The masses were aided in “grasping” these concepts of קדושה וטהרה that are so central to our religion and the מלכות ישראל that he was engaged in building.<sup>38</sup>

Also central to מלכות ישראל and to the work of Shlomo was forging this nation into a unified people. "ומפני מה תיקן שלמה דבר זה? כדי שלא יטעו העם ויאמרו כשם שמותר להוציא מן החצרות לרחובות המדינה ושוקיה ולהכניס מהם לחצרות כך מותר להוציא מן המדינה לשדה ולהכניס מן השדה למדינה. ויחשבו שהשוקים ורחובות הואיל והן רשות לכל הרי הם כשדות וכמדברות ויאמרו שהחצרות בלבד הן רשות היחיד וידמו שאין ההוצאה מלאכה ושמותר להוציא ולהכניס מרשות היחיד לרשות הרבים. לפיכך תיקן שכל רשות היחיד שתחלק בדירין ויאחו כל אחד ואחד בה רשות לעצמו וישאר ממנה מקום ברשות כולן ויד כולן שוה בו כגון חצר לבתים שנחשוב אותו המקום שיד כולן

<sup>38</sup> —עיי' הגדה של פסח מבית לוי דף קצ"א: See *Hilchos Avos HaTumah* 8:8. "וכמו הדין דבעינן קידוש ידים ורגלים לעבודה" The Brisker Rav explains that קידוש ידים ורגלים was a unique *takanab* comparable to נטלת ידים לחולין according to Rambam. While the Brisker Rav only feels this idea was relevant to חולין, most commentaries feel that Shlomo's *takanab*, which was made with regard to *kodshim*, was the source of this latter *takanab*. Hence we apply this idea to Shlomo's *takanab* as well, since in the *Sefer HaMitzvos*, Rambam seems to be talking about all חולין נטלת ידים.

שוין בו כאילו הוא רשות לרבים ... אלא ישתמש כל אחד ברשות שחלק לעצמו בלבד עד שיערבו כולן אף על פי שהכל רשות היחיד" (הל' עירובין א:ד-ה). Rambam explains that people did not understand that the מבואות and even the cities they shared were in fact רה"י. They did not understand that they were in a state of partnership with the thousands, and theoretically millions, who lived in a walled city. In truth, the people themselves are the בעלים and responsible for the governance of their city. *Hilchos Shbchenim* (Chapters 4–6) details the rights and responsibilities that members of מבו, ומדינה, מבו, מצר, have towards each other.<sup>39</sup> The appointment of a Jewish king still leaves his subjects as free men, with the responsibilities of free men.<sup>40</sup> The enactment of *erwin* was to create a consciousness of this point.<sup>41</sup>

Moreover, Rambam explains that while the final goal of *mitzvos* is שלמות הנפש that he hoped to promote with his *takanah* of נטלת ידיים, this can only be reached after שלמות הגוף which is reached by the fulfillment of the just *mitzvos baTorah* dealing with interaction between men in society.<sup>42</sup> Shabbos, he explains is not only a vehicle for binding man with God, זכר לבריאת העולם, but it is also זכר ליציאת מצרים, a reminder that God in his mercy granted us freedom and in this way empowered us to build the world.<sup>43</sup> Underlying the section of Jewish law dealing with the interaction of men in society is the principle that it is man's duty to create partnerships with his fellow men and to promote their mutual interests through the organs of civilization.<sup>44</sup> Shlomo's *takanah* of *erwin* was intended to strengthen the awareness of this concept amongst his people. Rambam's language,<sup>45</sup> and his entire presentation of the *mitzvah* of *erwin*, makes

<sup>39</sup> It is interesting to note that these fourteen chapters contain no Biblical law within them. Hence, the Kings and Rabbis were charged with defining these responsibilities and rights.

<sup>40</sup> See *Peirush HaMishnayos, Avos* 3:5 חירות על הלוחות.

<sup>41</sup> שום תשים עליך מלך — סה"מ מ"ע קעג. Since the people are charged with choosing their king, their government, hence the ultimate responsibility for their governance, lies with them.

