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Articles

Faith and Law in a Multicultural World (James Luther Adams Lecture, Emory University, February 6, 2002)  
Harold J. Berman

An Introduction to Bahá'í Law: Doctrinal Foundations, Principles and Structures  
Udo Schaefer

Healing at the Borderland of Medicine and Religion: Regulating Potential Abuse of Authority by Spiritual Healers  
Michael H. Cohen

All You Need is Love: Paul Ramsey's Basic Christian Ethics and the Dilemma of Protestant Antilegalism  
Robert W. Tuttle

No Other Gods: Answering the Call of Faith in the Practice of Law  
Howard Lerman

Book Review

Separation of Church and State, by Philip Hamburger  
Timothy L. Hall
AN INTRODUCTION TO BAHÁ’Í LAW:

DOCTRINAL FOUNDATIONS, PRINCIPLES AND STRUCTURES*

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INTRODUCTION

While the last and most recent of the revealed religions is generally considered to be Islam, religious scholars are gradually recognizing that a religion founded later in the modern era, the Bahá’í Faith, displays all the characteristics of a universal religion. Where scholars working in the field of Islamic Studies tended in the past to treat this religion under the sub-heading “Islamic sects,” and Religious Studies scholars for many years paid little attention to it, more recent research counts the Bahá’í Faith as one of the world religions.

The present study aims to provide an overview of the revealed law.

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3. An initial outline (Bahá’í Law and its Background) is provided by Walbridge, Sacred Acts 3-29. Unfortunately, relevant works by Iranian authors, which have the character of...
of the Bahá’í Faith, which is of interest for students of both legal history and religious studies. We are entering virgin territory here, as no attempt has yet been made at a systematic jurisprudence, nor has a tradition of Bahá’í jurisprudence been established that might compare with the Islamic Usúlu’l-fiqh. Since the foundations and principles of this law can be understood only within their theological context, and knowledge of this context is rare outside the Bahá’í community, some basic background information about the faith will be provided first.

I. The Bahá’í Faith: its History and Doctrines

Bahá’ís believe that around the same time as philosophers4 were announcing the “death of God,” a new Epiphany took place in which “the God of Abraham, and of Isaac, and of Jacob”5 once again revealed Himself to humanity. The cradle of the Bahá’í Faith was nineteenth-century Iran. This religion, whose relationship to Shi’ite Islam is comparable to the relationship of Christianity to Judaism, sees itself as the fulfilment of Islamic eschatology, and also as the fulfilment of the promise found in all religions concerning the coming of a World Reformer at the “end of time.”

What we encounter in Bahá’ism is an archetype of religious history: an announcement by a forerunner and herald (the Báb)7


preparing the way for the Promised One, who is also the prophet-founder (Bahá’u’lláh) of a new religion. Bahá’ís regard him as the announcer of the Will of God for a new age, who has established a new divine Covenant with mankind, which is “the Ark of Salvation.” His mission is to establish the Kingdom of God on earth, through the unification of mankind in one global family. Bahá’ís regard him as the announcer of the Will of God for a new age, who has established a new divine Covenant with mankind, which is “the Ark of Salvation.”

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history is dynamic: He reveals Himself to mankind not “once for ever” in a single, final drama of salvation, but in a progressive, cyclically recurring process. Like all living things, religion is subject to the process of deterioration over time. It is therefore in need of renewal. The new revelation at the “time of the harvest” through which “the one and indivisible religion of God” is creatively adapted to the needs of a new age and the dwindling vitality of faith in God is restored.

The doctrine of “progressive revelation” opens up a new theological paradigm: religious truth is absolute in its claim to truth for mankind, but is relative in its dependence on man’s capacity and understanding and in its cultural and historical limitations. All revealed religions are “facets” of a single ultimate truth and are part of heilsgeschichte—the divine plan for the salvation of mankind. All of them “have proceeded from one Source and are the rays of one Light.” Salvation is therefore a continuous, never-ending process that is open to the future; its goal the progressive divine education of the human race.

The Bahá’í Faith sees itself not only as a doctrine of salvation, but also as a concrete prescription for living. For Bahá’ís, Bahá’u’lláh is redemptor and legislator. A major constitutive element of Bahá’í...
an introduction to bahá’í law

Let us consider the concept of the Covenant, which God has concluded with humanity through each of his Prophets. The Covenant, which expresses man’s dependence on divine direction, guidance, and mercy, is the basis for the twin obligations of the individual: recognition (‘irfān) of the Manifestation of God and compliance with the divine commandments.

For Bahá’ís, salvation for humanity arises out of the Covenant, the core of which is the Law. The commandments and statutes of God are not, as some Protestant theologians assert, an “obstacle,” “blocking” the path to God, but are instead “the breath of life unto all created things,” “the keys of My mercy for My creatures.” At the same time, however, they constitute “the means of order” and “the instrument of union.” They maintain “order in the world” and guarantee “the security of its peoples.”

Hence, in addition to its “vertical” dimension relating to the salvation of the individual, salvation also has a “horizontal,” intrinsically political dimension: the entire human race is to be guided to salvation and released from moribund social and political structures. The worldly goal, as foreseen by the Jewish prophets, is the establishment of world

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33. ‘ahd, mithāq. The concept of the Covenant, the insight that man is dependent on the divine guidance and mercy provided by the revelation, is a recurring motif in the scripture (cf. Kitāb-i Aqdas 1; Tablets 10: 4; 5: 11 and others).
34. Bahá’u’lláh, Kitāb-i Aqdas 1.
35. Gogarten, Die Verkündigung Jesu Christi 58.
37. Kitāb-i Aqdas 3. It is from the Law that man recognizes his obligations towards God, since it is through his obedience that he is associated with God in the Covenant. Although belief (i.e., recognition of the Manifestation of God) is the foundation—“Whoso is deprived thereof hath gone astray, though he be the author of every righteous deed” (Kitāb-i Aqdas 1)—divine grace is granted not sola fide, but through belief and righteous deeds: “These twin duties are inseparable. Neither is acceptable without the other” (id.). Thus, outward legality is not sufficient; what is demanded is inner devotion: “Observe My commandments, for the love of My beauty” (Kitāb-i Aqdas 4; The Hidden Words, Arabic 38). Since righteous deeds are dependent upon “acceptance” by God (cf. Kitāb-i Aqdas 161; Prayers and Meditations 46: 3; Gleanings 94: 4; 135: 5), the individual does not have an automatic claim to salvation even if he fulfils all the commandments of God (on the concept of divine law, see Schaefer, Imperishable Dominion 188-190). This amounts to a rejection of the antinomist positions that exist in Protestant theology. (On this subject, cf. Schaefer, Imperishable Dominion 180ff.; Schaefer, Towfigh, Gollmer, Making the Crooked Straight 218ff.) and in Sufism (cf. Saiedi, Logos and Civilisation 216-224). On Bahá’u’lláh’s doctrine concerning divine grace, see Making 267ff.
38. Bahá’u’lláh, Tablets 15: 12.
peace in a global order, and the unity of mankind in a *civitas maxima*, a *res publica mundialis*.

II. **THE THEOLOGICAL FOUNDATION OF THE LAW**

A. Religion and Society

The political dimension of religion and its indispensable function in ensuring the stability of the state and society is a central theme in the scripture of Bahá’u’lláh. The offer of divine salvation is addressed to the state and society, to the entire human race. All the Prophets of God are described in the scripture as divine “physicians” who, in their infallible wisdom, prescribe the “remedy” required to cure mankind of its manifold ailments.

All the religions have had a lasting influence on the order of the world and taught man what it is that holds society together at the deepest level: values and ideals that are rooted in faith and are therefore unquestionable, awareness of absolute obligations and metaphysical responsibility, willingness to practice solidarity, loyalty to the state and obedience to the law. The religions have instilled virtues that are indispensable for life in human society and for the stability of the community, and have instructed mankind as to the highest motivation for moral behavior:

Universal benefits derive from the grace of the Divine religions, for they lead their true followers to sincerity of intent, to high purpose, to purity and spotless honour, to surpassing kindness and compassion, to the keeping of their covenants when they have covenanted, to concern for the rights of others, to liberality, to justice in every aspect of life, to humanity and philanthropy, to valour and to unflagging efforts in the service of mankind. It is religion, to sum up, which produces all human virtues, and it is these virtues which are the bright candles of civilization.

Because in religion, moral values are rooted in and legitimized by faith, and the hierarchy of values is passed on through education from generation to generation to keep it alive in society’s consciousness, it is

42. *Kütâb-i Aqdas* 181.
44. On this subject, as a whole, see Gollmer, in Schaefer, Towfigh, Gollmer, *Making the Crooked Straight*, pp. 418-477; Ariane Sabet-Sobhani, *Die politischen Botschaften des Religionsgründers Bahá’u’lláh* (Diss.) (Bamberg 2000).
45. Cf. *Gleanings* 16: 3; 34: 6; 106: 1; 120: 1.
46. “Walk in My statutes for love of Me” (*Hidden Words*, Arabic 38; *Kütâb-i Aqdas* 3).
faith that is the ultimate foundation of social order and of the state. This idea, which is by no means new, is expressed repeatedly in the scripture of Bahá’u’lláh: “Religion is a radiant light and an impregnable stronghold for the protection and welfare of the peoples of the world, for the fear of God impelleth man to hold fast to that which is good, and shun all evil.”

The frequently cited crisis of religion, the decline in the practice of religion as a way of life, demonstrates the connection between religion and morality more clearly than ever. Sociologists and economic experts are gradually coming to realize that man’s “limited rationality” is unable to cope with the complexity of our high-tech world, that the spirit of democracy “survives on the remnants of pre-modern values” and that the secular state is dependent on religion for the provision of meaning and values. No society can be kept under control by laws alone: *Quid leges sine moribus vanae proficiunt?*

48. The idea can be found in the works of Cicero (De officiis) and John Locke (Political Essays). Francis Bacon formulated it thus: *Religio praecipua manusae societatis vinculum* (Essays, “Of Unity in Religion” 6). Jakob Burckhardt called religion “the main bond of human society” (Reflections on History 93).

