ב״ה

Keynote Lecture to Limmud, Sunday, 26th December 1999

"How might Hillel have dealt with the Agunah problem?"

Any talk on this subject must commence with a statement of profound sympathy with those unfortunates who fall victim to the most insensitive treatment at the hands of those who are bent on punishing their former spouses or holding them to ransom by extorting large sums of money in order to grant them their freedom to remarry, as well as with the much smaller group of men whose wives refuse to receive a get from them, thus making it impossible for them to remarry. Whatever the perceived justification, nothing can justify ruining the life of another by making it impossible for him or her to find love, protection, stability, a self-esteem that has frequently been totally drained away amid the bitter feuding and insult-trading that led up to the separation or civil divorce, and, last, but by no means least, depriving them of the spiritual fulfilment that should be an intrinsic element within the Jewish marital relationship and the partnered home-life.

The recent high profile intervention of the Chief Rabbi, enabling a young *agunah* to secure her *get*, is greatly to be welcomed, though the lion's share of the credit must go to her women friends and sympathisers who kept up the pressure with their demonstrations and publicity. As an Orthodox rabbi, I felt very sad that the national press saw fit to hail not only the outcome, but, in particular, the unprecedented fact that dayyanim from the three Orthodox Battei Din had managed to liaise together to achieve such an outcome. I regarded that as a back-handed compliment.

I should have thought that such co-operation and intervention should have been in place all along, as an on-going facet of concerted communal action, to be activated as soon as the problem arose, not just at the eleventh hour of a particularly high profile case.

Let me say at the outset, that, had Marc Anthony been a rabbi, and had he been charged with delivering this lecture, he would assuredly have commenced with the words: “If you have expectations – of a solution to the *agunah* problem this afternoon - prepare to shed them now!” They say that fools rush in where angels fear to tread. In a moment of folly I offered Limmud the subject of *agunah* as one of my three topics for lectures. I thought that, in doing so, I might, if nothing else, just keep the issue simmering and offer a gentle forum for some 40 or 50 people to hold an exchange of views and, perhaps for some, an opportunity for a release of pent-up tensions.

I must admit that I was not expecting the bombshell of a return phone call from Limmud about an hour after receiving my list of topics: ‘Please would you deliver your *agunah* lecture as a keynote address.’ I am sure that most of you must have been in that terrible position at some time or other, when, having opened one’s big mouth, one is placed into a situation of no-return. Hence I stand before you, having to deal with *the* most controversial subject in halachic Judaism, knowing from the outset my presentation can only engender disappointment in the minds of those who, perhaps understandably, albeit naively, imagined that any rabbi having the temerity to give a keynote address on such a subject must, of necessity, have something new to offer.

Well, I've tried to cover my back somewhat by forewarning, in the publicity blurb, that I am offering no "solutions." Which brings me to comment on those two rabbis, Morgenstern & Rackman, who have not just offered, but actually implemented their own solution to the plight of *agunot*. Regretfully, I have to say, commendable as is their intention, all they have succeeded in doing is to invest those unfortunate women with a status which, while their own, *ad hoc* court might well recognise, yet no other Orthodox Bet Din in the world would. Thus, if the women they release wished to remarry, they could only do so under the aegis of that same *ad hoc* court, and in no other Orthodox synagogue in the world. And if they go on to have children, the taint of *mamzerut* will tragically still adhere to them, with no guarantee that any similar *ad hoc* Bet Din will exist in 20-odd years time to recognise them as untainted and free to marry an Orthodox partner. So they have merely helped the *agunah* to shunt the problem onto her next generation. *That* is not a "solution." It cannot even serve as a temporary psychological release for the *agunah*, as she reflects on the fact that she is, in effect, merely storing up that same problem for her loved ones in the future.

In halachic literature, when offering new approaches to problematic or controversial issues, even towering authorities generally couch their suggestions in a humble and tentative mode, adding the caveat that their view should only be adopted in practice if it has the concurrence of other distinguished authorities. Often they present their views as merely academic or theoretical, *lehalachah v'lo l'ma'aseh*, but not offered for practical implementation. At other times they assert categorically that implementation of their decision is to be dependent upon the concurrence of other, often specifically-named, *gedolim*.