<sup>42</sup> See *Moreh Nevuchim* 3:27; also see *Hilchos Deos* 3:3.

<sup>43</sup> וזכרון חסדי ה' עלינו שהניח לנו מתחת סבלות מצרים, וכאלו הוא חסד כללי, באמתת ההשקפה העיונית ותקינות המצב הגופני (מ"נ ב:לא).

<sup>44</sup> ואהבת לרעך כמוך — סה"מ מ"ע ר"ו.

<sup>45</sup> עד שיערבו (ולא כתב "אלא אם ערבו").

clear that communities are expected to make *eruv*. Life in the ancient world would have been very difficult if carrying was prohibited locally on Shabbos, and the intent of the *takanab* was not to prohibit it. Moreover, the very process of making the *eruv* in which שכולנו מעורבין ואוכל אחד לכולנו ואין כל אחד חולק רשות מחבירו would draw the people into שותפות (partnership)—a relationship that in fact is a goal of the *mitzvos* of the Torah and the intent of Shlomo's *takanab*.<sup>46</sup>

Yet, Rambam states explicitly a more direct purpose for this *takanab*. It was designed to make people aware of the prohibition of carrying from the private domain to the public, and vice versa. Reconciling these two seemingly disparate concepts behind this *takanab*, gives us insight into the purpose of הוצאה. Shlomo's ultimate goal required that his people understand the prohibition of carrying on Shabbos — איש ואשה אל יעשו עוד מלאכה לתרומת הקדש ויכלא העם — מהביא, הא למדת שההבאה מלאכה קורא אותה (הלכות שבת יב:ח). On Shabbos we refrain from מלאכה, from the process of building civilization. Shlomo saw that men did not understand that coupled with the prohibition of work on Shabbos is a Torah imperative to engage in מלאכה for six days of the week.<sup>47</sup> The meaning of this imperative is that man should take from nature, from the רה"ר, and turn what he takes into a רה"י. Man was meant to go into the desert, the forest, and the field, and take the bounty that God put into nature and use it to build the public domain.<sup>48</sup> To do this, man does הוצאה as he takes his tools to these areas and then הכנסה as he brings in what he finds there. Interestingly, only here, in describing *eruv* (*Hilchos Eruvin* 1:4), does Rambam speak of the two processes הוצאה and הכנסה,<sup>49</sup> for here he must explain that this process of הכנסה is what

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<sup>46</sup> Yerushalayim did not have an *eruv* in Talmudic times, based on *Eruvin* 101a. We must assume that this was because of their inability to make one. According to our understanding of Rambam, explained above, the פרצות that could not be closed made it halachically impossible. But see *Iggeros Moshe OC* 5:28.

<sup>47</sup> ששת ימים תעבוד ועשית כל מלאכתך.

<sup>48</sup> See *Yirmiyahu* 17:21–22 where the prophet makes הוצאה the central theme in שמירה שבת. (Thanks to Dovid Guttman for this reference.)

<sup>49</sup> ע"י הל' שבת יב:ח בשינוי נוסחאות.

Shlomo feared would be lost in the consciousness of the people.<sup>50</sup> The task of מלאו הארץ וכבשוה is that of ששת ימים.

Shlomo's two *takanos* were intended to ingrain within the nation the two goals of שלמות הגוף and שלמות הנפש that are the essence of Judaism. According to Rambam, the "handles" that Shlomo added to the Torah were a new aspect to *takanos*. He added *takanos* that would change the mindset of a people and help them grasp the concepts of the Torah.