49. Tablets 8: 53; see Kita-b-i Aqdas 2; Tablets 5: 12; 6: 19.

50. Eighty years ago the philosopher Karl Jaspers spoke of “the twilight of the gods”, which is advancing “into nothingness with a radicality hitherto unknown” (Die geistige Situation der Zeit 16). Pope John Paul II perceives a deep “crisis of modern Catholic moral theology” (Veritatis Splendor 1993, nos. 5, 29, 32, 84, 90, 93). He formulated this as follows: “Dechristianization, which weighs heavily upon entire peoples and communities once rich in faith and Christian life, involves not only the loss of faith or in any event its becoming irrelevant for everyday life, but also, and of necessity, a decline or obscuring of the moral sense” (id. no. 106). On the whole subject see Heiner Barz, Postmoderne Religion am Beispiel der jungen Generation in den Alten Bundesländern, Opladen 1992; Friedrich Kardinal Wetter, Zur Glaubenssituation in Deutschland, in: zur debatte 2ff (Jan./Feb. 1989).

51. Half a century ago the Catholic theologian Romano Guardini prophesied that the future will “bring a frightful yet salutary preciseness” illuminating the relationship between religion, culture and the social order: “As the benefits of Revelation disappear even more from the coming world, man will truly learn what it means to be cut off from Revelation.” (The End of the Modern World 123).

52. Schelsky, *Die Arbeit tun die anderen* 195.


55. Horace, *Carmina* 3, 24, 55. (“What is the use of laws without morals?”). The Harvard sociologist Daniel Bell observes that religion offers protection against the anarchical impulses of man. He refers to Jean-Jacques Rousseau’s statement that “every society is held together either by force (the army, militia and police) or by moral laws” (The Cultural Contradictions of Capitalism 157, 154). In her study of the much-discussed concept of “civil society,” Wendy Heller writes:

When religion is consciously ejected from political life at the front gate, it inevitably comes in again through a backdoor as what has been called ‘civil religion’ simply because no structure of political order can exist without some kind of moral architecture, in other words some set of transcendent beliefs and values that constitute its organized principles. (The Religious Foundations of Civil Society 33).
The decline of religion has inevitable consequences for society: values are losing their religious legitimation and, hence, their absolutely binding nature. The growing relativity of values is causing human society gradually to lose its orientation and its cohesion; conflicts, and the tendency to seek violent solutions to them, are increasing, resulting in a greater need for social regulation.\footnote{56} The control systems that precede those of penal law, such as the family, school, and neighborhood ties, with their stabilizing function in important spheres of life, are less and less effective. The community is losing its stability and is increasingly subject to disruption. Bahá’u’lláh has described the relationship between these developments as follows:

Should the lamp of religion be obscured, chaos and confusion will ensue, and the lights of fairness and justice, of tranquillity and peace cease to shine . . . .\footnote{57} The greater the decline of religion, the more grievous the waywardness of the ungodly. This cannot but lead in the end to chaos and confusion.\footnote{58}

Thus, for Bahá’í religion plays a critical role in maintaining social life.

B. The Concept of the State

Bahá’u’lláh’s texts convey a positive image of the state. Worldly power, which also implies the state’s right to avenge punishable offenses, is legitimatised by express reference to the New Testament\footnote{59} and the Qur’án,\footnote{60} which insist that all power is “from God” and the kings and rulers should be “the emblems of justice.”\footnote{61} “God hath committed into your hands the reins of the government of the people, that ye may rule with justice over them, safeguard the rights of the downtrodden, and punish the wrong-doers.”\footnote{62}

Should the governors fail in this duty, they will “be called upon to answer” before God.\footnote{63} There is little that comes in for greater or more insistent condemnation by Bahá’u’lláh than the autocratic systems of government of his own era, the tyranny and arbitrary rule of those in power, the oppression and exploitation of the people and the lack of

\footnotesize{56. Bahá’u’lláh alludes to this situation: “Were men to strictly observe that which the Pen of the Most High hath revealed in the Crimson Book, they could then well afford to dispense with the regulations which prevail in the world.” (Tablets 7: 24).}  
\footnotesize{57. Tablets 8: 53.}  
\footnotesize{58. Tablets 6: 20.}  
\footnotesize{59. Matt 22: 21 and Rom 13: 1ff.}  
\footnotesize{60. Súra 4: 59.}  
\footnotesize{61. Gleanings 118: 3; Epistle to the Son of the Wolf 143.}  
\footnotesize{62. Gleanings 116: 3; Kitáb-i Aqdas 88.}  
\footnotesize{63. Gleanings 118: 5.}
legal rights for the ordinary subjects. His scripture frequently takes up the theme of the structural elements of a just system of government, gives legitimation to democratic rule and emphasizes obedience to the law and the state as a religious duty.

C. Justice in the Revelation of Bahá’u’lláh

The norms of law (fiqh), ethics (akhláq) and rituals (‘ibádát) emanate from the justice of God, their source is divine revelation. God’s laws and ordinances (hudúd, ahkám) are contingent expressions of His sovereign, unfathomable Will and are therefore “the essence of justice and the source thereof.” The revealer of God’s purpose, who is His “representative and mouthpiece,” “incarnate[s] the highest, the infallible standard of justice [’adl] unto all creation.” That is why Bahá’u’lláh calls his Book of Laws, the Kitáb-i Aqdas, “the unerring balance (qistásu’l-haqq) established among men.” To the Bahá’ís it is the standard against which truth is distinguished from error, good from evil.

Law and justice are closely related terms. The rank of law in the revelation of Bahá’u’lláh is evident from the status assigned to justice (al-’adlu wa’l-insáf) in his system of values, for the goal of justice

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64. See Hidden Words, Persian 64; Kitáb-i Aqdas 88, 89, 135, 148; Tablets 7: 6, 8; 8: 24, 52; 9: 3; 11: 6, 8, 11, 23; 14:14; Epistle to the Son of the Wolf 90, 157, 192; Gleanings 113: 5; 114: 2, 9, 14, 19.
68. It would be beyond the scope of this paper to attempt to clarify the concept of law and to list its criteria. The different spheres of revealed norms will be discussed in chapter IV of my forthcoming work Introduction to Bahá’í Ethics in the Light of Scripture (forthcoming George Ronald Publisher 2005).
69. Literature: Halabi, Ethische Aspekte des Aqdas 275-302; Schaefer, Towfigh, Gollmer, Making the Crooked Straight 403-408; Schaefer, In a Blue Haze; Schaefer, The New Morality.
70. Gleanings 88.
71. Id. 28: 2; see id. 21.
72. Id. 88.
75. This is a complex concept that cannot be given detailed consideration here. It is discussed in my article Crime and Punishment: Bahá’í Perspectives for a Future Criminal Law and in my forthcoming Introduction to Bahá’í Ethics (forthcoming George Ronald Publisher.
(‘adl) is the rule of law. Justice (the sign of the Messiah\(^76\) and the Mahdi)\(^77\) is the highest value in the world of order (‘adl),\(^78\) and at the personal level of individual virtue (inṣāf). It is—as in the philosophical tradition\(^79\)—“the most fundamental among human virtues.”\(^80\) When Bahā’u’llāh announces for the new age “the reign of justice . . . amongst the children of men” so “that the light of justice may shine upon the world,”\(^81\) he refers specifically to the establishment of a global rule of law in a “new World Order,”\(^82\) “a system in which Force is made the servant of Justice.”\(^83\) The establishment of state structures based on the rule of law throughout the world means overcoming totalitarian systems of rule and all forms of despotism and oppression.

Law is immanent in the revelation of Bahā’u’llāh because this revelation aims to reform the material world and its systems of order: “The progress of the world, the development of nations, the tranquillity of peoples, and the peace of all who dwell on earth are among the principles [usūl] and ordinances [ahkām] of God.”\(^84\) This immanence is also evident in that revelation itself sets out law and also provides a basis for the further development of law, as well as giving the community its legal form,\(^85\) whose validity is therefore absolute.

III. THE SOURCES OF LAW\(^86\)

The Bahā’ī community is in the possession of a revealed Law, a ius divinum, whose source is the entire body of sacred texts emanating from the pen of Bahā’u’llāh, which together constitute the “Book” (al-kitāb). The central text setting out legal norms is Bahā’u’llāh’s Kitāb-i Aqdas, which as the “Book of Laws” holds a special rank among the texts,\(^87\) but

\(^{76}\) Isa 11: 5; 26: 9; 32: 17. On this subject, see Cohen, Religion of Reason 429ff.

\(^{77}\) He will “fill the world with equity and justice” after finding the world “full of evil and ungodliness” (Hadīth, cf. SEI, key word “al-Mahdi” 1230-1238, vol. V). The Bahā’īs consider these eschatological figures to be the Bāb and Bahā’u’llāh.

\(^{78}\) ‘Adl is institutional justice. It is manifested in the principle of “reward and punishment,” the two “pillars” on which “the canopy of world order is upraised.” (Tablets 8: 55; 3: 25; 6: 25; 8: 61). As to justice in the context of penal law and its relation to love and mercy, I refer to my elucidations below, in the text accompanying notes 173-208.

\(^{79}\) Plato, Aristotle, Thomas Aquinas.

\(^{80}\) Gleanings 100: 6. Its priority over all other worldly virtues is repeatedly emphasized (cf. Hidden Words, Arabic 2; Tablets 10: 23).

\(^{81}\) Tablets 11: 6.


\(^{83}\) Shoghi Effendi, World Order 204.

\(^{84}\) Tablets 8: 63.

\(^{85}\) For further detail, see below §VII.1.

\(^{86}\) Cf. Schaefer, Grundlagen 53-70.

\(^{87}\) This is immediately evident from its title as Ummu’l-Kitāb, the “mother book.” On this
there is no *numerus clausus*: legal norms (like moral instructions) are scattered throughout the revealed scripture. They do not form a consistent system; instead, they constitute supreme norms (as in the case of legal provisions in the Qur’ân) that require systematization and specification. This is done not, as in Islam, by means of the interpretation of the sacred texts but through supplementary legislation.

