Agunah – The Manchester Analysis
(Launch Lecture, July 28th 2009)

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1. *Personnel and Funding*

We mark this evening the completion of the five year project of the Agunah Research Unit, involving five scholars. I wish first of all to recognise the contributions of my colleagues. Each one has made a distinctive and unique contribution: I name them in the order in which they joined the project: Dr Shoshana Borocin-Knol, who wrote her PhD in the Unit; Rabbi Dr. Yehudah Abel, who has been with us, either full-time or part-time, almost from the start; Mrs. Nechama Hadari, who has also been working on her PhD in the Unit; and Dr. Avishalom Westreich, who spent 18 months with us and has come back from Israel to participate in this event.

The five members of the Unit come from somewhat different academic backgrounds, but we have been united in our overall objective, which has been to use the best of both traditional halakhic literature and the academic study of Jewish law in order to produce a report directed primarily to the halakhic authorities. For this reasons, it is technical, and places great emphasis on the issues of authority which have traditionally impeded progress in this area. It is no bedside read – unless you wish to get to sleep quickly.

I also wish to thank our sponsors. The project overall has cost approx. £300,000, more than half of which was contributed by the Leverhulme Trust. A substantial grant was also made by the Hanadiv Foundation – since retitled Rothschild (Europe) – and generous contributions have been made by a number of family trusts, represented here this evening by Sandra Blackman and Lord Steinberg. Without their initial contributions, I doubt that we would have been able to apply successfully for the Leverhulme grant. In fact, they have provided both "seed corn" and some "icing (kosher, of course) on the cake."

We have also taken great encouragement from the participation in Manchester last summer of a number of leading halakhic figures at a private workshop (sadly leaked to Ha'aretz; someone here tonight may even know by whom). Quite apart from the analysis of detailed matters discussed at that workshop, it convinced at least some of the participants of the value of close collaboration between all of us involved in the search for a solution to this problem, and I very much hope that that spirit will be manifest in reactions to this report and in practical ways of carrying its agenda forward.

In the course of our work, we have published on our web site some 20 Working papers (available from http://www.mucjs.org/publications.htm), amounting to over 1000 pages of detailed analysis of sources; they are listed your handout. Our final report is itself of book length, and will be published first on the web site (on Friday) and in a few months' time, hopefully in the light of initial reactions, in print form as part of a set of five volumes, representing also the individual contributions of the members of the team (which naturally differ somewhat in their emphases and occasionally on matters of substantive detail). It is not my intention this evening to go into details; those interested in the halakhic minutiae can consult the

report itself, especially the last two chapters. Your handout contains a Table of Contents. This evening I want to concentrate on the broad picture.

2. *Defining the problems*

The problem of the *agunah*, the woman chained to a religious marriage because her husband refuses to participate in the *get* process, arises from a basic biblical premise, that *qiddushin* may be terminated only in two ways: death or delivery of a *get*. If the husband is alive, his voluntary participation is in principle required. To this, over the years, three types of qualification have been considered and sometimes adopted: (i) a number of talmudic cases of annulment by the court; (ii) forms of conditional marriage which themselves qualify the basic principle; and (iiii) qualifications of the requirement that the *get* must be willingly given (sometimes by "coercion", *kefiyah*). Much of our work has been concerned with the fine detail of these three approaches, their inter-relationships and possible combinations. More of that anon.

But first it is necessary to be clear about the nature of the problem. In fact, *'iggun* arises in three distinct situations, which we may distinguish as follows:

(a) that of the "chaste wife", who complies with the halakhah and suffers in her "chains" for an intolerable period (if indeed ever released at all);

(b) that of the "unchaste wife", who breaks the halakhah by entering into a new relationship despite not having received a *get* and thereby commits adultery and may give birth to *mamzerim*;

(c) that of the "blackmailed wife", who submits to extortionary conditions (sometimes *without* the knowledge of the *bet din*) in order to receive the *get.* Even though she may "buy" her freedom, and thus cease to be an *agunah*, this may well entail intolerable delays and stress, quite apart from the issues of morality and *ḥillul hashem* which arise.