### Rambam's *Eruv*

As we have noted before, according to Rashi (*Eruvin* 6b, 59a)<sup>51</sup> the methodology of making an *eruv* in large cities consists of first turning them into a חצר דרבים by canceling any רשות הרבים that may exist within them and then being מערב to turn the חצר הרבים which is a כרמלית into a רה"י. The problem that a רה"ר presents is handled with דלתות which cut off traffic from this road that penetrates the city. It is understood that it is בקיעת רבים (a large amount of traffic) that is מבטל מהיצות, and as soon as this problem is handled there is no problem creating a חצר דרבים. When the Tur (*Orach Chaim* 391) addresses the issue of עיר he treats it no differently than מבוי, and both are made up of חצרות that had previously been מערב.<sup>52</sup> This עירוב of עיר and מבוי are identical in his opinion and differ from that of חצר, only in that חצר is to מבוי as an individual is to a חצר.

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<sup>50</sup> It is also worth noting that Rambam does not speak of a fear the people would not know that it is prohibited to carry four *amos* in a רה"ר and, in fact, the *takanah* allows carrying within an area without an *eruv*. The only educational concern was with regard to carrying from the public to the private.

<sup>51</sup> See *Orach Chaim* 364:2 and 392:6.

<sup>52</sup> Note also he speaks of being מערב rather than using the terminology of משתף (כולם עשו ערוב אחד... אין יכולין לערב כולם ביחד) which is used by both he (*Orach Chaim* 386) and Rambam (*Hilchos Eruvin* 1:7) for a מבוי. Unlike Rambam, the Tur is not concerned with making a clear distinction between the process of שתוף and ערוב. The Tur only devotes an independent *siman* (392) to this discussion of עיר because it is necessary to discuss the details of whether the ערוב requires שיור (leaving part of the city out of the *eruv*).

According to most *Rishonim* and the *Shulchan Aruch*, the laws of עירוב are singular and they consist of joining into a group all people that have been enclosed within a halachic structure. Because this joining need be done only via a halachic structure and not a physical structure, the builders of modern day *eruv* contend that a joint area of residence can be defined by electric power lines that qualify as imaginary מהיצות comprised of הפתח צורת. This halachic world of *eruv* is fanciful and the joint structure within which people carry on Shabbos is essentially an imaginary one.

In contrast, Rambam to some degree considers the process of עירוב in a city to be comparable to that of a מבוּי in that both are called שתוף (*Hilchos Eruvin* 5:19 במדינה כיצד משתתפין). A city is more comparable to a מבוּי, as he explains at the beginning of *Hilchos Eruvin*, in that both מבוּי and מדינה are perceived by the public as being a רה"ר. However, according to Rambam, the שתוף of a מדינה is an independent concept unto itself as the unique laws that apply to it imply. According to Rambam, the laws of *eruv*<sup>53</sup> apply to three distinct joint residential structures: 1) the joint הצר surrounded by houses and enclosed by walls, 2) the מבוּי, which is a street—but perhaps not any street, but the streets of ancient cities that were enclosed by specifically built walls of the הצרות that surrounded them, and 3) מדינות—walled cities, in which the people constitute a joint social unit—a real one. According to Rambam, disparate מבואות cannot be joined together into one unit (*Hilchos Eruvin* 5:24). Many *halachos* discuss the joining of הצרות into one unit when they abut and have a connecting door (*Hilchos Eruvin* chapter 3), but מבואות which often intersect, never come up in this discussion. According to Rambam, the *halachah* of עיר להצאין אין מערבין עיר (see *Maggid Mishnah* 5:19) means that when streets are part of a walled city and no joint *eruv* is made for the whole city, then the only means to be מערב is for separate *eruv* to be made for individual streets which must be physically separated from each other (with a מצבה)—no blocks of streets may share one joint *eruv*. When the city is not joined by a wall then the people may be מערב together, just as הצרות may join together when linked with a פתח. Since each מבוּי by definition has a פתח linking it with the rest of the city, the *gemara* never had to define what constitutes a פתח (see

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<sup>53</sup> In addition to a camp, explained above.

