The Eruv: Developing a Flexible Fabric of Public Religious Life

> Last Chance!! If you don't want Tenafly to be enclosed by
> an Eruv and the separation of church and state "given
> away"...speak up!
> -   (Flyer distributed in Tenafly, NJ, Spring 2003.)[1]

"All politics is local," the former Speaker of the U.S. House of Representatives

Thomas "Tip" O'Neill claimed often.[2] So it seems, also, for religion in public life.

Regardless of the governmental and cultural frameworks in place, there is a need for

specific groups of people in any multicultural society to *negotiate* their overlapping

senses of public and private *sovereignty* for religious practices and expressions, and their

ultimate *costs*. In other words, the solution to these issues is *political*. The question is,

though, in terms of O'Neill's sense of politics: What is "local?" Furthermore, should we

not ask, also: What is "public religious life?" The answers to these seemingly simple

questions are, ultimately, very political in their own right.

The complexity of answering these questions is illustrated well through a conflict

that arose between an Orthodox Jewish community in Tenafly, New Jersey and their

fellow residents fifteen years ago, regarding the implementation of an *eruv* - a symbolic

enclosure of the public areas of a neighborhood or region, so as to enable normally

private practices for observant Jewish families in local public spaces during their Sabbath

and holy days. This controversy generated a great amount of public debate and

negotiation. However, these public communications surfaced more than just friction

between clashing cultures in a largely secular, self-described "tolerant" and "inclusive"

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[1] Susan H.Lees, "Jewish space in Suburbia: Interpreting the eruv conflict in Tenafly, New Jersey,"
Contemporary Jewry 27, no. 1 (October 2007): 42.
[2] John A. Farrell, *Tip O'Neill and the Democratic Century* (New York: Little, Brown and Company, 2001),
65.

suburban borough.[3] Ultimately the conflict over the *eruv* in Tenafly reveals layers of meaning that define different senses of culture, language, symbols, time, space, and power, which may inform potential political frameworks for a peaceful and productive coexistence of religious communities governed by secular political institutions. This paper examines the layers of meaning surfaced by this conflict, evaluates their meanings in the light of scholarly understandings of public and private religious cooperation, and suggests how the lessons from this particular conflict may point to ways to weave a healthy and strong fabric of religious cooperation and support in today's multicultural society.

Susan Lees, a cultural anthropologist, has documented the facts of this particular incident in Tenafly, as well as related incidents and traditions. An Orthodox Jewish community in Tenafly wanted an *eruv* to enable their families to walk and to carry items that they owned or had purchased on their Sabbath and holy days outside of their homes but within an *eruv*, presumably to and from nearby places such as religious buildings and local kosher markets.[4] They formed the Tenafly Eruv Association, and in 1999 they requested permission from Tenafly's Borough government to erect an *eruv* demarcation, using plastic sleeves attached to cable television wires strung from utility poles to identify symbolically, but visibly, "doorways" in the "house" of the *eruv* region demarcated by the wires.[5]

Traditionally, a group erecting an *eruv* negotiates consent from Jewish and non-

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[3] Lees, 50.
[4] Lees, 51.
[5] Lees, 53-54.

Jewish residents within the proposed *eruv* to erect it.[6] However, in the U.S., typically, this has been done by negotiating a nominal or symbolic "rent" paid to a local government, as they would for a private dwelling that the *eruv* represents, and local residents are not negotiated with directly.[7] As the Borough approval process proceeded in Tenafly, however, the Cablevision cable television service began to install the *eruv* markings requested by the Tenafly Eruv Association. There were objections from local residents, and the Borough rejected the Association's request. A Federal District court upheld the Borough's decision, but in 2002 a Federal Appeals court overturned the decision; the U.S. Supreme Court declined to hear the case.[8]

This case offers many entry points to study its implications for religion and society, but perhaps the most important one is how people imagine "power" in the zones of human interaction that we call "public" and "private" today. Charles Taylor has defined the notion of a "social imaginary," the sense of how we imagine ourselves in relation to a social reality, and how we absorb, signify, and interact with that social reality.[9] Taylor's observation implies that there is no absolute social "reality" - we are all *negotiating* to develop an imagined sense of assurance and value within social situations. In this instance, the community that was seeking to create an *eruv* had a religious framework for their social imaginary, which they believed would provide their people with the power to transform something called "public" into something called "private" for their specific purposes, while, in theory, not impeding on others' use of this space.

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[6] Lees, 43.
[7] Lees, 52.
[8] Lees, 54.
[9] Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2004), 23.

This Orthodox Jewish community - an "enclave," as Gabriel A. Almond and R. Scott Appleby would describe it - was experiencing a social imaginary boundary problem, with both private and public dimensions.[10] They wanted to honor their traditions, but, at the same time, those "traditions" were not necessarily the same as those used to establish the concept of an *eruv* in Jewish culture centuries ago. In many instances, it appears that women, who, until modern times, were not allowed or expected to attend Orthodox Jewish synagogue worship services, wanted to do so and still be able to carry purchases and personal items, as well as to visit other families, instead of being confined to their homes on sabbath days.[11] So, in an odd sense, the *eruv* in Tenafly was accommodating revised boundaries for "Orthodox Jewish" social imaginaries to preserve the integrity of their definition of "private," so as to accommodate internal changes to their culture, as much as it was negotiating a new sense of boundaries in public space..