There have been some highly polemical exchanges about the number of *agunot*. The dispute arises largely from differing definitions: not only whether the "blackmailed wife" should be included at all (we maintain that she should) but also because of different definitions of recalcitrance: at what stage in the *bet din* process does the husband's "no" make his wife an *agunah*? Some argue: only at the end, once the *bet din* has formally imposed an obligation (*ḥiyyuv*) on the husband to give the *get*. But since *batei din* are often reluctant to issue such a *ḥiyyuv* (sometimes for policy reasons), this definition essentially allows them to define the problem out of existence. There are, however, other ways in which *batei din* may signify to the husband that he really ought to give his wife a *get*: they may tell him it is a *mitzvah* to do so, or even simply "recommend" that he does so. We take the view that a woman should be defined as an *agunah* whenever she has not received a *get* within 12 months of a *bet din* having at least recommended (by *hamlatsah)* that the husband grant it (provided we can assume due speed in the *bet din* process).

Of course, these are all issues of which the spouses, on their happy day, are blissfully ignorant, and we make some specific recommendations both to address such ignorance, and to help the spouses define in advance what precisely should happen should the marriage break down.

3. *Towards a 'Global' Solution*

We have throughout been committed to the search for a 'global' solution, one capable of preventing the

problem from arising at all. This takes us far beyond 'parochial' solutions which invoke support from the secular law of the community concerned, whether in the form of statutory modifications of the civil divorce procedures, civil sanctions (available in Israel) or PNA's designed to provide the husband with a financial inducement to comply. Indeed, even the most severe forms of "coercion" contemplated by the halakhah, physical beating and imprisonment (the latter also available in principle in Israel), are not guaranteed to work (as the case of the Yemeni who ultimately died in prison after 32 years shows). All such measures, we argue, may provide steps on a 'roadmap' towards a solution, but they are not the solution itself.

In the course of our work, we have become increasingly aware of a different aspect of the need for a 'global' solution. Given the diversity of halakhic approaches within the Orthodox community, and the phenomenon of (nowadays often upwards) 'religious mobility', it is no longer sufficient to seek a solution which may prove acceptable within a particular branch of the Orthodox community, but be rejected elsewhere. Indeed, there may be no "one size fits all" formula, but rather a plurality of approaches suited to the needs of different communities. The bottom line, however, is that any solution must be capable of achieving mutual recognition, so that the children of remarriages are not regarded as *kasher* by some communities but *mamzerim* by others. Our approach is thus directed to the unity of *klal yisra'el* and seeks to *avoid* its fragmentation. And in this context, the *agunah* problem should not be viewed as of concern only to the Orthodox community; religious mobility, based on individual choice, must be available to the children of non-Orthodox as well as Orthodox couples.

4. *The Grounds for Divorce and the Stability of Jewish Marriage*

This brings us to the vexed question of the grounds for divorce. All too often solutions to the problem of the *agunah* have been opposed on the grounds that they would threaten the stability of Jewish marriage. The fear is that they would open the way to 'no fault' unilateral divorce on the part of the wife (which ceased to be available to the husband, at least in Ashkenaz, after the reforms of Rabbenu Gershom a thousand years ago). Indeed, the Mishnah already is concerned lest accepted grounds for divorce be used by the wife as a cover for the ulterior motive of having "cast her eyes on another" – which, we may note, was perfectly acceptable in the case of the husband according to (the minority view of) R. Akiva. On the other hand, cases of genuine unilateral disgust (*me'is alay*) have been widely accepted as a legitimate grounds for divorce, even by Rabbenu Tam, although he opposed coercion in such cases. Halakhic literature in fact discloses a wide range of positions (some, but not all, associated with the Ashkenazi-Sephardi divide) on the acceptable grounds for divorce, ranging from serious fault-based grounds to no-fault grounds amounting to "irretrievable breakdown". It is only when no-fault grounds reach the stage of triviality, or are used as a "cover" for illegitimate ulterior motives, that there appears to be a consensus that this crosses the bounds of what is acceptable within the halakhah.