I cannot even offer you anything as constructive or original as that. I have neither the halachic competence nor authority. The following comments are not intended, therefore, as a halachic solution to the *agunah* problem. I would not have the temerity to offer that, in a situation where great halachists have not satisfied their consciences that any of the suggested solutions could be implemented as *halachah l'ma'aseh*, a solution ready for implementation. My purpose is merely to keep the debate open, and re-examine the factors underlying the institution of Hillel's *Prosbul,* the most common precedence adduced for the setting aside of a biblical institution which, with the passage of time, was being misused to flout the Torah's wider humanitarian purpose. The inference that is popularly made is that in the case of the *get* - where the Torah states *Vekhatav lah*, "*He* shall write *for her* a bill of divorcement" - that requirement should also be modified where the man is grossly abusing his privilege in this matter.

Now, given that Hillel did not act without due regard to special circumstances, we will examine what those circumstances were, and whether, had Hillel lived in our time, he might have regarded the unprecedented decline of marriage and morality in our age as a religious emergency necessitating the application of those identical revolutionary halachic principles to the resolution of the *agunah* problem.

The *agunah* problem has been exacerbated in our age by the frequency and ease of civil divorce and the loosening of morality as a result of changed social attitudes and sexual mores. This has been nourished by the upwardly mobile nature of business and professional life, with business travel and close encounters in the work place, and frequently with both partners carving out their own , separate careers and leisure-time interests - all making home life and marriage far more tenuous and far less satisfying and important in the order of priorities, and making adultery a

common occurrence. The necessity of avoiding *mamzerut* – a cardinal talmudic principle - by enabling women divorced civilly to obtain their *get* speedily, and avoid the pitfalls of *agunah*, is more urgent in our age, therefore, than at any previous time in history. This being recognised, Hillel may well have explored the feasibility of activating emergency action in our day, on the basis of the famous rabbinic interpretation of the verse *Eit la'asot lashem heifeiru toratekha*, "There is a time to act for God; they have frustrated thy law." The rabbis daringly reinterpret this to yield the principle that "for the sake of achieving God's wider purpose, we may introduce emergency measures that may be construed as tantamount to frustrating the written import of the Torah itself." One may conjecture that the rationale of that principle was in line with the talmudic statement that "Moses was already shown at Sinai everything that a distinguished disciple would, in the future, rule in the presence of his teacher" (TJ Meg. 4:1 (74d). In other words, all later interpretations, innovations, decrees and emergency measures were already foreseen and conceded as part of the Sinaitic revelatory process. The one caveat being that it bears the authority of a *talmid vatik*, a distinguished disciple and, secondly, that it is a measure with which his teacher can concur."

But before analysing how Hillel might have applied the principles of *Prosbul* to the *agunah* situation, it is appropriate to survey some of the principle approaches to the resolution of the *agunah* problem that have hitherto been suggested.

The first is that of establishing the marriage itself, at the outset, on a conditional basis. Thus, the two parties might be called upon, before their marriage, to enter into an agreement that their marriage would be nullified retroactively if the husband delayed the issuance of a *get* by more than two years after a civil divorce, or if he demanded money in exchange for it. Nullifying the marriage means declaring that it no longer exists; with the result that no *get* is required to free the woman to remarry.

Rabbinic annulment is based on a talmudic principle (*Ket*. 3a) *Kol dim'kaddesh ada'ta d'rabbanan m'kaddesh,* "that the definition, status and religious bond of marriage is created and undergirded by rabbinic authority, and the rabbis possess the power, therefore, to annul that marital status." That rabbinic authority is alluded to in the declaration that the marriage is *kedat mosheh v'yisrael,* in accordance with the law of Moses *and* [the authority] *of Israel*.