*Hilchos Erwin* 3:19). However, the **מבואות** never become one unit but rather require proper *tikunim* on each individual street.<sup>54</sup> The *halachah* (*Hilchos Erwin* 5:19–20) that was stated with regard to an **עיר של רבים** (a city that was originally founded by many joint owners) that **שיור** is required—that one section of the city must be left outside of the *eruv*—should not be interpreted as a requirement that the city be divided into parts, since Rambam is explicit that this may not be done. Rather, the entire city participates in the *eruv*, but one section, and one section only—which could consist of even a single house—participates by limiting itself to carrying in its isolated area, so that it be absolutely clear that it is the *eruv* that is permitting the carrying

Much of the debate about making an *eruv* in metropolitan centers revolves around the definition of what a **רה"ר** is, because it is generally assumed, as Rashi states (see above), that the process of *eruv* is first turning an area into a **כרמלית** via the proper structures and then being **מערב**. But according to Rambam, the issue is not whether the area is a **רה"ר**, but as to whether it is a **רה"י** made up of Jews living together in a communal relationship. The three areas that Rambam identified in *Hilchos Shabbos* as the **רשויות היחיד** that are man-made constructs of society are the three constructs upon which the *takanos* of *erwin* were made.

The most halachically complicated of these three constructs is the **מבוי**. A **מבוי** with a **לחי** is a **רה"י דאורייתא** while a **מבוי** with a **קורה** is really a **מקום פטור מדאורייתא** which the **חכמים** classified as a **רה"י**. Nevertheless, a **מבוי** with a **קורה** is also subject to the *halachos* of *eruv*. It is unclear if a **מבוי מפולש** would also qualify for an *eruv*. While Rav Chaim Brisker (*Hilchos Erwin* 16:16) interprets Rambam as contending that a **מבוי מפולש** without *tikun* is a **רה"ר**, according to the understanding that comes from the principles articulated above, anything with a **מבוי שם** cannot qualify as a **רה"ר**, for this identity comes from the presence of houses and courtyards that identify it as

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<sup>54</sup> According to Rashi (*Erwin* 59–60, see above) as well, although a city can be one unit when it is surrounded by a wall, or when it is an **עיר של יחיד**, or even had at one time been an **עיר של יחיד**, a city that is a pure **רה"ר** must have separate *tikunim* for all its **מבואות המפולשין**. Ramban (*Erwin* 59) also agrees that when there are **מבואות מפולשין** within a city, separate *erwin* and *tikunim* must be made.



a residential area (*Hilchos Shabbos* 17:7). According to Rambam, the presence of the homes and הצרות of people removes the identity of רה"ר from an area.<sup>55</sup> Thus, while our *girsā* in the *gemara* (*Shabbos* 6a,b) refers to מבואות המפולשין as רה"ר, Rambam records this statement as דרכים המפולשין להם (לרה"ר). Nevertheless, in *Hilchos Shchenim* we see that in a מפולש, the residents do not have the ability to limit rights of their neighbors as they do in a מבוה סתום (*Hilchos Shchenim* 5:4; also see 5:12–14) and this would imply that it is not included in the *eruv* process, as does also the language of the *gemara*<sup>56</sup> and Rambam's own language.<sup>57</sup> In contrast, Rashi (*Eruvin* 2a מבוה ד"ה) contends that a מבוה is a term used for any street and a מבוה becomes a רה"ר when it is sixteen *amos* wide and has a population of 600,000. According to Rashba (*Avodas Hakodesh* 3:1, see *Maggid Mishnah* 14:1), even the continuation of a sixteen-*amos* road that narrows remains a רה"ר. Thus in their view there is no structural construct that is a מבוה but the same street can turn into a רה"ר if traffic or population in the area increases.

### ***Tzuras HaPesach—Gateways***

"אם עשה צורת הפתח אפילו לפרצה יתירה מעשר מותר ואפילו  
לא נעץ אלא ד' קונדסין בארבע רוחות ועשה צורת פתח על  
גביהן מותר ... ולהרמב"ם אין צורת הפתח מועיל לפרצה יותר  
מעשר אא"כ עומד מרובה על הפרוץ." (שו"ע או"ח שסב:)

The *halachah* of the *Shulchan Aruch*, that four corner poles connected on the top can stand in the place of מחיצות, is based on an explicit statement in *Eruvin* 11a and *Tosafos'* (*ibid.*) understanding of that statement. According to this statement, the ד' קונדסין create מחיצות that allow carrying on שבת and separate grain from grape with respect

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<sup>55</sup> In *Hilchos Eruvin* when Rambam speaks of people not appreciating that the שווקים in their מדינה are in fact a רה"ר since the entire city is walled, he also speaks of the רחובות which they will believe are רה"ר and about which they are mistaken for they, too, are a רה"ר as part of a walled city. He uses this term רחובות rather than מבואות, for מבואות are in fact never a רה"ר.