But the *agunah* problem is not restricted to cases of this kind; it exists even where there are grounds for divorce accepted by all, and whose implementation cannot therefore be regarded as a threat to the stability of Jewish marriage. A recent case in Israel well illustrates this: in January 2006 the *Bet Din HaGadol* (consisting of Rabbis Issirer, Daichovsky and Sherman) decided that a wife had good reason (in the form of sexual abuse) for her disgust of her husband and issued a *ḥiyyuv* to the husband to divorce her, two of the three dayanim (Rav Sherman being the dissenter) adding that if the husband refused, the *bet din* was prepared to consider forms of coercion, including imprisonment. Clearly, they did *not* consider that this would constitute a threat to Jewish marriage. I may add that the husband still failed to give the *get* (the

wife had first filed in 1998). Ultimately, the wife took the case to the civil courts and in July 2008 was awarded NIS 550,000 plus costs (but I still do not know whether she has her *get*).

In fact, we do find specification of the grounds for divorce – often apparently going beyond what would otherwise be accepted by the community concerned – both in *ketubbot* and in Talmudic traditions regarding conditions made by the parties, sometimes correlated with release of the *ketubbah* debt in cases of no-fault grounds advanced by the wife. Nor is it doubted that conditions may be made in relation to the financial consequences of divorce. Here again, the two key criteria are transparency on the one hand, mutual recognition on the other: transparency entails that spouses should be informed of the grounds accepted in their own community and given the opportunity to make alternative specifications (within the halakhah) should they wish to do so; mutual recognition entails that communities with stricter criteria recognise that the children of second marriages where the first marriage was terminated on more lenient grounds, or by procedures available within the halakhah but which they themselves, *leḥumra*, do not accept, are not in fact *mamzerim*. For where certain communities adopt *ḥumrot* which are only discretionary, they cannot claim that those who do not apply such *ḥumrot* are in violation of any prohibition (*issur*), such as would produce *mamzerim*.

5. *The Procedures for Divorce and the Stability of Jewish Marriage*

Another argument used against proposed solutions is that any relaxation of the *procedures* for divorce will also threaten the stability of Jewish marriage. The argument here is that taking away the husband's effective veto on divorce, especially in the form of exercise by the *bet din* of a power of retroactive annulment, creates a sense that the wife is ultimately approachable by other men, since it leaves open the possibility that if she enters into a relationship and has children, her first marriage may be undone, if only (or primarily) in the interests of the innocent children, who otherwise would be *mamzerim*.

But nothing in this argument justifies the use of the husband's veto not in the interests of the stability of the marriage but rather for ulterior motives of his own, whether of spite or greed. Nothing in this argument justifies use of the husband's veto as an instrument of blackmail or extortion (severe instances of which in the Israeli rabbinical courts have recently been documented from a practitioner's case files). Indeed, we have been prompted, in this context, to ask ourselves what precisely is the nature of the husband's veto. It is one thing to say that he vetoes the wife's attempt to use no fault grounds, saying (if he is sincere) that much as she may detest him he still loves her and wants to maintain the marriage; it is quite another for him to say: "I don't want to be married to you any more than you want to be married to me – but you are going to have to pay for it." In short, can he veto the procedure even if he does *not* wish to veto termination of the marriage? The issue has not often been debated in these terms in the halakhic literature, but there are sources supporting our view (as well as others expressing a preference for the carrot rather than the stick, even if the wife – or her family – have to pay for the carrot). We have argued for a distinction between the husband's will to have the marriage terminated and his will to participate in the *get* procedure: we maintain that if he has authorised a *get* in advance, his change of mind on the procedure can be discounted where he does not in fact want to remain married to his wife. Where he does want to remain married to his wife, a different approach is required, namely a condition which specifies that unilateral disgust on the part of the wife, combined with defined acts of recalcitrance on the part of the husband, brings the marriage retrospectively to an end. Indeed a clause discussed in the Jerusalem Talmud was later interpeted as justifying the Geonim in their measures of compulsion in just such cases.