From their enclave's perspective, there was a huge cost to bear without the *eruv*. Without external negotiations to support the women's public social imaginaries of public "modern justice" and private "tradition," their families would not prosper in the enclave - a disabling blow to their "low grid, high group" coherency.[12] So, to preserve the enclave's power to sustain itself, negotiation for a form of *sovereignty* over a secular public space was necessary. How they went about this was determined by a typical conflict in U.S. suburban social imaginaries: between those with a more secular and highly individualized sense of society, with little group coherency (low grid, low group); a public government empowered to create secular coherency for a wide variety of interest

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[10] Gabriel A. Almond, R. Scott Appleby, and Emmanuel Sivan, "The Enclave Culture," in *Strong religion: The rise of fundamentalisms around the world*. (University of Chicago Press, 2003), 32.

[11] Lees, 44.

[12] Almond and Appleby, 32.

groups contending for public power in a self-described "tolerant" culture (high grid, low group); and those with an empowered sense of their own dominant and coherent religious or secular culture (high grid, high group). In such a landscape of power, governments may seem to offer the best path for negotiating a solution.

But O'Neill's truism reminds us that negotiating with governments is not the same thing as negotiating with cultures. As Lees observes regarding the controversy, "It was about neighborhood constitution and change, and the relationship between self-identified groups within the neighborhood."[13] In other words, in spite of potential issues about the grid coherency of their neighborhood's constituencies, the Tenafly Eruv Association did not appear to manage the cost of cultural accommodation within the neighborhood as a political priority *independent of the government*. In a sense, this was exactly contradictory to the original intent of the Orthodox rabbis centuries ago who established the notion of an *eruv* as a tool for negotiating a sense of intercultural community coherency in public spaces directly with the affected non-Jewish residents, and with other Jewish residents who wanted to observe their Sabbath differently.[14] The social imaginary of a public known as "neighborhood" exists with our without any government. Thus, peaceful coexistence of religious views requires an O'Neillian sense of cost-effective "retail politics" to develop a negotiated public accommodation of private religious culture.

From this perspective, the views of Jürgen Habermas regarding the negotiation of religious life in a secular, constitutional state setting seem to be at once both accurate and

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[13] Lees, 46.
[14] Lees, 43.

naive. Habermas is right to say that the U.S. sense of "freedom of religion" was designed

primarily to enable minorities to practice religion without governmental or public

obstruction,[15] as affirmed by the U.S. Court of Appeals decision in the Tenafly case. It is

likely that Habermas would agree that the claim for "separation of church and state"

advanced in the handbill distributed by angry opponents of the Tenafly *eruv* was

inaccurate; the state was not endorsing a religion, nor turning over *state* sovereignty of

territory to this enclave. However, Habermas' belief in "a contractualist tradition that

relies on 'natural' reason, in other words solely on public arguments to which supposedly

all persons have *equal access,"* (Habermas' emphasis)[16] seems to be quite naive.

Habermas assumes that the market economy, which affirms "reason" as its

governing principle for managing sovereignty over private parties in the public market

space of contracts, is the remedy for conflict between contentions in the public realm. So

"reason," by Habermas' logic, would substantiate the normative *language* of whatever

majority has the power to define the language of such reason. In a market economy

dominated by mass media, in which capital effectively buys that language, the notion of

equal access is often an empty myth. The fact that a U.S. Court of Appeals backed the

U.S. Constitution's traditional interpretation of the First Amendment in favor of a

religious minority in the Tenafly case is itself an artifact of the political processes of a

majority that appointed the justices who decided that case. Had another court with other

political appointees been in place, the outcome could have been quite different. The local

majority's sense of "justice," though, was not affirmed in any event, and the costs to them

were absorbed into the greater market economy. It turns out, perhaps, that the only thing

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[15] Jürgen Habermas, "Religion in the Public Sphere." *European Journal of Philosophy* 14:1 (2006): 3.
[16] Habermas, 4.

that is really sovereign in Habermas' model is Adam Smith's "invisible hand of the marketplace."

So although the Tenafly Eruv Association prevailed in the courts on the grounds of "religious freedom," they failed in the "courtyard" of O'Neill's door-to-door neighborhood politics. Instead, they adopted the market-driven social imaginary of "freedom of religion" to assert a public legal protection for religion above and beyond the O'Neillian (and traditional rabbinical) realm of community and cultural contracts to define a communal sense of overlapping local cultural sovereignty. Acknowledging state sovereignty over territory claims and legal contracts is not sufficient to ensure that public religious expression and activities are negotiated effectively. Moreover, the Tenafly Eruv Association's negotiations with Cablevision, a market entity that claimed legal rights to private utility poles in public areas of this neighborhood, was necessary in terms of contractual "reason," but also focused on legal sovereignty without negotiating the cost of neighborhood politics. So, the privileging of "freedom of religion" as a social imaginary may, in some instances, draw religious traditions away from negotiating the true social costs that the most intimate form of "public" - a local neighborhood - is likely to bear, in favor of a solution that bypasses local negotiations to seek market-driven solutions in government and business.