In the canon of the normative prescriptions set out in the Kitâb-i Aqdas a clear distinction between law and morality is perceivable, a difference that was emphasized by Immanuel Kant. Nevertheless, these two types of norms are mutually related, as both are facing the same philosophical problems as to right action. Divine law must always be seen and interpreted in the light of the moral instructions and demands set out in the scripture. As Bahâ’u’llâh emphasizes (possibly with regard to the Sufi’s disdain for law), the Kitâb-i Aqdas is not “a mere code of laws [akhâm]”, not a dry codex, but is—on account of its unprecedented dogmatic rooting,—the unshakeable foundation of a Bahâ’î legal system which will develop in the fullness of time. *Ius divinum* is contained also in the testament of ‘Abdu’l-Bahâ, which

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88. A systematic set of norms is only partially evident. However, it should not be judged by the strictly rational criteria of state legislation. The sacred as the “mysterium tremendum” (Rudolf Otto, *The Holy 12ff.* (1931)) is beyond rationality and its categories; it has its own logic. Revelation is eruptive in nature, and its precipitation in the sacred texts has the character of ancient rock. For detailed discussion of the character of divine legislation, see Schaefer, Towfigh, Gollner, *Making the Crooked Straight* 338ff.; Saiedi, *Logical and Civilization* 235ff.

89. Cf. *Metaphysics of Morals, Doctrine of Right,* Bielefeldt, *Kants Symbolik* 107ff; Welzel, *Recht und Sittlichkeit* 45ff. This insight leads to the recognition that moral norms cannot be simply turned into legal norms or legal criteria. Selflessness, one of the highest virtues—to take but one example—cannot be decreed or made into a legal obligation. Impartiality is a high moral duty (cf. ‘Abdu’l-Bahâ, *Selections* 138: 1; 225: 2; *Paris Talks* 47: 4), an element of justice and a pre-condition for all jurisdiction. In a legal system it can only be achieved through its institutionalisation. Conflicts are to be removed by means of objective, procedural precautions (i.e., specific provisions regarding such conflicts of interest) as expressed in the Roman legal principle “*Nemo iudex in sua causa*” (Cod. Just. 3, 5).

90. Such as the virtue of chastity as an individual moral value and the prohibition in penal law of extramarital intercourse (zînâ’, *Kitâb-i Aqdas* 49). The penal norm covers only a small area of possible violations of the obligations regarding sexual ethics.

91. Both spheres of norms were subjects of the philosophical reflections on natural law over the millennia.

92. “Think not that We have revealed unto you a mere code of laws. Nay, rather, We have unsealed the choice Wine (al-rahiq al-makhtum) with the fingers of might and power.” (*Kitâb-i Aqdas* 5). “Sealed wine” is a Qur’ânic metaphor for the delight of those who are close to God on the Day of Judgement (cf. Qur’ân 83: 25). This passage is “a rejection of the traditional Islamic-jurisprudential approach to law. However, it is equally a rejection of the Sufi approach to law. Both those approaches regarded the law as a “mere code.” (Saiedi, *Logical and Civilization* 217; see id. 216–224).


94. In the *Kitâb-i Aqdas* (121, 174) and in the *Kitâb-i ‘Ahd* (Tablets 15: 1-14), Bahâ’u’llâh
supplements and puts into concrete terms the constitutional order of the community, the outlines of which had already been drawn up by Bahá'u'lláh, and described in the Tablets of 'Abdu'l-Bahá relating to the principle of consultation.  

Further sources of law are the numerous letters written by Shoghi Effendi, in which he formulated the principles and structures of the law relating to the community. Shoghi Effendi did not have legislative power, but until the establishment of the supreme legislative body endowed with this power, he had to provide the community with at least some basic legal guidance for the organizational process that began in the 1920s. The legal principles that he established, on the basis of the spirit and principles of the Faith, concerning the constitution of the community and the functioning of its organs, which were integrated into the statutes of these bodies, were made subject to approval by the Universal House of Justice.

Finally, the Bahá'í community has a supplementary divine law that is also in the category of *ius divinum positivum*, namely the legislation made by the Universal House of Justice, the supreme administrative body, which is democratically elected by the world community. The published laws established by this body are therefore also sources of law. Thus, the Bahá'í divine law is a *ius divinum positivum* with appointed his eldest son 'Abdu'l-Bahá (1844-1921) the “Centre of the Covenant” and entrusted him with the leadership of the community following his own death. 'Abdu'l-Bahá was, as he designated himself, the “*mubayyin*” (=Explainer), *auctoritas interpretativa*. However, in addition to interpretation, he had a certain, albeit limited, degree of legislative competence (on this subject cf. Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 349ff., 684ff.), enabling him to draw up details of the institutional structure of the community, which Bahá'u'lláh had revealed only in outline, and thus to assist in the implementation of the *ratio legis divinae*. See § VI, 3b below, as well as footnote 130. On the life and works of 'Abdu'l-Bahá see Shoghi Effendi, *God passes by* 309-320 and *World Order* 131-139; Balyuzi, *'Abdu'l-Bahá*.

96. See below §§VII, 3-5.
97. Selections 48-45; see below §VII, 5b.
98. Selected letters are published in Shoghi Effendi, *Bahá'í Administration*; id., *Messages to America*.
100. The Universal House of Justice was elected for the first time in 1963.
101. Many of these are to be found in Shoghi Effendi, *Bahá'í Administration*; id., *Messages to America. Selected Letters and Cablegrams Addressed to the Bahá'ís of North America 1932-1946* ; id. *World Order of Bahá'u'lláh*.
102. Numerous principles concerning the conduct and functioning of the elected bodies were, for instance, incorporated into the appendix to the statutes of the German Bahá'í community (cf. Schaefer (ed.), *Die Verfassung der Bahá'í-Gemeinde* 65ff & 90ff.).
103. *Bahá'í Administration* 41.
104. Cf. below §VI, 4c and also Schaefer, *Grundlagen* 65ff.
105. So far, no special bulletins have been published for this purpose.
106. Positive divine law.
the subcategories of *ius divinum scripturae*\textsuperscript{107} and *ius divinum supplementum*,\textsuperscript{108} which together constitute the Bahá’í sacred law.

The following, however, are not sources of law:

\begin{enumerate}
\item \textit{the scripture of the Báb.} As the Word of God, these texts are sources of faith and an authoritative and integral component of doctrine,\textsuperscript{109} but the legislation set out by the Báb in the \textit{Bayán}\textsuperscript{110} (which repealed the Islamic \textit{Sharī’ā}) was abrogated by Bahá’u’lláh’s \textit{Kitáb-i Aqdas}.,\textsuperscript{111}
\item \textit{oral tradition.} The revelation of Bahá’u’lláh is attested by the authentic texts that have been preserved in writing. Oral reports about the sayings and actions of the Prophet (\textit{sunna}) do not possess any authority and are therefore a source for neither belief nor law. Hence, the Bahá’í Faith is exclusively a “religion of the book;” and the Reformation principle \textit{sola scriptura}\textsuperscript{112} is consistently put into practice;
\item \textit{natural law}.\textsuperscript{113} The ultimate foundation of law and ethics is the sovereign will of God, who manifests Himself in the divine revelation. The verses: “He doeth what he pleaseth...”\textsuperscript{114} He shall not be asked of his doings,”\textsuperscript{115} express the Bahá’í Faith’s voluntarist view of God.\textsuperscript{116}
\end{enumerate}

\textsuperscript{107}. Divine law of scripture.
\textsuperscript{108}. Supplementary divine law.
\textsuperscript{109}. The same applies to the Qur’an, and in principle also to the scripture of the Hebrew Bible and the Christian New Testament.
\textsuperscript{111}. The Roman dictum “\textit{Lex posterior derogat legi priori}” (Dig. 1, 4, 4) also applies in the history of salvation (\textit{heilsgeschichte}).
\textsuperscript{112}. Cf. Schaefer, \textit{Grundlagen} 66-70; Gollmer, in Schaefer, Towfigh, Gollmer, \textit{Making the Crooked Straight} 683.
\textsuperscript{113}. A thorough study of this subject will be provided by the forthcoming thesis: Tajan Tober, \textit{Der Naturrechtsgedanke im Urteil der Bahá’í-Lehre}.
\textsuperscript{114}. Qur’an 2: 254.
\textsuperscript{115}. \textit{Id.} 21: 34. This idea, which is a recurring leitmotif throughout the scripture, especially in the \textit{Kitáb-i Aqdas} (cf. verses 7, 47, 157), has been raised by Bahá’u’lláh to the status of a touchstone of faith: \textit{Id.} verses 161-163. Qur’an 21: 34 also provides the verdict on the question of theodicy: the justification of God’s doings by reason is an expression of human presumptuousness before God (see Rom 9: 20ff.).
\textsuperscript{116}. This strain of thought can also be found in Christian theology, where it can be traced back to St. Paul and St. Augustine. The Franciscan monk John Duns Scotus (1270-1303) formulated categorically “\textit{Omne aliud ad Deo est bonum, quia a Deo volitum, et non converso... quia est bonum, ideo acceptatum}” (Oxoniense IIId, 19qu. 1a.7). William Ockham (1285-1350) followed his path as did Luther and Calvin, who both saw the origin of all morals and all law in God’s unfathomable will. In his treatise \textit{De servo arbitrio}, Luther testifies to the unlimited sovereignty of God: “Deus est, cuius voluntatis nulla est causa nec ratio, quae illi ceu regula vel mensura praescribatur, cum nihil sit illi aequale aut superius, sed ipsi est regula omnium” (WA 712, vol. 18). And elsewhere: “His Will is His spirit-level, measure and weight” (\textit{Id.}, vol. 16, \textit{Sermons on the Book of Leviticus} 148). Calvin formulated no less categorically: “\textit{A Deo enim summa est iustitiae regula Dei voluntas, ut quidquid eo ipso quod vult iustum habendum est}” (\textit{Institutio III},...
God has “no associate in His judgment nor any helper in His sovereignty,”117 He is “the Lord of all things and is the vassal of none”118—not even (in the sense of Plato’s theory of ideas) of the truth of eternal ideas. There is no superior law above Him to which He might be subject,119 His will is the creator of all law and all values. Thus, normative authority or the source of law is not ordered nature, not a rational concept of the human nature defining for all eternity the idea of good, nor a rationally recognizable “nature of things” (natura rerum), but rather the decisions of God’s arbitrary will embodied in the sacred scripture. Hence, the Bahá’í Faith does not support the concept of a natural law (ius divinum naturale), i.e., of pre-existent eternal values, of an innate moral law that God has inscribed in the human heart120 that can be discerned through reason. Humans have, as ‘Abdu’l-Bahá stated, no “innate sense of human dignity” that prevents them from committing evil actions: “This very sense of honor and dignity is itself one of the bounties arising from the instructions of the Prophets of God.”121

Natural law, which in Catholic doctrine is part of the divine law (ius divinum naturale) is based on the idea that the fundamental principles of law and ethics are eternal verities of everlasting validity. Classical natural law is in its essentials (prima principia) universal, unchangeable, ahistoric and static. In contrast to this, in Bahá’ísm the divine law is exclusively a ius divinum positivum. The Bahá’ís consider all law122 that has been revealed by the prophets of the past and by Bahá’u’lláh (in the Pentateuch, the Qur’án and the Kitáb-i Aqdas) as historic embodiments of God’s sovereign will in accordance with the requirements of the specific age, and liable to abrogation in a new revelation.123

23, 2 [“The supreme rule of justice is the will of God, and everything that He wills must be accepted as just because He wills it”]. The predominant doctrine in classical Sunni Islam (Sháfi‘i, Ibn Hanbal, Al-Asbá’i), too, was that of voluntarism (cf. George F. Hourani, Reason and Tradition 17).