6. *Issues of authority*

We have stressed from the start the centrality of issues of authority. The problem is not solved simply by pointing to eras in the past when radical measures were adopted; it requires consideration of whether those (or other) measures are available to us today, in the light of contemporary understandings of the nature of halakhic authority. Frequently we hear a demand for "consensus", sometimes to the extent that any one significant contrary opinion has a veto. This might appear quite contrary to the basic position of majority decision-making, but it has been adopted specifically in matters of *qiddushin* and *gittin*, where it is known as the *ḥumra shel eshet ish*, the principle of severity applied to a married woman, precisely because of the seriousness of adultery and the possible birth of *mamzerim.*

Yet the halakhic status of the rules of authority are themselves open to debate, and the *ḥumra shel eshet ish*, insofar as it requires that we take into account even a single stringent opinion (even if it is opposed to the majority lenient rulings, including those of the *Shulḥan 'Arukh*) appears to be a modern innovation, of purely customary and, at most, rabbinic origin and status. Moreover, analysis of a *teshuvah* by R. Moshe Feinstein (*Iggrot Moshe*, *EH* I, 79) leads to the conclusion that the opinions of an *insubstantial* minority, *even* in matters of *'erwah*, need *not* be considered.

There are comparable complications in other basic rules of decision-making. I shall briefly mention three.

First, does the principle of majority decision apply, at the biblical level, only where the *maḥloket* was face to face (as in a debate amongst the judges of the Sanhedrin), while a *maḥloqet* amongst *poskim* who never met face to face remains a matter of doubt at the biblical level? This has major implications, given what we may call the 'calculus' of *sfeq sfeqa*: while a single doubt on a matter of biblical status is resolved in favour of strictness (*safeq de'Oraita' leḥumra'*), a double doubt is sufficient to permit a Torah prohibition (which would include the remarriage of a 'doubtfully (still) married' woman).

Second, in what circumstances does the principle of *hilkheta kebatraei*, that we follow the views of later *posqim* (within a particular halakhic epoch) give way to the qualification of Rema, that this does not apply where the later *posqim* were unaware of a significant earlier opinion? And does this extend to new manuscript discoveries (there is one which affects our understanding of a Talmudic passage crucial to our issue) as well as to other historical evidence which affects our evaluation of the later opinions?

Third, what further leniencies are available in times of "emergency" or even (a lesser category) in situations of "urgency": Rav Ovadyah Yosef has argued that our period may well be comparable to that of the Geonim as constituting an "emergency", in which it is possible in principle for the *gedoley hador*, the pre-eminent halakhic authorities of the generation, even to suspend (literally, "uproot") a Torah law by reintroducing the geonic compulsion. Few would doubt that the criteria of the lesser category, a situation of "urgency" (*she'at hadeḥaq*), are satisfied, thus permitting leniencies going beyond what would otherwise be possible, including permitting in advance (*lekhatḥilah*) what otherwise would be permitted only expostfacto (*bediavad*).

It is in the light of such arguments that we in fact encounter views which might appear the absolute opposite of the *ḥumra shel eshet ish*, namely the view that, once a situation of '*iggun* has materialised,

then in the absence of a solution approved by majority opinion, we may rely on lenient minority views and even on a lone lenient opinion.