This approach was inspired by a ruling of R. Israel Bruna (15th cent.), found in a gloss on *Shulchan Aruch, Even HaEzer* 157:4, permitting a marriage to be contracted with a man whose brother was an apostate, with the *ab initio* proviso that, should her husband die, she should not be attached to that brother-in-law in his capacity of a *yavam*, a levir, who, not accepting Torah prescription, could not free her from the levirate bond, so that she would not be able to marry him or anyone else.

It has to be said that there have been many authorities who have objected to the conditional marriage. The objections are especially focused on the implications of the act of retroactive annulment and particularly on the question of how far that rabbinic authority stretched and, secondly, what constitute grounds for annulment.

Retroactively annulling a marriage means that one is, essentially, deeming that entire marriage to have been merely a “relationship,” rather than a sacred union. This means that every act of intercourse was, from the halachic perspective, an act of *zenut*, immorality. That is not a relationship the rabbis were prepared to acknowledge, for the halachah is committed to the principle, *Ein adam oseh be’ilato be’ilat zenut*, “People do not conduct an on-going sexual relationship as a mere act of immoral gratification.” In other words, however, unacceptable that mode of relating to one another may be, we still assume that the parties regard themselves as committed to each other in a bond that approximates that of the marital union.

The whole concept of annulment is thrown into doubt, therefore, by this consideration, as the rabbis could not possibly, by their act of annulment, reduce a morally constructive marital relationship to an unacceptable immoral association.

One authority (Resp. R. M. Alshaker, no.48) suggests that the implication of the phrase *ada’ta d’rabbanan* is that such an annulment can only be made with the consent of “all or most of the community and the rabbis in any given country.”

R. Eliezer Berkovits sought to circumvent that precondition in his attempt to solve the *agunah* problem by employing the method of nullification. He maintained that in the light of the present day’s global village, with instant communications and the existence of national, communal and rabbinic organisations, it should not be difficult to get the rabbinic consensus implied in the term *ada’ta derabbanan*.

Perhaps we might speculate then, that, since Jewish marriages in Britain are solemnised "under the authority of the Chief Rabbi," who represents the majority of the congregational rabbis in this country, the principle of *Kol dim'kaddesh ada'ta d'rabbanan m'kaddesh,* "that marriage rests on the authority of the rabbis, who therefore have the power to remove their authority and annul the marriage" might well be invoked, were it not for the caveat to which we have referred.

The second approach has been to commission from the husband, before the marriage, a divorce document, the divorce to take effect on the fulfilment of certain conditions and after a stipulated period of time. This method is rooted in the talmudic statement (*Gittin* 76b) that the soldiers of King David were instructed to provide their wives with such a *get* before they went into battle, in case they went missing in action and there was no clear evidence of death with which to free their widows to remarry, thus rendering them *agunot*, possibly for life. It has to be said that there were an equal number of objections to this conditional divorce solution as there were to the conditional marriage.

The approach that avoids most of these halachic pitfalls takes account of the fact that a husband has the duty of *mezonot,* sustenance, towards his wife, until such time as she has received a valid *get* from him. This duty remains even if he is no longer living with her, if he has sent her a *get* of doubtful validity, and if he is preventing her from remarriage. On this basis, modern halachists (e.g. R. Betzalel Zolti. Responsum reproduced in S. Riskin's *Women and Jewish Divorce* (Ktav, 1989, pp.153-156) have proposed that, at the time of the marriage, the husband should undertake contractually that, in a situation where there has been a civil separation or divorce, but where his wife remains chained by his refusal to issue a *get*, that he agrees to make provision for his wife's support (to include food, clothing and housing

expenses) to a sum of, say, £1500 a week. The agreement would include a clause that it shall be open to the husband to relieve himself of this terrible financial burden by petitioning a Bet Din for aid. Naturally, the Bet Din would point out to him that the moment he issues the *get*, his obligations towards his wife cease forthwith. J. David Bleich proposes the simpler expedient of including this extra element of provision for his wife's maintenance in the *tosefet*, the additional voluntary alimony clause of the Ketubah. These are regularly included in Ketubot, though not in the typically conservative Anglo-Jewish version. Bleich suggests including under this rubric in the Ketubah, or in a separate contract, an additional sum for each day that the husband is away and the wife is not sharing his board. This would, of course, limit the wife's claim to monetary allowance to periods of separation. Bleich acknowledges that "to be fully effective, the sum stipulated at the time of marriage should be significantly greater than any likely alimony award" (p.159).