<sup>56</sup> *Shabbos* 6a speaks of ערוב on a מפולש שאינו מפולש.

<sup>57</sup> *Eruvin* 1:1 only speaks of קורה and לחי, not צוה"פ.

to כלאים. Rambam, however, does not recognize these four צורות as מחיצות either with regard to Shabbos or כלאים.<sup>58</sup> He clearly interprets the Talmudic statement about ד' קונדסין as does Rabbeinu Chananel (ibid.)—to be dealing with an initial four corners that are then filled in every three *tefachim* with reeds.<sup>59</sup> While according to *Tosafos* a צורת הפתח has the status of a מחיצה,<sup>60</sup> which means it has the ability to separate, according to Rambam its status is that solely of a פתח—serving merely to delineate a gateway.<sup>61</sup> It can suffice for two sides of a מבוי<sup>62</sup> because a מבוי is made for traffic and thus the requirement to complete its structure is satisfied with two gateways. But when a חצר is constructed, then a צוה"פ can only be used on the fourth side, and only if the side is less than ten *amos*, for only one gateway allowance is made for a חצר which is fundamentally a closed structure. In a מדינה where דלתות ננעלות are needed and the city must be separated from outside roads, of course a צורת הפתח could never be used as a complete side. The characteristic of a צורת הפתח is that it so clearly defines the opening as a פתח, that even if it is wider than a normal פתח (greater than ten *amos*) it remains a פתח and does not turn into a פרצה. But a צוה"פ is a gateway that can stand in the case of a מבוי in place of a מחיצה, but is not a מחיצה, and thus in the case of כלאים where separation is necessary it is not effective.<sup>63</sup>

<sup>58</sup> *Hilchos Kilayim* 7:17. See R. Akiva Eiger who questions why Rambam does not bring this law.

<sup>59</sup> See *Biur Halachah*, ibid.

<sup>60</sup> See *Biur Halachah* and the *Pri Megadim* 363 that he quotes.

<sup>61</sup> See *Chidushei Rav Chaim, Shabbos* 16:16, which brings a proof from פתחא בקרן זוית לא עבדי אנשי.

<sup>62</sup> Though we speak of using a לחי on one side, since a צוה"פ contains within its structure a לחי, obviously a צוה"פ can be used on both sides.

<sup>63</sup> The *gemara* (*Eruvin* 11a) in saying על העומד מרוכה על הפרץ במבוי ופרץ מרובה על העומד clearly implies that two separate principles apply to these two different structures and hence supports the position of Rambam. (See *Tosafos* [ibid.] who notes this implication but is not swayed by it.) The concept of a פתח alone constituting complete sides of greater than ten *amos* only works for מבוי and not for חצר. In addition, even other *Rishonim* (see Ritva, [ibid.]) note that the *gemara* can be understood to be saying that while it is only Rav who rejects the ability of צוה"פ to validate a מבוי entrance greater than ten *amos*, the deduction that therefore עומד

The Chazon Ish (*Erwin* 107:2) asks, how is it possible that Rav Yehudah can say אתי רבים ומבטלי מחיצתא when the concept of a צורת הפתח as the מחיר of a מבוי is never disputed. His answer is that the principle of אתי רבים does not apply when the area into which the traffic enters is a רה"י. But according to Rambam, since a צורת הפתח is a פתח, the concept of אתי רבים is inapplicable to it, for it pertains to the destruction of a מחיצה and is not operable to traffic entering a פתח. It is especially irrelevant to the openings of a מבוי where a לחי, קורה, וצוה"פ apply. A מבוי is made for traffic and no traffic numbers are stipulated or relevant and traffic passing through its gateway will not invalidate it. The *gemara* does not discuss the concept of אתי רבים with regard to מבוי for its openings are designed for the passage of traffic.<sup>64</sup>