All this may appear frustrating to those trained in secular law, where there is an expectation that what Hart called the "secondary rules of recognition" will yield results which are demonstrably and objectively correct. But the halakhah is not a system of secular law, and local variations, not only on technical issues such as the above but also on the very basic issue of "whose opinion counts", continue to exert considerable power. The hopes of many that this situation would be remedied in the modern State of Israel have been disappointed; indeed, the involvement of the religious parties in politics, and the politicisation of appointments to the state rabbinical courts, have only made matters worse.

This only confirms our analysis that a pluralistic approach to the problem is necessary, one which recognises the fact that we, and Jewish women in particular, are faced with a plurality of halakhic communities, and that marriage planning requires as much expert guidance in our day and age as does tax planning, and for much the same reason: it affects the interests of the next generation as much as our own.

7. *Proposals for a Combined Solution*

In our report we apply such analysis to each of the three main strategies which have been used or proposed in the past to solve problem of '*iggun* (conditional marriage, coercion and annulment), with a view constructing a form of "combined solution" which may prove acceptable even today. I shall not attempt here to summarise the results, for fear of inaccuracy on matters which are both complicated and sensitive. I restrict myself to one central aspect of the history of the debate, which illustrates very graphically the nature of the problems we face.

In the light of the introduction of civil divorce in France (and the danger that many assimilated French Jews would avail themselves only of civil divorce), proposals were made by the French rabbinate to attach a condition to *qiddushin* which in effect would retrospectively terminate the marriage on the granting of the civil divorce. The proposal was made on the basis of advice from a Sephardi *poseq,* R. Eliyahu Ḥazzan. At a later stage, R. Yehudah Lubetsky decided to seek opinions more widely, mainly from the leading Ashkenazi *posqim* of the generation. They gave the proposal a resolute thumbs down, and it was withdrawn. Later (in circumstances prompted in fact by some halakhic jiggery-pockery in London), the *teshuvot* opposing the French proposal were published, in a booklet entitled *Eyn Tnai BeNissuin* ("No conditional marriage"). This has widely been construed as meaning: "all conditional marriage is halakhically forbidden", despite the fact that the arguments of these *teshuvot* were directed against one particular form of conditional marriage (a form which excluded any participation on the part of the *bet din*), and despite the interpretation of Tosafot of the talmudic expression *Eyn Tnai BeNissuin* as meaning "it is not *customary* to make *nissu'in* subject to conditions".

In 1926, R. Yosef Eliyahu Henkin, one of the leading halakhic scholars of his generation, proposed a formula to solve problems of disappearing and incapacitated as well as recalcitrant husbands. Of the many proposals which have been made over the last century (including one by Rav Uzziel *after* the publication of *Eyn Tnai BeNissuin*) we regard it as the most promising. But when shown the collection of *teshuvot* in *Eyn Tnai BeNissuin*, R. Henkin withdrew his proposal, since it included a form of conditional marriage. And this, notwithstanding the fact that an eminent Sephardi *poseq*, R. David Pipano, had himself proposed a form of conditional marriage a year or two before R. Henkin's proposal. In 1966,

R. Eliezer Berkovitz published a book, *Tnai BeNissu'in uVeGet*, which systematically demonstrated that the views in *Eyn Tnai BeNissuin* did not apply to all forms of conditional marriage. His work has been largely ignored by traditional *posqim* (to the great distress of his mentor, R. Yeḥiel Weinberg), and indeed the Supreme Rabbinical Court in Israel has only this year attempted to close off any further debate on the matter by according canonical status to *Eyn Tnai BeNissuin*.

Any strategy designed to solve the problem of '*iggun* has to engage with such attitudes, and not merely dismiss them in the manner some appear to dismiss proposed solutions. But before we suggest any such strategy, we have to take account of a further entrenched attitude which has to be addressed.