This is, of course, the idea of the PNA, where the couple agree that if their marriage is dissolved in civil law, they will attend the Bet Din and will abide by whatever guidance they will be given as to the requirements of Jewish Law, given their continued married status in Jewish law. The Bet Din, in such a situation, would seek to require the husband to provide a high level of maintenance, "commensurate with the needs of a Jewish woman;" and the husband, calculating the financial strain, would probably agree with the suggestion of the Bet Din that it would be in his interests to give a *get* and be relieved of any further commitments under Jewish law.

The weakness of Bleich's solution is that it is a charter for wealthy husbands who can comfortably afford the *tosefta*. Also, in a climate of inflation, with the passage of the years, a truly generous *tosefta* in any given year can become derisory five or ten years later, or even two years later if the husband's financial situation is dramatically

improved, and the whole exercise can be deprived of its teeth. Again, as far as the PNA is concerned, at the present time there is little the Bet Din can do if the husband refuses to attend its court. and reneges on his PNA commitment. This is precisely what happened in the White House Affair. Because of his refusal to attend, the London Bet Din revoked his Kashrut licence, whereupon he promptly went to the Federation who were glad of the business. I am mystified as to how they could not have realised the incalculable harm they were doing to the PNA instrument, and to the plight of the *agunah* by accepting the application of one declared by another Bet Din as a *mesarev ledinah*, a rebel against the authority of the court.

The report this week of a senior judge refusing an application for a decree absolute until the husband issues a *get,* because it would cause hardship to one of the parties, is greatly to be welcomed. It is to be hoped that the discretionary power to judges to act in this way, which was made explicit in the new Family Law Act but subsequently shelved, will soon be reinstated.

It is obvious that none of those three basic approaches we have analysed has, to date, won rabbinic consensus. So all I can do at the moment is dream! And in my dream I see the great Hillel, who sought to find solutions to all problems and heal the emotional traumas and religious perplexities of all people, great and small. And I indulge my fantasy in order to imagine how he might have dealt with the *agunah* problem, had it been an issue in his day.

I have referred to the commonly-adduced parallel with *Prosbul.* That institution is worthy of closer analysis, for the principles which motivated the relaxation of that biblical law, the social and economic crises which cried out for such a solution, and the subsequent use of exe*get*ical Midrash to justify it, all have points of contact with,

and parallels that, may be applied to, the situation of *agunah*, to the extent that Hillel's capacity for imaginative, sympathetic and courageous extrapolation might well have led him to the conclusion that, in the case of a recalcitrant husband, a Bet Din might step in and act unilaterally to issue a *get* on his behalf, even against his will.

The effect of such a representative act would be to prompt the man to behave in accordance with the Torah's humane ethic. Hillel, we suggest, might well have considered that such a unilateral act on the part of a Bet Din would be justifiable, in line with the principle of *zakhin l'adam shelo b'fanav*, "One may do something that accrues to a person's benefit even without his express instruction." For the Bet Din to step in and prevent him from flouting such a Torah law as *Lo ta'ashok et rei'akha*, "Do not oppress your neighbour"(Lev.19:13), is, in the final analysis, a *zekhut,* a benefit, for the husband, for which one day, if not here, then in the hereafter, we may be certain he would be grateful for. This particular verse is found in the context of a triad of laws, *lo tignovu* and *lo tekhachashu,* ("Do not steal or deny possession"), so its import is clearly that of financial oppression, or extortion. This would cover the refusal of husbands to grant a *get* unless unreasonable sums of money are paid over in return for a document that is the woman's right to receive if the husband is minded to divorce her, and especially if he has effectively done so through the agency of the civil courts.