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is needed even with a צוה"פ, is made even according to the *Rabbanan*. This would explain the stance of Rambam that although a צוה"פ can close a gap greater than ten *amos*, still each wall must be עומד מרובה על הפרוץ. Once we are willing to consider the idea that a צוה"פ does not have the ability to turn an unlimited opening into a פתח we have obviously conceded that a צוה"פ is not a wall; we cannot therefore necessarily solve the problem of פרוץ מרובה with it, for a wall with so many openings is considered נפרץ. It is important to note, that the interpretation of *Maggid Mishnah* here that when a צוה"פ acts on less than ten *amos* it turns that area into valid מחיצה as if it was עומד, has no support in Rambam's language and is untenable.

<sup>64</sup> Having established that a צורת הפתח is a פתח and not a מחיצה, we can better understand the role it plays in the building of a *succab*. A valid *succab* consists of three דפנות. It is not מחיצות that are needed but a new criteria that Rambam constantly repeats, called דפנות. (See *Hilchos Succab* 4:2–7.) Indeed, מחיצות are good for דפנות (see *halachos* 5, 10, 11, 16) and even halachic מחיצות of Shabbos are good for דפנות during Shabbos within *Succos*. However, Rambam's need to explain this, shows that the standard we are dealing with for דפנות is not that of halachic מחיצות. Moreover, were the standards the same, these מחיצות would be good even after Shabbos. The main difference between דפנות and מחיצות is that for דפנות we require only a minimum size to make up a wall and the rest can be completed with פתחים—entrances (*Hilchos Succab* 4:12). There is no need to have עומד מרובה על הפרוץ as long as any openings qualify as פתחים. However, when we deal with דפנות, the walls of a hut, a פתח greater than ten *amos* cannot normally be accepted as a פתח, therefore such an opening remains a פרצה even if it has a צורת הפתח and

## Rambam and Other *Rishonim*

Rambam's conceptualization that רה"ר is based on open access and not large numbers allows us insight into the words of other *Rishonim*. Rashi only speaks of 600,000 in respect to streets inside of a city (*Eruvin* 6a, 59a). He never mentions this criterion with regard to a סרטיא (*Shabbos* 6a), a road between cities. Also, the simple rendering of Rashi is that he does not require 600,000 travelers on a particular street in order to make that street a רה"ר, but that all the major streets of a city become a רה"ר when there are 600,000 people in the city.<sup>65</sup> Thus it would seem, as Ramban suggests (*Eruvin* 59b), that only inside a city where outside access is closed does he require that 600,000 be available from the city itself, but outside of the city, a major road that is considered accessible to the entire world is considered a רה"ר no matter what its daily traffic is since "דהא דכולי" (Ramban [*ibid.*]).<sup>66</sup> Rashi (*Eruvin* 69a) actually speaks of "נכנסין בה תמיד ס' רבוא" implying that we are talking about 600,000 people having access to the streets of the city. The Ritva and Ravva<sup>67</sup> make clear that the 600,000 is the people in the city at market time, and thus those who enter regularly for business are included.<sup>68</sup>

The Rosh (*Eruvin* 6b) however, disagrees with Ramban's understanding of Rashi, applying the principle of 600,000 even to inter-city roads. Ramban's understanding of Rashi also runs counter to the language of the *Shulchan Aruch* (*Orach Chaim* 345:7), "שכל שאין ששים רבוא עוברים בו בכל יום אינו רה"ר" which implies that the 600,000 would have to be traveling on the road daily, not living in the area.