8. *Retrospective zenut and non-qiddushin options*

That attitude relates to the fear of *zenut*, a term most commonly translated in this context as "promiscuity", but whose range extends from any non-marital sex to actual prostitution. The fear of such *zenut* arises when a valid *qiddushin* is *retrospectively terminated,* whether by virtue of a condition or as a result of annulment. There is a maxim, *'Eyn 'adam 'oseh be'ilato be'ilat zenut*, a man does not act in such a way as to render his intercourse promiscuous, which is used both as an argument against annulment and as a presumption of revocation of any condition placed on the *qiddushin* because of the fear of a *zenut* which might *otherwise* occur. But whether *zenut* would in fact occur in such circumstances is contested, if in fact the spouses thought at the time that their relationship was marital (*leshem ishut*). There is no doubt a strong social element here: couples do not wish retrospectively to diminish the status of their relationship, so that others might regard them as having been "living in sin". Moreover, although there is no question of the legitimacy of the children of such a marriage (they are not *mamzerim*), some believe that nonetheless some form of spiritual taint attaches to them.

As regards any presumption of revocation of conditions attaching to the marriage, technical means are available to rebut such a presumption, including the widely advocated use of a public oath promising not to revoke. Yet even this may not be accepted in some communities, and spouses wishing to ensure the possible upwards religious mobility of their children may be particularly concerned that those children may be regarded by others as in any way tainted, even though not *mamzerim.* Similar, but different, issues arise in relation to the children of couples who opt out of *qiddushin* entirely, whether precisely in order to avoid this possible danger, or for ideological reasons, preferring either a purely civil marriage or marrying under non-Orthodox auspices.

Those who marry only by a civil ceremony are generally regarded as having formed a (marital) relationship (*leshem ishut*) which is not *qiddushin*: no *get* is therefore required for termination. This is already partially recognised by the rabbinical courts in Israel, in their handling of "Cypriot" marriages. A similar view is taken of some Conservative and all Reform ceremonies, at least once an attempt has been made to obtain a *get*. Thus, in these cases, the relationship is regarded as neither *qiddushin* nor *zenut*: because it is not *qiddushin*, no *get* is required; because it is not *zenut*, there is no spiritual taint on the children. But what kind of relationship is it? Some argue that it is *pilagshut*, an "honourable estate", despite its common translation as "concubinage": the mother of two of the 12 tribes, Bilhah, is described as a *pilegesh*. It could be undertaken with a *ketubbah* and subject to a monogamy condition, and is terminable without a *get*. The problem with it is the (minority) opinion of Rambam that it is permitted only to kings. But that does not make children born of it *mamzerim*.

Another, arguably even more honourable, relationship short of *qiddushin* is known as *derekh qiddushin*. Here, too, there would be no problem in attaching a monogamy condition, or in incorporating financial terms in a *ketubbah*. In short, one can create a sanctified form of marital relationship which may be terminated without a *get.*

9. *A pluralistic conclusion*

I indicated earlier that there may be no "one size fits all" solution to our problem, but rather that we may need a plurality of approaches suited to the needs of different communities. I hope that the contours of such a pluralistic approach are now becoming clear. There is no single 'magic bullet'. Indeed, the signs at present are that even the most sophisticated adaptations of traditional *qiddushin*, through some form of "combined solution", may work only for particular Orthodox communities (perhaps even a minority) and even then would require (at least) an enactment from the highest authority within such communities to be completely effective. I may add that there is a pluralistic element even at this level: "combined solutions" are compatible with different options as regards the grounds for divorce and the definition of recalcitrance.

Some couples, however, may not wish to risk the rejection of such a "combined solution" by other Orthodox communities, while wishing at the same time to avoid entirely any risk of *'iggun.* For them, a sanctified form of non-*qiddushin* marriage may be preferable.

But how are couples to make such choices, and how are they to know what are the prospects of recognition *outside* their own communities, so that their children (and especially the children of second marriages) are not regarded as *kasher* by some communities but *mamzerim* by others? And has this analysis not left us with a major gap in any 'global' solution, namely the choice made by some couples to prefer the risk of *'iggun* to either a non-universally recognised form of *qiddushin* marriage or a non-*qiddushin* marriage? I turn now, (almost) in conclusion, to these practical problems. They call, in our view, for transparency on the one hand, an incremental approach on the other.