The Bet Din, in this situation, acts as the representatives of rabbinic Judaism, and it has a special representative role in the context of marriage, in accordance with the principle *Kol dimkadesh ada'ata d'rabbanan mekadesh, v'afka rabbanan kiddushei minnei,* "Whoever marries does so under rabbinic licence, and the rabbis therefore reserve the right to withdraw that licence[and annul the marriage.]." While there

are, as we have already mentioned, serious ramifications in annulling a marriage, nevertheless, the principle, that, in extreme circumstances, they have that power – and especially in the light of the fact that modern marriage outside Israel is underpinned by, what to Hillel would have been an enigmatic concept of civil marriage and civil divorce – these considerations might well have prompted a Hillel to grant the rabbis of our day greater exercise of their powers to terminate the marriage in a situation where the couple has already resorted to the civil courts to grant them a divorce.

It should be noted that Jewish law already grants the wife the right to a divorce in situations where it has become intolerable for her to live with her husband, such as where he becomes sexually dysfunctional, with an irreversible inability to cohabit (*S.A.Even Ha-Ezer* 154:6-7) or if his reproductive organs were impaired, making it impossible for him to give his wife children (*Even Ha-Ezer* 5:2), or if, after the marriage, he becomes a *mukeh shechin*, afflicted with leprosy or *ba'al polypos*, he develops a terrible odour issuing from his mouth or nose making intimacy objectionable to her (*Mishnah Ketubot* 7:10). So, granted that these are not situations where the Bet Din can issue a *get* against the husband's will, yet they can coerce him to issue a *get.* And we are postulating that Hillel might well have appreciated the unique present-day situation that we have outlined, making adultery and *mamzerut* real possibilities if no *get* is issued, and that, following on from a civil divorce, he might well have instructed the Bet Din to exercise their special authority as establishing the status of a marriage and a divorce, by issuing the *get* on behalf of the recalcitrant husband.

Let us now extract some of the principles underlying the precedent of Hillel's *Prosbul.*

1. First, its justification: the problem it came to solve. The Torah tells us that, at the *Shemittah*, the final year of each 7-year agricultural cycle, among other things, all outstanding debts are cancelled, so that the debtor can make a new and happy start to a life hitherto dogged by insolvency and poverty. Why did Hillel deem such a measure necessary? Clearly it was (a) to solve an economic, domestic and social problem – to whit, the refusal of lenders to extend loans to the poor in the year(s) leading into the *Shemittah*, and (b) to protect against exploitation - to whit, the lenders, against being exploited by poor people who had no intention of repaying their debts. Hence Rav Hisda interpreted that Greek term as *pruz buli u'buti*, "to the advantage of both the rich and the poor" (Tal. Gitt. 36a-b)

2. Hillel's solution. The *Shemittah* is described in the Torah as an instrument for the cancellation of privately-contracted loans: *Va'asher yihyeh lekha et achikha tashmeit yadekha,* "And that which you have belonging to your brother, your hand shall release" (Deut. 15:3). The *Prosbul* declared that the status of these loans could be converted from the private domain, where the law of the *Shemittah* obtained, to the public domain, where it did not. This meant, in effect, posting the bond or contracting the loan *through the Bet Din,* and signing a document establishing the right to collect the loan from the debtor at any time the creditor desired. Thus relieved of his apprehension, in the years leading up to the *Shemittah* year, that repayment might be delayed until the *Shemittah* year when he would have to forgo his money, the creditor was now more amenable to lending his money to the poor.

3. Its philosophical basis. What circumstances underpinned Hillel's temerity to effectively neutralising, if not abrogate, the force of a biblical institution which clearly sought to effect the cancellation of debts, not merely to reschedule or transfer them? The answer has to be that the rabbis were convinced that such an institution as the *Shemittah* could never have been intended *as a stumbling block to humanitarian conduct*. On the contrary: its purpose was the protection and easing of human misery. If it had manifestly failed to achieve that objective, because of the outside economic considerations and social conditions which an evolving society had created, then surely it served to promote the Torah's wider philosophy that it should be set aside.