117. Tablets 8: 19. The existence of a moral order binding upon God would be a limitation on his sovereignty.
118. Prayers and Meditations 4: 1.
119. This is in contrast to Plato who in his early dialogue Euthyphro (marginal no. 10) raised the decisive question: “Is the good loved by the gods because it is good, or is it good because it is loved by the gods?”, which he clearly answered in the first sense: The gods are bound to the eternal verities.
120. Cf. Rom 2: 15.
121. Selections 97.
122. The same is true for the norms of rituals (‘íbadát).
123. According to the paradigm of “progressive revelation” (cf. Schaefer, Beyond the Clash 121ff.) the revealed law belongs to the horizontal dimension of the revelation, whereas the norms of morality are part of the vertical dimension, of the “changeless Faith of God, eternal in the past, eternal in the future” (Kitáb-i Aqdas 182). This moral law belongs to the essentially unchanging heart of religion that does not change nor alter and which will never be abrogated (‘Abdu’l-Bahá,
Because of their claim to truth, the revealed laws in relation to humankind have always been absolute; because of their historic nature, however, they are relative in character. As all prophets who are “Manifestations of God” are endowed with the “knowledge of being” (‘ilmu’l-wujūd), and are aware of the necessary relations arising from the nature of things, the laws they reveal are absolutely adequate to the needs and exigencies of the human world in a specific age and are expressions of these necessary relations.

IV. FORMAL ENACTION OF LEGAL NORMS AND THEIR DEVELOPMENT

A peculiar feature of Bahá’ísm is that most norms of the revealed law (including the ordinances of ritual) do not come into force ipso iure upon their promulgation, but have to be formally enacted by introductory acts of the supreme legislative body with global responsibility, the “Universal House of Justice” (Baytu’l ‘adl al-a’zam). This gradual process of bringing laws into force derives from the founder of the religion himself, who did not want the break with the customary order of life to be too abrupt; instead, it should be fitted to the capacity of people to accept it. Moreover, the socially relevant legal norms, especially the regulations concerning criminal justice, presume the existence of a society already shaped by the revelation, a “society

Some Answered Questions 11: 9). In each of the different cycles the eternal values have been confirmed and renewed, because human virtues wane, and “only the husk subsists” (id. 11: 10). In every new outpouring of the divine will in history these values are purified from their incrustations, deformations, misinterpretations and shifts in emphasis, and are provided with new semantic raiment, new sense, new emphasis and new force. On the concept of the “vertical and horizontal dimensions,” see Schaefer, Beyond the Clash 141-144.

125. Id. 40: 7.
126. Forms of worship (‘ibādāt), cf. Tablets 3: 25. A further development of ritual norms has been excluded by Bahá’u’lláh himself. The catalogue of ceremonial ordinances constitutes a numerus clausus that may not be increased: “Acts of worship [‘ibādāt] must be observed according to that which God hath revealed in His Book.” (Tablets 3: 25).
127. For further detail, see below §VII, 3.
128. This was due to the historical conditions of the religion, which differed from those of Judaism and Islam, in which the people of God were also the “people of the state” and the Law of God determined the structures of the new order from the very beginning. Throughout his prophetic ministry, Bahá’u’lláh was a prisoner and exile. The Bahá’í communities are a diaspora in a completely different world.
130. An example of the gradual introduction of the law is monogamy. The text (Kitāb-i Aqdas 63) limits the number of wives to two, but makes it clear that monogamy is intended. The early believers were originally Muslims and were often married to several wives. Once a new generation had grown up, ‘Abdu’l-Bahá made monogamy binding, in accordance with the ratio legis (cf. Kitāb-i Aqdas, Notes 89; Schaefer, Towfigh, Gollmer, Making the Crooked Straight 346ff.).
destined to emerge from the chaotic conditions that prevail today.”¹³¹ A further reason for the need for formal enactment of the revealed laws is that they are valid for a period of at least one thousand years.¹³² As social conditions on earth are subject to constant change, legal norms that regulate specific details once and for all are in danger of leading to rigid legal casuistry and to the petrification of the law. Bahá’u’lláh has eliminated this danger by providing the legal system “with an essential element of flexibility.”¹³³ The divine law regulates only “matters of major importance.”¹³⁴ Moreover, the legal norms have been revealed at a high level of abstraction. They are so general and leave so much unregulated that they need to be specified and adapted to the conditions of the time. They are in need of detailed sub-regulations. In the Bahá’í community these sub-regulations—the development of the legal system—do not result from authoritative interpretation by the religious scholars, “the learned ones”¹³⁵ (as the Rabbis in Judaism and the ‘ulamá’ in Islam), but from supplementary legislation. The institution of a supreme legislature that has been “freed from all error”¹³⁶ allows for constant adaptation of the law to changing social conditions, since this legislature can amend¹³⁷ its own laws, though ius divinum,¹³⁸ and thus take account of altered circumstances.¹³⁹

Certain legal norms were (at least for the eastern Bahá’ís) considered binding from the start,¹⁴⁰ others were declared universally valid by ‘Abdu’l-Bahá, and later by Shoghi Effendi and eventually by the Universal House of Justice.¹⁴¹ As far as the institutions and structures of community order are concerned, implementation of law began during the office of ‘Abdu’l-Bahá.¹⁴² It is self-evident that revealed legal norms are effective in the community as ethical guidelines

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¹³² See §V.
¹³⁵ Al-‘ulamá’ fi’l Bahá’ (see Kitáb-i Aqdas 173). Their opinions have no authority, “unless they are endorsed by the House of Justice” (‘Abdu’l-Bahá, quoted from Kitáb-i Aqdas, Introduction 5).
¹³⁷ Id. 2: 8.
¹³⁸ These laws have “the same effect as the Text itself” (‘Abdu’l-Bahá, Will and Testament 2:8). The reference to the sacred text expresses the special quality of this law, which results from the infallibility of the legislator (cf. below §VII, 4).
¹⁴⁰ See e.g. such prohibitions as the confession of sins (Kitáb-i Aqdas 34; Tablets 3: 14), the clergy, pulpits in the Houses of Worship (Kitáb-i Aqdas 154), the consumption of alcoholic drinks and intoxicating drugs (Kitáb-i Aqdas 119, 155, 190 etc.), etc.
¹⁴¹ An example of these norms is the request of the consent of parents as a pre-condition for marriage.
¹⁴² Cf. below §VII, 1.
even before they come into force.

V. THE PERIOD OF VALIDITY OF THE IUS DIVINUM

The claim raised by each of the three monotheistic religions to the finality of their respective revelation inevitably leads to the claim that the revealed law is of eternal validity. According to Bahá’u’lláh’s new paradigm of salvation, i.e., that of “progressive revelation,” in which all claims to finality are rejected and future divine revelations are promised, divine law can be valid only until such time as God confirms or repeals the law He had previously promulgated—which man is not authorized to change—through a new revelation. Since Bahá’u’lláh has excluded the possibility that such a revelation will take place before the passing of a thousand years, the ius divinum of the Bahá’ís is valid for at least one millennium.

VI. SPECIFIC SPHERES OF LAW

Compared with the other world religions, the Bahá’í Faith is still at an early stage in its development, being currently only in its second century. Hence, any information about such a complex sphere as law must necessarily remain preliminary and fragmentary—it cannot hope to be more than an initial attempt at analysis, inasmuch as not all of the sacred texts have so far been translated into western languages.

The Law revealed by Bahá’u’lláh (like all revealed law) is not a consistent legal system, let alone a systematic code. It is rudimentary,
calculated for further development. The Kitâb-i Aqdas (like the Qur’ân) only regulates certain aspects of law, such as matters concerning personal status (e.g. family law and inheritance law) and penal law. The latter includes only a few norms which, in combination with statements on the theology of law and on the purpose of punishment, are intended to form the basis of a future criminal code. The Kitâb-i Aqdas and the Testament of ‘Abdu’l-Bahâ comprise the constitutional law of the community.

Many aspects are still in need of clarification. Some provisions are clearly identifiable as legal norms,151 while in the case of many normative scriptural passages relating to society,152 clarification is still required about whether they constitute legal norms or are rather guiding principles, social and ethical guidelines for future legislation. The following explanation will be limited to the provisions of penal law, the laws relating to the family, marriage and inheritance, and, in the final section, the community’s constitutional law.

A. Penal Law

The Kitâb-i Aqdas contains some provisions of penal law, but these are expressed in a very general and abstract way, allowing for the later specification of offenses. There is no legal definition of elements of an offense. The details of penal laws were not specified by Bahá’u’lláh. Referring to the death penalty153 in cases of murder, homicide and arson, the Universal House of Justice elucidated in a note to the Kitâb-i Aqdas:

The various details of the law, such as degrees of offense, whether extenuating circumstances are to be taken into account, and which of the two prescribed punishments is to be the norm are left to the Universal House of Justice to decide in the light of prevailing conditions when the law is to be in operation.154

Thus, given the rather abstract nature of the holy text, a certain vagueness is undoubtedly intentional and serves the flexibility of divine law.