10. *Practical Steps*

It is sometimes said that buying a house, especially with a mortgage (if you can get one), is by far the most significant transaction entered into by an individual in his or her lifetime. In Jewish terms, I would put *qiddushin* above that. Few people would dream of buying a house without expert advice, and that advice will centrally include what we today call a "risk assessment"; the health and safety analogy, in my view, is not inappropriate

Transparency is thus crucial: a means must be found to ensure that every couple makes its choices on the basis of accurate knowledge of their full consequences, not only in their own community but also elsewhere. This starts with transparency between the spouses: they should make explicit, in a formal agreement, their intentions on a range of matters, including the grounds of divorce (within the halakhah), the definition of recalcitrance, and the status of their relationship should it be retrospectively terminated. And they are entitled to know how exactly the halakhic authorities of their community deal with such agreements. But transparency should not end there. Our argument that we need to take account of religious mobility requires transparency also in relation to the consequences of such agreements as viewed in *other* communities.

We thus need to consider, in relation to each element of a solution, not only the arguments for its halakhic acceptability, but also its consequences in other communities which reject its acceptability. These consequences may be of two kinds: either partial recognition ("we would not do this ourselves, but we *will* recognise it *expostfacto* (*bediavad*) when done by (perhaps specified) others") or complete rejection, – despite our argument that communities choosing to exercise discretionary leniencies would not be violating any *issur* and therefore any children born to second marriages entered into as a result of such discretionary leniencies would not be *mamzerim*.

It is, in fact, the very phenomenon of religious mobility which provides hope for an eventual 'global' solution. We advocate an incremental approach, a "roadmap" towards a solution. It may well commence with adoption and implementation of a combined solution only within a small number of halakhic communities, but religious mobility will inevitably result in its presentation to more traditional communities, often in the form of marriage applications of children of the second marriage of a wife whose first marriage was terminated under this agreement. Such applications may gradually lead to *bediavad* recognition and ultimately to demands for adoption of the agreement within such communities themselves. Pressure in this direction will also be exerted by the choices of some couples, in the light of the risks of traditional *qiddushin*, to adopt instead alternative forms of marriage, such as *derekh qiddushin*. Once a sufficient movement has developed in favour of a particular combined solution (within traditional *qiddushin*), it may be opportune to request of the *gedolay hador* that they convene with a view to making these arrangements generally available, by making the terms of the agreement standard terms in all *qiddushin*. At that stage, the solution becomes 'global'.

The twin requirements of transparency and a degree of mutual recognition entail the following practical roles for the various 'stakeholders' in the system.

(i) Pastoral arrangements are required to ensure that every man and woman entering *qiddushin* is made fully aware of the risks which they may incur in the event of marital breakdown, and of the attitudes of both their own *kehillah* and other *kehillot* to any agreement they are contemplating. This role may be fulfilled either by their own congregational or communal Rabbi or by specialist counsellors appointed for this purpose by the congregational organisation to which they belong.

(ii) Couples contemplating marriage not only have a duty to themselves and their unborn children to enter *qiddushin* on the basis of full knowledge of its possible consequences; they also have an opportunity to contribute to removal of the problem by the choices they make. Some will, in a spirit of altruism, undertake a degree of risk (but a known risk, given the measures of transparency we advocate) by entering into an agreement modifying traditional *qiddushin*; others will opt for no risk (an alternative to *qiddushin*) and will thereby contribute to the solution of the problem in a different way. Those who opt for traditional *qiddushin* without any modification of this kind should do so in full realisation of the (different) risks they thereby incur.