4. The *Prosbul*'s exegetical basis. Namely, how was Hillel the Elder able to justify textually his re-interpretation of the institution? The answer is by resorting to a semantic inference . Deut 15:2-3 *Va'asher yihyeh lekha et achikha tashmeit yadekha…*Hillel highlighted and gave added emphasis to the phrase *et achikha*, a loan which "your brother" owes you, you must release, but, said Hillel, that which a public body, an institution, owes you, is not cancelled in the 7th year.

Let us now conjecture how Hillel might have applied these considerations to the *agunah* problem. In his day, the only obstacles to a woman's freedom to remarry after divorce would have been halachic, such as whether or not we may accept the word of a single witness who delivers a *get* from across the seas and testifies that *b'fanai nikhtav ub'fanai nichtam,* "it was written for this particular lady, and signed by the husband and the witnesses in my presence." In order to leave her free to remarry, it was a straightforward piece of humanitarian legislation for the Mishnaic sages to declare that one witness as acceptable. Similarly where we only have the testimony of a woman to the death of a woman's husband, one may decide that an

exception can be made in order to relieve her of being an *agunah* all her life. Hillel would only have had to deal with such issues, and the large measure of autonomy granted to the Sanhedrin in his day left it free to judge and exercise wide civil jurisdiction not only inside but also outside of Palestine. With such paramount authority, it was unthinkable for anyone to act in a recalcitrant manner and defy the instruction of the court to grant a *get* to his wife.

Let us speculate on what Hillel's mind-set might have been had the Roman's withdrawn the authority of the Jewish civil jurisdiction, just as they withdrew jurisdiction over capital cases some 40 years before the destruction of the Temple (circa 30CE). Imagine how he would have reacted had the situation been as today, where men could, with impunity, defy the rabbis' rulings and refuse their wives a *get,* with, in a climate of moral licence and the acceptability of "relationships," such chained women inevitably adding to the proliferation of adultery and the birth of *mamzerim.*

There is no doubt that Hillel would have regarded this situation at least as alarming as, if not more so than, the financial hardship being suffered by those who could not secure loans. And we may assume that he would have applied the identical criteria for halachic intervention as he did when he introduced the *Prosbul*. Namely,

1. The necessity of alleviating a morally indefensible situation and solving a human, domestic and social problem
2. To enable the woman, as he did for the debtor, to make a new and happy start.
3. To uphold the biblical law against exploitation

4. Divorce, in the modern world, especially given the critical level of assimilation and intermarriage threatening our very existence as Jews, might no longer have been construed by Hillel as a private matter, but as an institution with wide social and spiritual ramifications for the community. Moreover, since only competent and trained judges can preside over *Gittin,* it may – like the *Prosbul* situation – have been regarded by him as an institution that is exclusively within the authority and competence of the Bet Din to administer, as is the case in our day, but was not in his own. Once such authority – to grant or refuse - is recognised and exercised, Hillel may well have granted the Bet Din the power to issue a *get* in accordance with its own perception of an individual situation, especially where a recalcitrant husband is flouting the humanitarian basis of Torah law, attempting to extort money as a *quid pro quo* and possibly creating a situation for his wife where she might feel the need for affection and protection, leading to her entry into an adulterous relationship, with its tragic ramifications.

5. An interesting Talmudic law is relevant to the humanitarian consideration. The Talmud states that orphan lenders do not require the *Prosbul* in order to claim back their money in the *Shemittah* year. This is because “the Bet Din is the parent of the orphans.” Hillel might well have argued likewise that the Bet Din has a similar responsibility to protect any other category of person subject to exploitation, such as the widow and the woman at the mercy of an estranged husband. Thus the philosophical basis is an exact parallel to that of the *Prosbul* situation.