The provisions of the Kitâb-i Aqdas are fundamental norms for a future system of penal law, but are also parameters for moral order. It goes without saying that the “Book of God” establishes a value system

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151. An example of such a clear norm is the permission to take interest (vgl. Tablets 8: 74, 77-78) in contrast to Mosaic and Qur’ânic law (cf. Exod 25: 36-37; Deut 23: 20ff; Qur’ân 3: 130; 2: 275ff; 30: 39).
152. This is discussed in my forthcoming Introduction to Bahá’í Ethics (forthcoming George Ronald Publisher 2005).
153. In these cases “life-imprisonment [. . .] would be permissible“ (Kitâb-i-Aqdas 62).
154. Note 85.
of its own\textsuperscript{155}—“God doth not tread in their ways”\textsuperscript{156}—which “is not limited by the standards of the people”\textsuperscript{157} and constitutes, as the Bahá’ís believe, the critical norm of all human law. This fundamental truth has been repeatedly and insistently expressed in the scripture:

Great is the blessedness of him who hath in this Day cast away the things current amongst men and hath clung unto that which is ordained by God\textsuperscript{158} . . . . Cast away the things current amongst men and take fast hold on that whereunto ye are hidden by virtue of the Will of the Ordainer, the Ancient of Days\textsuperscript{159} . . . .

Hence Bahá’u’lláh’s admonition:

Weigh not the Book of God with such standards and sciences as are current amongst you, for the Book itself is the unerring Balance established amongst men. In this most perfect Balance whatsoever the peoples and kindreds of the earth possess must be weighed, while the measure of its weight should be tested according to its own standard, did ye but know it.\textsuperscript{160}

The book contains the divine law for the \textit{whole} of humanity. In some respects, it therefore conflicts with the moral values currently dominant in Europe: it is less individualistic\textsuperscript{161} and more concerned with the common good. This is most clearly evident in positions relating to sexual and to legal ethics. Thus, the idea that the individual can determine his own sexual orientation is incompatible with Bahá’u’lláh’s normative image of the human being. Sexual intercourse is reserved for (heterosexual!) marriage. Sexual activity before or outside marriage is a violation of the virtue of chastity,\textsuperscript{162} pre-marital and extra-marital sex is (as in Islam) \textit{zinā’},\textsuperscript{163} it is stigmatized as immoral and legally penalized. Homosexual practices (\textit{liwāṭ, sihāq}) are condemned by Bahá’u’lláh as

\begin{footnotesize}
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\item\textsuperscript{155} Cf. Tablets 5: 5; 6: 56.
\item\textsuperscript{156} \textit{Id}. 8: 19.
\item\textsuperscript{157} Tablets 8: 19
\item\textsuperscript{158} \textit{Id}. 5: 5.
\item\textsuperscript{159} \textit{Id}. 6: 56.
\item\textsuperscript{160} \textit{Kitāb-i Aqdas} 99.
\item\textsuperscript{161} The limits to individual freedom are not determined only by the rights of others but also by the divine Law, which protects the individual from self-abasement, “depravity and wickedness.” (\textit{Kitāb-i Aqdas} 123). Even Art. 2 of the German Constitution (\textit{Grundgesetz =Constitution, Basic Law}) refers not only to the rights of others and adherence to the constitutional order as limits to freedom, but also to the “moral law.” Whereas this was intended by the composers of the Constitution as a given, objective entity and was also interpreted as such in the past by the Supreme Federal Court (cf. BGHSt 6, 46ff), it is understood today to mean only “the moral consciousness of people in general,” and this is something relative, because it is in constant flux (Dreier (ed.), \textit{Grundgesetz. Kommentar}, art. 2 I, marg. no. 44). On this subject as a whole, see Schaefer, \textit{Die Freiheit} 25ff.
\item\textsuperscript{162} Tablets 9: 5; Gleanings 59: 5; 60: 3.
\item\textsuperscript{163} \textit{Kitāb-i Aqdas} 19, 49, Note 77.
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immoral, even “satanic.” Pederasty is regarded as particularly contemptible. The concept that “ethical minorities” might be placed under legal protection, such as providing for de facto equality between long-term homosexual partnerships and marriage, is incompatible with these positions.

Values that differ from those that are currently dominant are also evident in the penal law: the idea of retaliation as one of the purposes of punishment and the legitimization of the death penalty in cases of murder and serious cases of arson usually meet with disapproval and suspicion in Europe, where this purpose of punishment is denounced as an expression of subliminal feelings of hatred and revenge, and where the death penalty is regarded as a barbaric relic of pre-modern times and its abolition celebrated as a milestone on the path to the progressive humanization of society.


166. See below in the text accompanying notes 193-227.

167. This raises the question of the Bahá’í’s attitude to the European Enlightenment, which can be answered as follows: Bahá’u’lláh’s sexual ethics correspond to the basic tenets of the other Abrahamic religions, and also of Buddhism, though it avoids the extreme positions represented by zealots who regard the physical body as an enemy to be vanquished and suppressed, and who therefore see the state of voluntary celibacy and virginity as superior to that of marriage (such as Cyprian, Tertullian, Hieronymus, Augustine and others, with reference to I Cor 7:1ff). Chastity does not amount to a defamation of human sexuality, its aim is not the suppression of the sexual urge, but the disciplined use and control of the reproductive force and the human ability to express love. (For further detail, see Schaefer, Imperishable Dominion, 175ff).

Neither can the foundation of the penal law in the metaphysical principle of justice, as a reaffirmation of the idea of expiation and retribution (Punitur quia peccatum est), be described as a return to a pre-Enlightenment position. While it is true that most Enlightenment philosophers emphasized the idea of crime prevention (Punitur ne peccetur) and demanded the abolition of both torture and the death penalty (the great Italian jurist Cesare Beccaria, 1738-1794, was the first who made this demand in his work Dei delitti e delle pene, 1764), Kant, who marked the epitome of the European Enlightenment (and subsequently Hegel, too, Philosophy of Right, §§97-102), were the most radical advocates of the principle of retribution. Kant mocked Beccaria’s “sophistry and pettifoggry” and legitimised the death penalty (Metaphysics of Morals. Doctrine of Right, §49). This was also the position upheld by Catholic and Protestant theology until the early 1960s (in LThK 1986, vol. 9, col. 1097, with reference to the dictum Punitur quia peccatum est). Even the Catechism of the Catholic Church published in 1993 (no. 2266) justifies the death penalty under certain circumstances.

Furthermore, the message of Bahá’u’lláh can certainly be described as compatible with “Enlightenment values” with regard to many of its principles and demands, such as the unconditional dignity of every individual and the equality of all before the law, freedom of conscience, thought and speech (cf. ‘Abdu’l-Bahá, Promulgation 197), the abolition of the clergy, the democratic structure of the community, the preference for democratic forms of rule, the rejection of absolutism, the tyranny of rulers, imperialism, colonialism, exploitation and religious fanaticism, as well as the protection of religious, political and ethnic minorities. These are all positions upheld by Enlightenment thinkers. The vision of a federal world commonwealth in a peaceful global order corresponds to Kant’s conviction “that at last . . . the highest purpose of nature, a universal cosmopolitan existence, will be realised as the matrix within which all the original capacities of the human race may develop” (Idea for a Universal History with a
The Bahá’í position derives from the basic political concept according to which the common good and the security of the public has to be balanced against the rights of the individual.168 Thus, strong emphasis is placed on the “security and protection of men,”169 the “common weal”170 and the “prosperity, wealth and tranquillity of the people.”171 This different emphasis is also reflected in the provisions of penal law, which are based on the metaphysical principle of justice: “The structure of world stability and order hath been reared upon . . . the twin pillars of reward and punishment.”172

Justice (‘adl) is the cardinal value of temporal power,173 justice, law and order are the foundations on which Bahá’u’lláh’s world order is built. In his hierarchy of virtues justice (al-‘adlu wa’l-‘insâf) is the highest of worldly virtues.174 Although tension exists between justice on the one hand, and love, mercy and compassion on the other hand, there is no essential conflict between them: God is not only a God of love and mercy (His mercy “hath preceded all creation”175 and “embraceth all things”),176 but also a “God of justice”177 and of “wrath”178 who chastens, punishes and revenges.179 As I formulated elsewhere: “In God the

Cosmopolitan Purpose, 1784, eighth proposition, p. 51), and that “the perpetual peace is no empty idea but a task” that “comes steadily closer to its goal” (Perpetual Peace 391 (1795)). Kant’s definition of the Enlightenment as “man’s emergence from his self-incurred immaturity” and his maxim “sapere aude” (Horace)—“Have courage to use your own understanding!” (“An Answer to the Question: ‘What is Enlightenment?’” 54)—is remarkably similar to Bahá’u’lláh’s commandment to seek the truth independently. He admonishes people “to see with their own eyes and to hear with their own ears” (Kútb-i ‘Iqán 176) and “know of thine own knowledge and not through the knowledge of thy neighbour.” (Hidden Words, Arabic 2). That this is a fundamental principle is evident from the many warnings against “vain imitation” (cf. Gleanings 75: 1; 84: 2; Tablets 10: 23 etc.) and the implicit rejection of the Islamic principle of Tâlîqâd (SEI 562f.; Halm, Der schiitische Islam 118ff, 133ff; Momen, Shi’ih Islam 175). The “coming of age of the human race” is a recurring theme in the revealed scripture (cf. Kúth-i Aqdas 189; Gleanings 33: 2; Lawh-i Salmân; ‘Abdu’l-Bahá, Selections 16: 5; Shoghi Effendi, World Order 165, 166f, 202, 205. On this subject, see Saiedi, Logos and Civilization 311-313, 338-345, 356-360).