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the wall can only be valid if עומד מרובה על הפרוץ. The only place where a צורת הפתח is relevant to a *succah* is on the third wall which is considered the entryway to the *succah*. This status of entryway allows that the wall have a halachic length of 4 or 7 טפחים (depending on position; see *halachos* 2, 3) and on this wall an opening of any size can be accepted as a פתח if it has been validated via a צורת הפתח.

<sup>65</sup> See Ritva *Shabbos* 6b.

<sup>66</sup> See *Torah Sheleimah* 15:163ff and *The Contemporary Eruv*, pp. 54–55, that this is the explicit opinion of the *Tosafos Rid* as well.

<sup>67</sup> See *Mishkenos Yaakov* OC 120 and *Torah Sheleimah*, *ibid.*

<sup>68</sup> See language of *Teshuvos HaGeonim* (*Torah Sheleimah* 15:167)—ששים רבוא מצויין שם, דומיא דדגלי מדבר.

Such a stance would be consistent with the opinion of the Rosh, that the 600,000 is a function of travelers on the road rather than people in the vicinity. Rav Menachem Kasher does find several references to this language, even in the original source of the *shittab*, the *Baal Halachos Gedolos*— רה"ר דוכתא דדשין בה שית מאה אלפי גברי בכל יום. Nevertheless, he concludes, as it does appear,<sup>69</sup> that even in these cases the language is לאו דוקא and the 600,000 need be only in the area. However, the opinion of the Rosh<sup>70</sup> would make a literal interpretation of the *mechaber* viable and opens the gates for permitting *eruv* almost anywhere.

Rambam's conceptualization would seem to explain another Rashi as well. Rashi (*Erwin* 6a) and *Shulchan Aruch* (*Orach Chaim* 345:7) speak of מפולשים משער לשער<sup>71</sup> as a requirement of רה"ר only within a walled city. This can be explained with Rambam's concept that רשויות are particular structures and not just defined by a collection of rules. Rashi here refers to the main-street concept that existed in historic towns, and even today in many places, in which an outside road passes straight through the center of a town and constitutes its main street.<sup>72</sup>

In Ramban as well, we find shades of Rambam's thought. Ramban was open to Rambam's principle that מחיצות are not uniform in their halachic effect. He suggests that Rav Yehudah only considered two מחיצות sufficient to remove an entity from being a רה"ר when they surround a road, but for a large square where people

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<sup>69</sup> Some of those quoting this language are only quoting it to reject it.

<sup>70</sup> Also voiced as a possibility by the ראה"ה.

<sup>71</sup> רש"י — "מכוון משער לשער שיהא מפולש" ועי' בריטב"א שיש לגרום "או".

<sup>72</sup> This is essentially the point of the *Aruch HaShulchan* 345:20. See, however, how Rav Moshe Feinstein, in *Iggeros Moshe* 5:28, explains it in terms of *Diglei Midbar*. In any case, the roads do not generally go absolutely straight, and as Rav Moshe explains, it is difficult to take the meaning as requiring the city gates to be facing each other. It is informative to note the language of Ramban (*Erwin* 59a) הילכך כל מבוי מפולש בשני ראשין ומכוון עד חוץ למדינה... הוא רה"ר. This would seem to be Rashi's *shittab*, that in a non-walled city the streets generally are accessed from outside the city and thus are רה"ר, but in a walled city only the main street that passes through the city gates and is accessed from outside the city is considered a רה"ר as long as access is not cut off by דלתות. See Rashi *Erwin* 101a, ד"ה חייבין.

congregate, even with two *מהיצות* the area would be a *רה"ר*. Rashba (*Avodas Hakodesh* 3:1) accepts this idea in its entirety and claims that even according to the *halachah* that four walls around a city with gates that lock at night turn the city into a *רה"י*, still the *פּלטיא*—town square—remains a *רה"ר*.