6. Finally its exe*get*ical basis. Hillel gave a new emphasis to the words *et achikha*, "a loan executed *with your brother*," namely, but not one executed with the bet din. Given our morally turbulent present day conditions, Hillel might well have adopted the same exe*get*ical latitude in the case of the biblical formulation of the law of divorce. Indeed, this would not be too difficult since, in any case, the biblical verse v*'khatav lah,* "literally, "He shall write for her (Deut 24:1)," is not literally applied, since it is a scribe who actually "writes" the *get* on his behalf. Significantly, the halakhah states that the husband should not, in fact, personally write the *get* (*Remah* on *S.A*. 123:1), notwithstanding the clear biblical instruction of *v'khatav,* "he shall write!" Indeed, the *Bach* states categorically that it is to the scribe that the Torah is specifically referring by the word *v'khatav* (See *Bach* on *Tur Even HaEzer* sec,123). The phrase is clearly understood, therefore, in the impersonal sense of, "there shall be written for her."

   (A parallel example of this impersonal passive usage is Gen, 48:1, where there is no subject reference to the verb: "And it came to pass, after these things, *vayomer leyosef hinnei avikha choleh*, literally rendered, "And *he* said to Joseph, 'behold your father is ill'." The word *vayomer* here is clearly meant to be understood in an impersonal passive construction: "it was said, it was told (*on dit*), to Joseph.")

   Thus, Hillel might well have employed such an exegesis in order to empower a Bet Din to write it for him. Again, the active form of the continuation of the verse, *v'natan beyadah*, "And he shall place it in her hand," would also be similarly rendered passively, "and it shall be placed in her hand." And the continuation, *v'shilchah mibeitoh* – "And he shall send her from his home," as "she shall be sent away from his home," that is, as a corollary of the Bet Din's intervention.

The Mishnah provides a pertinent dimension of the scope of the verb *v'khatav* when it observes that *Hakol kesheirin likhtov et haget…ha'ishah kotevet et gitah*, "All are fit to write the *get*…the wife may write her own *get*" (Gittin 2:5). While the assumption of the Mishnah is that the husband has given his wife the instruction to write it for him and she writes it in a state of acquiescence and acceptance, nevertheless, the *Bach* states that if the woman took the initiative and wrote her own *get,* and made a statement before witnesses that, although he did not instruct her to write the *get*, she knows for sure that her husband wished to divorce her, this fulfils the halachic requirement that the *get* be written *lishmah*, specifically for the woman (See *Bach ad loc*.; *Tos. Eiruvin* 13a, *D.H.Aval; Entziklopedia Talmudit,* 5, pp569-570). Might not Hillel have also been satisfied, then, in the situation of our age, where the husband has obtained a civil divorce, for the Bet Din to take the initiative - *on behalf of the wife* according to *Bach'*s view - and issue the *get*?

One should not imagine that it is without precedent for a Bet Din to take the initiative in issuing a *get*. There is a precedent for this in the provision of *heter me'ah rabbanim*, "the licence given by 100 rabbis," in cases where the wife suffers dementure, Alzheimer's or senility, and cannot comprehend the implication of having to accept a *get,* or in the case of a *get zikkui*, where a *get* is written *in absentia* for a woman who has run away and committed adultery. We should not forget that the Torah states specifically, "he shall place it *in her hand*." So we do have a precedent for exegetical licence in the case of divorce going hand-in-hand with a Bet Din initiative!

I stressed at the outset that I was going to take you through a purely theoretical analysis of how a Hillel might have dealt with this great problem had he been confronted with the terrible consequences of *agunah* in the modern age where living-to*get*her before, during and after marriage hardly occasions a raised eye-brow – unless one is a Cabinet Minister that is, when moral dalliance suddenly becomes something deeply offensive to the nation's delicate conscience.

So if it is so hard for present day halachists to find a solution, why have I found it so easy to suggest a solution that Hillel might have resorted to? The answer is, obviously, that Hillel functioned in the formative period of the halachic process, when, as Nasi, the supreme spiritual and temporal leader of world Jewry, and combining unprecedented popularity with unrivalled authority, his was the challenge to establish halachic precedence. He followed on after the long reign of Herod, wherein the complexion of Judea became more Hellenistic than Jewish; and hence, he and his colleague Shammai, were challenged both to teach, clarify and systematise existing traditions, as well as establish halachic principles *de novo* on the basis of the hermeneutic principle then being developed. Hillel was able to adapt halachah to the social, economic and religious needs of the day, as a reading of Louis Finkelstein's *The Pharisees* amply demonstrates.