169. Tablets 7: 32.
171. Tablets 7: 29.
172. Id. 11: 6; see 3: 25; 8: 55; 8: 61; 11: 6.
173. This is in accordance with western tradition: “Justitia fundamentum regnorum” (“Justice is the foundation of temporal powers”), a sentence that originates from Antiquity (Cicero, Sallust, Virgil, although it cannot be determined who formulated it).
174. See The Hidden Words, Arabic 2; Tablets 10: 23; Gleanings 100: 6. This corresponds fully with the philosophical tradition (Plato, The Republic, no. 336e; Aristotle, The Nicomachean Ethics 1129b) as well as Thomas Aquinas (In Eth. L. V. I.II, no. 907).
178. Gleanings 66: 13; Prayers and Meditations 81: 4; 83: 3.
179. Cf. Gleanings 66: 2; 103: 5; Tablets 8: 8.
tension between love and justice is superseded in a paradoxical unity.”

‘Abdu’l-Bahâ discussed the two spheres (justice and love) at length,

making clear that love, mercy and forgiveness belong to the realm of

interpersonal relationship and should determine the conduct of

individuals with one another, whereas justice (‘adl=iusititia legis et

distributiva) belongs to the realm of the social order. ‘Abdu’l-Bahâ

objected to those who put—referring to the Sermon on the Mount and

God’s mercy—a one-sided emphasis on loving forgiveness: “As

forgiveness is one of the attributes of the Merciful One, so also justice is

one of the attributes of the Lord . . . . The tent of existence is upheld

upon the pillar of justice, and not upon forgiveness.”

He leaves no doubt that society has the inalienable right “of self-
defence and of self-protection,” whereas the individual is morally

obliged to forgive the one who has committed an injustice against him

and to “return good for evil.” Love which is not simultaneously “just”

when applied in the social order, has degenerated, as the Swiss

theologian Emil Brunner aptly expressed, into “sentimentality” and has

been turned into “the poison, the solvent which destroys all just

institutions.” Perhaps nothing endangers the social order more than

this one-sided shift in emphasis to the secular value of “humaneness”

which has absorbed the Christian values love, mercy and compassion

and has been put into effect in the wrong place, namely in the

institutions of social order. The commandments of the Sermon on the

Mount are not directives for political action but are a radicalized ethic

for observance by the individual. It is as Thomas Aquinas put it: Justice

without love turns “into cruelty,” love devoid of justice is “the mother of

disintegration,” leading eventually to the breakdown of order. St

Augustine put it that way: “Remota itaque iustitia quid sunt regna nisi

magna latrocinia?”

Bahâ’u’llâh warns against all tendencies to supersede justice by

mercy in the Kitâb-i Aqdas when he states in the context of capital


180. Schaefer, Towfigh, Gollmer, Making the Crooked Straight 309.
182. Id. 77: 8.
183. Id. 77: 6.
184. Id. 77: 5.
185. Justice and the Social Order 129.
186. On the relationship between justice and mercy see ‘Abdu’l-Bahâ, Some Answered Questions, ch. 77; Schaefer, Crime and Punishment 52ff; Schaefer, Towfigh, Gollmer, Making the Crooked Straight 309f.; Id. Justice ou miséricorde? Une théologie du pardon selon la foi Bahâ’i.
188. Catena aurea in Matthew 5, 2.
189. [“In the absence of justice, what is sovereignty but organised brigandage?”] De Civitate Dei, lib. IV, cap. IV.
punishment for murder, homicide and arson: “Take ye hold of the precepts of God with all your strength and power, and abandon the ways of the ignorant.”

And in the context with the punishment of theft, he warns emphatically: “Beware lest, through compassion, ye neglect to carry out the statutes of the religion of God; do that which hath been bidden you by Him Who is compassionate and merciful.”

This reference to the All-Merciful is an admonition against man’s hubris in thinking himself more merciful than the God Himself of whom it is said: “Of those who show forth mercy Thou art in truth the Most Merciful.”

The primary purposes of punishment are expiation and retaliation, general deterrence and the protection of society; additional aims are utilitarian purposes such as the reformation of the offender. Retributory punishment, or retaliation, is by no means, as often imputed, vengeance, the expression of subliminal feelings of hatred and aggression; rather, it is the essence and the demand of justice. The one-sided orientation of western countries to the secular value of humaneness (with the inherent attitudes of mercy and compassion) is not shared.

The Kitāb-i Aqdas specifies the following as prohibited offenses: premeditated killing (al-qatl=murder and homicide), pre-marital and extramarital intercourse (zinā‘), theft (sariqa), arson, slave trading, backbiting (al-ghayba), and calumny (al-iftirā), causing bodily harm, unlawful entry, the carrying of weapons, ...
mendicancy, 204 cruelty to animals, 205 consumption of intoxicating drinks, 206 opium and all its derivatives and all other narcotic drugs and gambling (maysir). 208

The only offenses for which a punishment is specified are murder and homicide, theft, pre-marital and extramarital intercourse and arson. Murder and homicide, and also arson, are punishable by death or life imprisonment. 209 This penalty reflects the unique nature of every individual as the image of God, the sanctity and inviolability of every person’s life, as is expressed elsewhere: “What! Would ye kill him whom God hath quickened . . . . Fear God, and lift not the hand of injustice and oppression to destroy what He hath Himself raised up.” 210

The destruction of life created in the image of God is not only the worst possible violation of a legal good, but an offense against God’s majesty and order. Therefore, the perpetrator must expiate his crime by losing his life. This assessment of the value of human life is part of the tradition of the Abrahamic religions: “One soul is equal in value to the whole world,” says the Talmud, 211 and the Qur’ān states that:

Therefore we prescribed for the Children of Israel that whoso slays a soul not to retaliate for a soul slain, nor for corruption done in the land, shall be as if he had slain mankind altogether; and whoso gives life to a soul shall be as if he had given life to mankind altogether. 212

Zinā’ is punishable by a fine which is to be doubled if the offense

203. Verse 159. The qualification “unless essential” makes it clear that this is a general prohibition with certain exceptions. The police and military services are certainly not bound by it, nor does it apply to hunting or certain sports. The right to self-defense in emergencies is recognized. The international peacekeeping force that is to be formed in the worldwide state must also, of course, be armed (see Kitāb-i Aqdas Note 173).
204. Verse 147.
205. Verse 183.
206. Verse 119.
207. Verses 155, 190.
208. Verse 155.
209. Verse 62.
211. Berakhot 6b.
212. 5: 35; see Mishna Sanhedr. IV, 5. Furthermore, it should be pointed out that the death penalty on earth is also regarded in the Qur’ān as having a metaphysical effect: “In retaliation there is life for you, men possessed of minds.” (2: 175). The expiatory effect of the punishment consists in the promise that in the after-life—provided the person who has been executed is repentant—God “will impose no second penalty upon him, for divine justice would not allow this.” (‘Abdu’l-Bahā, Selections 152). This amounts to a kind of transcendental Ne bis in idem principle, as was also expressed in a traditional saying of the Prophet Muḥammad according to which God will not impose a second punishment on him who “has committed a sin and been punished in this world” (this Ḥadīth is listed in the traditional collection of Tirmīdhi, Nawādir’ul Usūl 138 (Constantinople n.d.; reprinted by Dar Ṣadīr publishers, Beirut n.d.).
should be repeated. The determination of the penalty for adultery which is part of *zinā’* rests with the House of Justice. In the case of theft “exile and imprisonment are decreed for the thief” and “on the third offence” his stigmatization is ordered: a mark shall be placed “upon his brow so that identified he may not be accepted in the cities of God and his countries.” All details such as the legal elements of theft and its various degrees, the definition of the “third offence,” the nature of the mark, how long it must be worn, on what conditions it may be removed, as well as for which cases of *qatl* or arson the death penalty is to be applied and for which cases life imprisonment, must be determined by the supplementary legislation of the Universal House of Justice.

Causing death through negligence (unintentional killing) does not constitute a criminal offense, but creates an obligation to pay a sum of money (*diyya*—blood money) to the family of the victim. Bahá’u’lláh has forbidden his people to engage in quarreling, rebellion and all forms of violence. He abolished “the rule of the sword” (*jihād* for the community’s own defense) on the first day of his prophetic ministry for “it is better to be killed than kill.” The use of force is also expressly forbidden in the proclamation of the Faith.

The fact that backbiting, slander and calumny are mentioned in the same verse directly alongside murder and homicide shows the high value attached to personal honor as an object of legal protection. This seems surprising in view of the way such offenses are dealt with in modern penal law, as for instance in the German code of penal procedure, where such offenses are matters of private prosecution. Parallels to this legal and ethical judgment, which appears again elsewhere in the scripture, can be found in Mosaic legal thought. Unlike in canon law and the legal provisions of the *Shari‘a*,

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213. Verse 49.
214. Kitab-i Aqdas, Questions and Answers 49.
217. Verse 188.
218. Kitab-i Aqdas 73.
219. Tablets 3: 4, 29; 7: 7; Epistle to the Son of the Wolf 43, 44; Saiedi, Logos and Civilization 242ff.
220. Quoted in Shoghi Effendi, God passes by 198.
221. Kitab-i Aqdas 73; Gleanings 128: 10.
222. Cf. §374.
223. Kitab-i Iqan 214; Hidden Words, Arabic 26, 27; Persian 66; Tablets 15: 2.
224. “He who publicly shames his neighbour is as though he shed blood,” “A man should rather cast himself into a furnace than publicly offend his fellow human beings.” (Bab. Talmud, Baba Mezia 58b, 59a). Slander, backbiting and calumny are serious offences according to the Qur’an (cf. 24: 4, 23-26; 49: 11-12).
225. In which *ipso iure* the penalty is excommunication (can. 751 CIC).
apostasy is not a punishable offense. The loss of religious faith affects
the spiritual development of the individual in this world and the world to
come, but the believer is free to sever his connections with the faith and
withdraw from the community without stigma.227

B. Family Law

1.) Gender Equality

The whole of family law is based on the fundamental legal
principle that all human beings, without exception, are equal before the
law,228 and that men and women have equal rights.229 The equal value of
both sexes before God was emphatically and repeatedly expressed in the
Qur’ân,230 but in the historic religions equal rights for women as well as
men were promulgated for the first time in the Bahá’í revelation.231

The equal status of both sexes before the law has been declared a
cardinal hermeneutic principle, and it is always applicable unless the
context explicitly states otherwise. It is a matter of principle that all
rights granted to men are, mutatis mutandis, valid for women, too.232
Equality is, however, not radically implemented. There are exceptions
to this principle, such as the special status of the first-born son in respect
of the inheritance law233 or the restriction of membership of the
Universal House of Justice to “men.”234 It should be stressed, however,

226. Ridda, literally “relapse” (into unbelief) is condemned in several places in the Qur’ân (2:
109; 217; 3: 86-90, 100-101; 149: 47: 25), but punishment is left entirely to the judgment of God.
However, the Sharî‘a of all legal schools commands the death penalty (cf. the key word
“Murtadd” in EI).