It is also important to note that while Ramban does not embrace Rambam's concept that a *רה"ר* is an area with no ownership and equal access, he does agree that ownership is a factor in determining what a *רה"ר* is. Anything that is privately owned cannot become a *רה"ר* (Ramban *Erwin* 59a) and an *עיר של יחיד* has no *רה"ר* in it since one person owns the town. This is in contrast to Rashi's approach in which an *עיר של יחיד* is defined as a city without 600,000 people. Rambam and Ramban are in agreement that the determining factor as to whether a city is a *רה"ר* is not the number of people in it, but its ownership. According to Rambam, joint ownership always exists, and thus it is a *רה"י*. According to Ramban, ownership by a single person is a factor in making a city a *רה"י*, while joint ownership is a requirement for becoming a *רה"ר*.<sup>73</sup>

## Conclusion

Lastly, it is worth noting that according to our analysis of Rambam's *shittah*, that a lack of settlement contributes to the *רה"ר* status of an area, it follows that an area is more likely to be a *רה"ר* around a camp and bungalow colony which attaches to a forest, than it is in streets with populations and houses enclosed. Thus, one is being lenient in a *ספק דאורייתא* in these places when relying on *מהיצות* of *צה"פ*. If one is to be *machmir* like Rambam because of fear of *רה"ר*, these are the places to do so. On the other hand, although one encompassing *eruv* cannot be made for Brooklyn according to Rambam, it is very possible that the individual streets of Flatbush and other large cities qualify as *מבואות*, and individual *ערובין* could be made for them.

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<sup>73</sup> Ramban bases his opinion on *Erwin* 22b, which we have noted that Rambam views in a different way. The approach *Acharonim* have taken in their discussions of *שכירות* from the government is dependent on how we view the ownership of public areas of cities, and this will be the topic of a future *Hakirah* article.

However, streets with service roads, such as Ocean Parkway, which are consequently not bound by houses, would probably constitute a רה"ר and should not be included in any *eruv*.<sup>74</sup> On the other hand, according to the simplest reading of Rashi, all the streets wider than sixteen *amos* that run entirely through a city would become a רה"ר and thus require דלתות ננעלות. Ironically, it would seem that Rashi's opinion would be the one requiring the greater stringency.<sup>75</sup> While according to Rashi, Shlomo feared that Israel would transgress the Shabbos, according to Rambam he feared that they would lose the concept that is Shabbos. "וידמו שאין ההוצאה מלאכה ושמותר להוציא מלאכה. ולהכניס מרשות היחיד לרשות הרבים" (הל' עירובין א:ד). Rambam does not say that they he feared the people would carry, but rather he feared that they would not know that הוצאה qualifies as a מלאכה. Even though on Shabbos itself we refrain from the process of מלאכה, part of the purpose of Shabbos is to educate us as to what מלאכה is and to help us understand the importance of our work during the ששת ימים. The מלאכות are learned out from the building of the *Mishkan*, for bringing the *Shechinah* to our midst is the ultimate goal of all our work and all our building. Indeed, one who carries in an area that is not a Jewish *חצר*, *מבוי*, *ומדינה*, but just a section of a sprawling foreign city encircled with imaginary walls, is in danger of violating the Shabbos. But we must remember that on this day we were meant to rest, not alone, but together with our brothers in the joint *חצר*, *מבוי*, *ומדינה*, that we have built together. Shlomo sought to impress upon the consciousness of his nation that the goal of bringing the *Shechinah* to their midst would require the joint effort of the entire people and he intended that the process of making an *eruv* would draw the people of a city together. So those who are now saying that an *eruv* in Flatbush will lead to the violation of the spirit of Shabbos, those who do not

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<sup>74</sup> We probably consider it מפולש to outside the city, and the area outside of the city is considered יערים מדברות, שדות, and perhaps מפולש שווקים suffices. Analysis would be required to determine whether modern shopping areas constitute שווקים.

<sup>75</sup> However, most streets come to a dead end.

long to be מעורב with the Jews of their city, have forgotten what the concept of Shabbos is—as the *Melech* Shlomo feared.<sup>76</sup> ❧

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<sup>76</sup> Special thanks go to my *chavrusa*, Yonah Wilamowsky, with whom I studied *Hilchos Erwin* and together with whom many of the ideas expressed in this article were developed.