Between Hillel and our time lies nearly 2000 years of halachic development and codification, wherein rabbinic consensus and practices hallowed by the ages have joined forces to establish a vast raft of pivotal principles as sacrosanct in all the main areas of law. The main codes of law, with their classical super commentators and glossators leave little scope for real halachic innovation, other than the exercise of testing their applicability or otherwise to the new ethical, social, medical and scientific problems of our age. That is not to belittle the efforts of the latter-day

acharonim, many of whom employ great brilliance and halachic imagination in applying the age-old principles to modern problems, but they do not have the unchallenged authority of a Hillel, and neither is the field as open as it was to him and his colleagues.

The rise of the Haskalah, and later the Reform, movement also made many halachists extremely wary of innovation, with the *Chatam Sofer* of Pressburg (1762-1839) declaring *chadash asur min haTorah*, any innovation or departure from accepted practice as biblically prohibited. It is understandable that, with the growth of the Progressive movements in our day, Orthodox halachists are extremely sensitive to adopting any approach to halachah which could open them up to the charge, by their more zealous colleagues, on the one hand, that they were diluting the halachah, and on the other by the progressives that they were adopting, albeit to a lesser extent, their own concept of on-going, dynamic revelation. Bearing in mind the mushrooming of Charedi Yeshivot and Kollelim, as well as the burgeoning Hasidic traditions, all owing total allegiance to a particular charismatic leader, it is out of the question that any numerically-manageable supreme council of sages could be elected, by universal consensus, that might have the courage to view our age as a special case, calling for a radical relaxation of a universally-accepted talmudic principle, such as the one which insists that it is the husband only who is biblically mandated to write the *get*, and that no one can usurp that right.

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If I can add a postscript, and that is to emphasise that the Chief Rabbi and Bet Din are doing everything possible, notwithstanding the general perception, to ensure that the *Agunah* status is a thing of the past. The Late Rav Lord Jakobovits exerted all the

influence possible to bring to the notice of the legislators the limitations of divorce law as far as enabling Jewish women automatically to remarry, and the way recalcitrant husbands can frustrate the objective of the law. The past Lord Chancellor, Lord Mackay, preferred Jews to solve their own problem in this regard, but the present Chief Rabbi has convinced the present Lord Chancellor that the Jewish community is not a self-regulating body with coercive powers, and that we require the help of the state to accommodate our needs, just as it does in the case of marriage, whereby the civil marriage is contiguous with the religious ceremony. The introduction of the PNA at least sends a signal to the government that we are doing as much as possible to resolve the problem. If nothing else, it shows the husband's assent to mediation, which is the thrust of the new Family Law Act. To that should be added the communal sanctions that have been proposed, coupled with naming and shaming where that is deemed helpful, and not, as in some situations, counter-productive the desired outcome. Then there is the counselling, mediation and legal services that the community can offer, and the promise of the appointment of another Dayan to lead an *Agunah* Task Force. And, to help forestall an *agunah* situation, the Chief Rabbi is encouraging the United Synagogue schools to introduce an enriched programme of relationship and marriage education.

One final observation: the people who can be most effective in persuading a recalcitrant husband to give a *get* are his immediate family, those he loves and respects and relies upon for his emotional, and frequently financial, support. The message must go out to them that there is never, ever, any justification for destroying the life of another person by making it impossible for the other party to find the happiness that has hitherto eluded him or her. It must be brought home to them that, if they remain aloof from the issue, they are acting wickedly and in

defiance of several Torah laws which prohibit the oppression of one's neighbour, and demand of us the practical implementation of love of neighbour as ourselves.

Let us hope that the spirit of Hillel - the arch exponent of love of, and respect for, one's fellow man - will descend upon those who sadly seek to bring their marriages to an end, and that those who are currently *agunot* will speedily and amicably be released, and that the combination of our communal and religious effort and the assistance of the law of this enlightened land will banish that terrible predicament and render it an anachronism in the future.

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