227. See below §VII, 2c. On this subject cf. Schaefer, Towfigh, Gollmer, Making the Crooked
Straight 232ff; Walbridge, Sacred Acts 265ff.


229. Cf. nos. 2, 3, 13, 14, 19ff of the compilation Women (see bibliography); Paris Talks, ch.
50, and also Janet Khan/Peter Khan, Advancement of Women (Hofheim 2001).

subject as a whole cf. Schaefer, Glaubenswelt Islam 105ff.


232. For a more detailed treatment, see Schaefer, Towfigh, Gollmer, Making the Crooked
Straight 373ff. For example, there is a prohibition on a man marrying his step-mother (Kitáb-i
Aqdas 107) just as it is forbidden for a woman to marry her stepfather.

233. Cf. Kitáb-i Aqdas 25; Notes no. 44. In accordance with this provision, the residence
passes to the eldest son, who also bears responsibility for caring for his mother. This provision
reflects the ancient principle of primogeniture. On the apparent discrimination against female
heirs in the inheritance laws, see below §VI, 3 (last paragraph).

234. In the sacred texts, mention is made of the “men (rijâl) of God’s House of Justice”
(Tablets 3: 24; 6: 34; Kitáb-i Aqdas 52). In the execution of their teaching office, ‘Abdu’ll-Bahá
and Shoghi Effendi have interpreted the term rijâl literally (cf. Selections 38: 3, 4). Exegetic
attempts to avoid this consequence are therefore doomed to fail. No reasons are given for
excluding women. For discussion of why this might be, see Khan, Advancement of Women 128ff.
that women have access to all other positions of office, whether elected or appointed. There are, on the other hand, exceptions to the principle of gender equality that are to the benefit of women, such as the dowry, which the bridegroom is obliged to present to the bride prior to marriage, or the educational privilege granted to girls: if a family cannot afford to educate all the children then “daughters receive preference over sons as mothers are the first educators of the next generation.” This is a principle that has far-reaching implications and is nothing short of revolutionary.

2.) Marriage

Monogamous marriage (nikāh) is a “divine creation” for men and women. Matrimony—“a fortress for well-being and salvation” has been “prescribed,” “God hath prescribed matrimony unto you . . . . Enter into wedlock, o people, that ye may bring forth one who will make mention of Me amid My servants.”

The primary, although certainly not the only purpose of marriage, then, is procreation: the production of offspring to secure the continuity of the generations. The procreation of offspring serves man’s cultural mission on earth: “All men have been created to carry forward an ever-advancing civilisation.” From this, and from the explicit mention of man and woman, it is clear that marriage is only intended as a bond between heterosexual partners. The law prescribing marriage is, however, not binding, so that it is neither a commandment with the

Referring to the fact that a number of women have been appointed to the highest-ranking position of “Hand of the Cause of God” (see below §VII, 3b), the Universal House of Justice has emphasized that this rule is not to be regarded as expressing any essential superiority of men over women. That the principle of gender equality is adhered to in the elections to the national bodies is illustrated by the current composition of the National Spiritual Assembly of the Bahá’ís in Germany, of whose nine members three at present are women, including the chairperson. At each of the last three International Congresses for the election of the Universal House of Justice (1988, 1993, 1998) the Congress was chaired by a woman.

235. Kitáb-i Aqdas 66. Its value is so limited that it can now more or less be regarded as of only symbolic importance (see n. 259).
236. Letter of the Universal House of Justice 24 July 1975 (quoted in Women 13 [no. 30]).
237. See n. 130.
238. ‘Abdu’l-Bahá, Tablets 474.
241. Id. This formulation is based on the idea that the purpose of creation is man, and that the purpose of man’s existence is the worship of God, as the believer testifies in the daily obligatory prayer: “. . . that Thou hast created me to know Thee and to worship Thee.” (Prayers and Meditations 181:1).
243. On the issue of homosexuality, see above 325.
244. Kitáb-i Aqdas, Questions 46.
force of law nor a moral obligation. It is the sovereign choice of each individual whether to marry or not. The “prescription” of wedlock, which is in fact only a recommendation, makes it emphatically clear that marriage is a divinely favored institution and is desirable. The advice set out in the form of a law is an extremely emphatic admonition against the anti-marriage tendencies of the past, a unambiguous clarification of the fact that marriage is not a concession to the sinfulness of the flesh, nor a place of refuge from “fornication” and is therefore not a “hospital for the infirm,” and no “remedium peccati.” Voluntary celibacy and virginity do not have a superior moral status in Bahá’í ethics.

The legal basis of marriage is the mutual consent of the marriage partners; it is a civil-law contract that comes into being through “the consent of both parties.” It is based on the pre-condition that the marriage partners have reached marriageable age, which is the case upon reaching the age of fifteen. The choice of partner is thus exclusively a matter for the couple themselves, but consent must be given by all living parents, regardless of whether they are still married or whether they are Bahá’ís. Whereas most of the laws of Bahá’u’lláh are apodictic, in this case a ratio legis is given: this pre-condition is intended to strengthen family bonds, promote “love, unity and harmony” and banish “enmity and rancour.” There are, however, limits to the parental right of consent, such as in cases of parental incapacity.
No legal impediment to marriage or marriage prohibition may stand in the way of marriage. The only explicit prohibition in the divine law is marriage to one’s stepmother or stepfather. Other prohibitions against marrying relatives or impediments to marriage are left to be dealt with in supplementary legislation. In Bahá’í law there is no impedimentum mixtae religionis, so that difference of religion is not an impediment to marriage.

The marriage cannot take place until the dowry (mahr) has been presented to the bride by the groom. The marriage is concluded by means of a formal act, the declaration of the will to marry at the wedding. This declaration consists of the phrase, “We will all, verily, abide by the Will of God,” which is spoken by each partner in turn. This recourse to the divine will gives the conclusion of the contract its religious dimension. The wedding ceremony is conducted by a person appointed by the Spiritual Assembly concerned in the presence of two witnesses. These individuals provide only “passive assistance” in the conduct of the marriage ceremony. The marriage is valid for life, subject to the right to divorce. There is no provision in Bahá’í law for the institution of temporary marriage (mut’á) permitted in Shí’ite law.

If one of the marriage partners is an adherent of another religion, it is permissible to conduct a wedding ceremony according to the rites of

Auslegungshindernis? Zur Interpretation normativer Bahá’í-Texte.
256. Kitáb-i Aqdas 107; Note 133.
257. Id. Questions 50.
258. Id. 66, 139, Questions 84, Note 158. On further practical consequences of theological universalism see Schaefer, Towfigh, Gollmer, Making the Crooked Straight 283ff.
259. Mahr or dowry is an ancient legal institution found in many cultures and in many forms; its purpose is to ensure the wife’s financial security. In old German law, it was understood to be a pretium virginitatis. In the western legal systems, it has been abolished, but it is strongly rooted in Islamic law. (cf. Qur’án 4: 4). Bahá’u’lláh has altered this institution and subjected it to clear limitations. Since the dowry has to be paid by the groom to the bride and not to her parents, it is not a “bride price”; since it is not paid by the bride’s parents to the groom, it is not a “dowry” in the traditional sense either. The sum to be paid is 19 Mithqál (=approx. 69.192 grams) of pure gold or silver (depending on whether the groom lives in a city or in a village). The maximum permissible sum is 95 Mithqál, and the recommended minimum sum is 19 Mithqál of silver (Kitáb-i Aqdas Questions 26. See id. Notes 93-95, 78). Given this case, the dowry is hardly of any relevance as far as maintenance is concerned; rather, it has the character of a symbolic act. On the Middle Eastern unit of weight of Mithqál, see Kitáb-i Aqdas, glossary. The rule about the dowry is not yet in force worldwide.
260. Thus, there are analogies to Islamic law (see Bergsträsser, Grundzüge 82) and to Catholic matrimonial law: “Matrimonium facit partium consensus inter personas iure habiles legitem manifestatum, qui nulla humana potestate suppleri valet” (can. 1057, §1 CIC).
261. Cf. below §VII, 3a.
262. On the procedure, see Universal House of Justice, A Fortress for Wellbeing 49.
263. That is, the marriage comes into being solely through the declared consent of both partners—the recital of the marriage vow in front of representatives of the Spiritual Assembly—not through any action performed by the latter.
264. See SEI, key word “Nikáḥ” 449.
that religion as well, but both weddings must take place on the same day.\textsuperscript{265} Such a wedding must not involve a vow to bring up any children resulting from the marriage in the other religion.\textsuperscript{266}

3.) Divorce

Marriage is intended as an eternal bond, a relationship of “everlasting unity throughout all the worlds of God;”\textsuperscript{267} nevertheless, divorce (\textit{at-\textit{talāq}) is permissible, although it is strongly disapproved of.\textsuperscript{268} The grounds for divorce must be “resentment or antipathy” (\textit{kurh wa kudūra})\textsuperscript{269} between the marriage partners. Both partners\textsuperscript{270} can seek divorce, but not until a “year of patience” (\textit{sanatu’l istibar})\textsuperscript{271} has been completed, that is, a year of separation during which husband and wife live apart and sexual intercourse is not permitted.\textsuperscript{272} During this year “the husband is obliged to provide for the financial support of his wife and children, and the couple is urged to strive to reconcile their differences.”\textsuperscript{273} If in the course of the year of patience a reconciliation takes place between the husband and wife, but they subsequently separate again, the year of patience must begin again.\textsuperscript{274} The consummation of the marriage is only of legal relevance insofar as the requirement regarding the year of patience need not be adhered to if a request for divorce is made after the recitation of the marriage formula and the payment of the dowry but “before the consummation of the marriage.”\textsuperscript{275} In this case, the dowry need not be paid back.\textsuperscript{276} If the


\textsuperscript{266} “There is no objection to a Bahá’í participating in a religious ceremony of the non-Bahá’í partner provided that the Bahá’í does not undertake a vow contrary to Bahá’í law, as, for example, a vow to raise the children of the marriage in the Catholic faith. Furthermore, there must be a Bahá’í ceremony which may be performed before or after the other religious ceremony, but on the same day.” (Universal House of Justice, letter to an individual believer, 9 Oct. 1975, in: Hornby, \textit{Lights of Guidance}, no. 758).