(iii) Each institutional halakhic authority should publish its stance on each of the halakhic issues involved in proposals for modification of *qiddushin*, so that it may be transparent whether termination effected under its terms will be recognised (whether *lekhatḥillah* or *bediavad*) by that community. A worldwide catalogue (kept up-to-date), maintained by an independent body, recording the halakhic attitudes of the different communities, needs to be established.

(iv) Individual *posqim* and *dayyanim* have traditionally taken account of their personal accountability to the Almighty in making decisions in this area. But a balance must here be struck. A prominent contemporary *dayyan*, in his retirement letter to his colleagues, has recently argued that it is in fact the duty of the *dayyan* to *risk* his personal accountability in the interests of doing justice to the parties before him.

(v) Most if not all *posqim* recognise that a *taqqanah* with global effect is possible only with the agreement of the *gedoley hador*; some may argue that *any* (even local) modification in *gittin* and *qiddushin* requires such approval. Calls for such a meeting have not been lacking. There is little doubt that such a meeting could take decisions on a majority basis. In earlier decades, it was natural to look to Israel for such a lead; in today's circumstances, one may hope that Diaspora leaders may cast off any self-imposed reticence.

11. ***Summary and Conclusion***

What, then, have we achieved in this report? I would put it thus:

1 Most of our work has been devoted to an in-depth strudy of the halakhic sources on conditional marriage, coercion and annulment, with a view to assessing the contemporary arguments which deny that we have the authority to use them today.

2. We have sought to enrich the halakhic analysis of the problem by bringing to bear questions and possibilities suggested by analytical and historical studies but always seeking to answer those questions and evaluate those possibilities in traditional halakhic terms.

3. We have sought to clarify the first principles underlying the issue: the stability of marriage, the 'rights' of the husband (and the point at which they become an abuse of rights) and the respective roles of the husband and the *bet din* in the termination of marriage.

4. We have sought throughout to take account of the issues of authority involved in any proposed solutions, noting the differences of view encountered in this area, and thus the role of discretionary practices.

5. We have carefully considered previous proposals for solutions, in the light of both traditional objections based on authority and our own analyses.

6. We have concluded that a 'global' solution needs initially to be pluralistic. While we make a recommendation regarding our preferred form of combined solution, we do not exclude others, but have sought to state clearly what issues and criteria need to be taken into account.

7. We have sketched an incremental 'roadmap' to a 'global' solution, taking account of the contemporary realities of Jewish religious life, and particularly the phenomenon of 'upwards religious mobility'.

8. Such a 'roadmap' requires substantial "bottom-up" as well as "top-down" activity by all concerned with the problem. It requires far greater transparency and informed choices, by couples, their Rabbis, and their congregational organisations, than has been the case in the past. That in itself may encourage the dayanim and ultimately the *gedoley hador* to respond in ways which will put in place the final elements required for a truly 'global' solution.

A final word. It is not possible to detach this problem from the ideological conflicts manifest in contemporary religious politics, especially in Israel. A former Principal of Jews' College (*not* the present Chief Rabbi) described the situation to me recently as a state of war declared by the *ḥaredim* against the modern Orthodox. And indeed, a crude *ḥaredi realpolitik* might say: we will make no concessions, since we are winning in demographic terms. That might well prove shortsighted, not least given the economic dependence of many *ḥaredi* households on the wife's earning power. Our pluralistic approach, by contrast, seeks to bridge the divide, in the hope that we may thereby find a roadmap back to a *halakhah* which will be a genuine expression of *klal yisrael.*

You may regard this as utopian, and ask why anyone should listen to us. At the outset of this project I would have agreed. More recently, I have become somewhat more encouraged, but it would be counter productive to tell you why. I fully anticipate that public reactions to our work, and to us personally, will be negative. But we all know that media battles are only one level of politics, and what really matters commonly takes place behind closed doors. I shall do nothing to undermine such possibilities. I am far more interested in private action than public reaction. Hence, you may well be disappointed in my response to your questions. I now open the session to comments and questions, and will reply to them (selectively) at the end.

Thank you.