However, although there was some messiness resulting from these oversights in managing the local politics of installing an *eruv*, it seems that José Casanova's sense of religious people needing to adopt a deprivatized sense of religion in society to establish

moral dialogue[17] was nevertheless upheld to some degree. The *eruv* concept provoked this nominally "tolerant" community to confront the moral dimensions of such "tolerance" that was normative only when threats to social homogeneity and market stability were not raised. Note that threats identified by the other residents included dropping real estate prices, problems with financing public schools, anecdotes of other *eruvin* having promised local merchants benefits from their establishment but then forced them to close on Sabbath days, and so on.[18] Many of these concerns could be categorized as market concerns - the cost of losing one's power to negotiate their social value in a market-driven, secular society that values homogeneity and non-cultural specialized roles. In other words, as long as "tolerance" does not force choices for culturally dominant social elements that require "agonistic respect," to use William Connolly's terminology,[19] which would draw them away from their base of market-driven social power, then "tolerance" is a given, and "agony" is low. When religious enclaves dare to make a cultural claim on public spaces, then tensions rise, and "tolerance" is frayed.

This tension is reflected in the residents of Tenafly's most frequently voiced concern - that the eruv was pushing them towards accepting a "community within a community."[20] Expanded to a different level of community, this could be said to express a concern that a "state within a state" was being established - ultimately not sovereign over territory and governmental law, but having social and moral *cultural sovereignty* that overlapped in the public realm with the secular society and the state and market

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[17] José Casanova, "Civil society and religion: retrospective reflections on Catholicism and prospective reflections on Islam," *Social Research* (2001): 1049-1050.

[18] Lees, 55-59.

[19] William E. Connolly, *Pluralism* (Durhan, NC: Duke University Press, 2005), 47.

[20] Lees, 59.

apparatus. It may not have been a high-grid threat in the broadest sense, such as with Israel's settlements in today's Palestine, or in homogeneous and exclusive Orthodox communities in towns such as Monsey, New York, but it was definitely not low-grid from the standpoint of secular cultural sovereignty. It was establishing a private boundary in the public realm triggered by a time period arriving, which, though it claimed to be for the purposes of private religion, created the perceived threat of the legalized establishment of a fixed border for a semi-autonomous cultural sovereign, without the residents having any legal or cultural recourse. That sense of disempowerment in both the political and cultural dialogue proved to be toxic, and pushed residents towards delocalizing the community issue in their own way as a "church and *state*" issue.

What seems to have been lacking most in this situation was the notion of *statecraft* that has been raised by Talal Asad as a key component of negotiating the realm of the political for religion in today's ostensibly liberal, secular states.[21] Casanova's claim that moral assertion in the public realm is necessary for religion requires the understanding of Asad's assertion that negotiation itself is not sufficient for effective resolution of religion's place in public life. If religions in a pluralistic society cannot hope to claim "*premier état*" status of sovereignty in public life, then they need a sense of statecraft at all levels of society to take their rightful place in a moral fabric woven from a multiplicity of faith traditions working together agonistically to fabricate an interrelated sense of the public that can survive with or without the presence of secular governments to ensure the social imaginary of "freedom of religion." Today's politics are too complex to rely upon the implementation of a global social imaginary of "freedom of religion" by

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[21] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity,* (Stanford, CA: Stanford University Press, 2003), 3.

secular governments, and it comes at a high cost, in any event: the cost of homogenizing many of the very traditions that need protection as strands in a rich fabric of religion, for the sake of the globalized market economy enabled by the secular state.

Since "all politics is local," local religious communities must be trained to implement a sense of agonistic, inclusive statesmanship for resolving tangible differences and similarities in religious cultures that enables them to assert their cultures in the public realm authentically and powerfully. As in Tenafly, the "state" is ultimately the politics of the street, everywhere: global is local, and local is global, but all streets are the same, ultimately. Public religious life requires the acceptance of responsibility for statecraft as a believer in a sovereignty of faith that is on the earth, and even in it, but not entitling any one faith to public sovereignty of any territory beyond their agonistically negotiated cultural and religious claims.

There is, therefore, regardless of the majority or minority status of a given faith tradition, a need to ensure not just legal integrity in the realm of the public, but also an integrity of statecraft built on religious cultural dialogue based on multicultural terms. Such statecraft must not submerge valuable differences that can add richness and strength to an inter-religious understanding that is needed to withstand the forces of hegemonic secularism and fundamentalism. There may be, as Connolly suggests, a "becoming" sense of time that moves these interwoven faith traditions towards semantics that define a more common future,[22] but, in the meantime, the fabric is beautiful in its own right, built up through centuries of faithful living from strand upon strand of its own local and universal integrities. Perhaps politics can create beauty, after all. Let us hope so.

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[22] Connolly, 121.

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