\textsuperscript{267} ‘Abdu’l-Bahá, \textit{Selections} 86: 1-2; 87: 1.

\textsuperscript{268} “Truly, the Lord loveth union and harmony and abhorreth separation and divorce.” (\textit{Kitāb-i Aqdas} 70). This fully conforms with the Hadith passed on by Abū Dāwūd, according to which the Prophet Muḥammad is said to have stated, “With Allah the most detestable of all things permitted is divorce.” (quoted in Maulana Muḥammad ‘Alī, \textit{A Manual of Ḥadīth} 284, no. 1).

\textsuperscript{269} \textit{Kitāb-i Aqdas} 68.

\textsuperscript{270} Verse 68, which regulates divorce, mentions only the desire of the husband for a divorce. The principles discussed here, however, have always applied equally to the wife, if she was the partner seeking divorce. (see \textit{Kitāb-i Aqdas}, Note 100; on this subject, see Schaefer, Towfigh, Gollmer, \textit{Making the Crooked Straight} 373ff).

\textsuperscript{271} \textit{Kitāb-i Aqdas} 68, Questions 12, 40 (also “ayyām-i istibar” 11, 19); see Note 100.

\textsuperscript{272} Id., Questions 11.

\textsuperscript{273} \textit{Kitāb-i Aqdas}, Note 100.

\textsuperscript{274} Id., Questions 40.

\textsuperscript{275} Id., Questions 12.

\textsuperscript{276} Id.
husband finds out after paying the dowry that his wife was not virgo intacta, he can demand repayment of the dowry and the reimbursement of costs.\textsuperscript{277} If virginity was an express condition of the marriage agreement, non-fulfillment of this condition means that the marriage contract is invalid, but it is regarded as especially commendable if the husband chooses “to conceal and forgive the matter.”\textsuperscript{278} According to the mutatis mutandis principle, this condition applies also to the husband, if his claim to pre-marital chastity turns out to be untrue.\textsuperscript{279}

The divorce is deemed valid eo ipso upon completion of the year of patience: “When the period is ended divorce is effective.”\textsuperscript{280} The start and end of this period must be officially certified. The duties of those appointed to witness the couple’s adherence to the conditions of the year of patience, who are mentioned in the text,\textsuperscript{281} are the responsibility of the Spiritual Assemblies.\textsuperscript{282} If divorce is sought by the husband on the grounds of proven adultery by the wife, she loses her entitlement to maintenance during the year of patience.\textsuperscript{283} Again, this provision applies equally to the husband.

In countries where a civil marriage ceremony is compulsory, Bahā’ī law has only subsidiary validity. The year of patience must be observed before the petition for divorce is submitted to the civil court. Thus, in this case, the period of the year of patience is not a constituent part of the divorce proceedings, but is instead only a pre-condition for the divorce, which is effected by civil court decree.

In addition, the Kitāb-i Aqdas contains a number of regulations whereby in certain cases a marriage is deemed to have ended ipso iure after a period of waiting (tarabbus) if the husband does not return from a journey and remains missing.\textsuperscript{284} As regards the institution of engagement, the only regulations provide that it is forbidden before both partners have reached marriageable age and that the period of engagement must not exceed 95 days.\textsuperscript{285}

C. Inheritance Law

The right to private property is taken for granted in the sacred

\textsuperscript{277} Id., Questions 47.
\textsuperscript{278} Id.
\textsuperscript{280} Kitāb-i Aqdas Questions 73, 98.
\textsuperscript{281} Id. Questions 98.
\textsuperscript{282} Id., Note 100.
\textsuperscript{283} Id.
\textsuperscript{284} Kitāb-i Aqdas Questions 4.
\textsuperscript{285} Id. Questions 43.
texts and is confirmed in the recognition of the right to inherit property. In contrast to Islamic law, the inheritance law set out in the Kitāb-i Aqdas is based on the principle of unlimited freedom for the testator. In cases of intestacy, inheritance rights are regulated in accordance with a legal line of succession.

Arranging for the inheritance of one’s property is not only a believer’s right; it is also a religious duty: “Unto everyone hath been enjoined the writing of a will.” In the will, the believer should first bear witness to his faith:

The testator should head this document with the adornment of the Most Great Name [al-ism al-a’zam], bear witness therein unto the oneness of God in the Dawnspring of His Revelation, and make mention, as he may wish, of that which is praiseworthy, so that it may be a testimony for him in the kingdoms of Revelation and Creation and a treasure with his Lord, the Supreme Protector, the Faithful.

The testator can dispose of his possessions “as he may wish;” he has “full jurisdiction over his property.” The decedent’s estate must be used first to cover the funeral costs, then to settle any debts and finally to pay Huququlʿllah, provided the decedent has clearly expressed in his will that he wants to pay them.

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286. “Beware lest ye encroach upon the substance of your neighbour.” (Gleanings 128: 9; 91: 3; 137: 3; see Kitāb-i Aqdas 47, Questions 17). Emphasis is placed on the social responsibility that arises with ownership of property. People are called upon to donate their wealth to the poor, but they should do so voluntarily and not as a result of legal obligation. Leveling by legal means is rejected (‘Abdu’l-Bahá, Selections 227: 19), but the extremes of wealth and poverty should be overcome through socially just legislation. (‘Abdu’l-Bahá, Promulgation 107, 181ff; 216ff; 238ff).
287. Cf. Bergsträsser, Grundzüge 90, 94.
289. Id. 109.
290. The greatest of all the names of God is Bahá’ (“Glory”). On this term see Steven Lambden, The Word Bahá’: Quintessence of the Greatest Name 19-43.
292. Id. 109.
293. Id. Questions 69.
294. Id. 28, Note 47. The order is prescribed in Questions 9.
295. This is the plural of Huququlʿllah (“the right of God”), a voluntary payment made according to the conscience of the individual of nineteen per cent of any increase in wealth after deduction of expenses. (cf. Kitāb-i Aqdas 97, 28; Questions 8, 9, 42, 44, 45, 69, 80, 90, 95, 102; Note 125). The Huququlʿllah payments to be made to the Universal House of Justice serve to promote the Faith of God and to support humanitarian work. (Kitāb-i Aqdas Note 125; ‘Abdu’l-Bahá, Will and Testament 1:27). Texts by Bahá’u’lláh on this institution are to be found in Huququlʿllah: The Right of God, compiled by the Research Department of the Universal House of Justice, Oakham, United Kingdom 1986. On this subject as a whole, cf. Schaefer, Towfigh, Gollmer, Making the Crooked Straight 379ff.
296. This opinion is at variance with an opinion, published in Huququlʿllah Newsletter no. 35. The payment of the Huququlʿllah is absolutely voluntary and, like prayer and fasting, a purely
The very detailed legal line of succession is intended for cases of intestacy, so that it is only subsidiary and, it would seem, undesirable. Since the writing of a will is obligatory, the sphere of application of the legal succession is obviously not very wide. It can perhaps be regarded as a model for the division of property in a will, insofar as a Bahá’í is morally and conscientiously bound to always bear in mind, while writing his will, the necessity of upholding the principle of Bahá’u’lláh regarding the social function of wealth, and the consequent necessity of avoiding its over-accumulation and concentration in a few individuals or groups of individuals. This is also indicated in the right of inheritance by the “Houses of Justice” if there are no legal heirs. Legal succession is based on quotas or shares (as is also the case in the estate laws of Islam). The decedent’s estate (al-mawáříth) is

*personal* obligation of every believer. It is up to the individual to meet his obligation “in accordance with his conscience.” There can be no substitution where the fulfillment of spiritual obligations is concerned. This is obvious in the case of prayer and fasting, but the same principle applies to the payment of Huqúqu’lláh: “One believer cannot discharge the obligation of another to pay the Huqúqu’lláh” (Compilation, Supplement 10.1). For that reason, the Kitáb-i Aqdas presupposes Huqúqu’lláh to be due only if the deceased has expressed his wish—either in his testament or in a private oral statement—that Huqúqu’lláh should be paid. This result cannot be escaped by recourse to verse 28 of the Kitáb-i Aqdas, which provides for the division of the estate and makes sure that all legal obligations of the deceased (debts, expenses for funeral, burial, Huqúqu’lláh) have been settled before the estate is divided. Verse 38 is not the cause in law of the Huqúqu’lláh, nor is it the cause in law of the debts or of other expenses. If the deceased has not left any debts, no debts have to be settled. If no legally claimable Huqúqu’lláh exist, they need not to be paid. If a Bahá’í has made provisions regarding the Huqúqu’lláh in his will by virtue of his testamentary disposition, a legal claim arises upon his death. If, however, a Bahá’í has not made any provisions regarding the Huqúqu’lláh, or explicitly stated that he does not want to pay them, this has to be respected. Jurisprudentially, it is unimaginable that at the moment of death a believer’s spiritual obligation (part of ‘ibadát) quasi *ex nihilo* transubstantiates into a legal claim that can be demanded, as it has been suggested.

298. For this reason, Fazel has discussed the question of whether the legal line of succession should be interpreted historically as only an ephemeral regulation for believers in Islamic states, now that the Islamic inheritance law is no longer valid following the abrogation of the Islamic Shari‘á (Inheritance 71-75). Saiedi, by contrast, has presented considerable evidence that the significance of the legal line of succession lies primarily in its religious symbolism. The mathematical relations stemming from the Arabic Bâyán of the Báb easily permit it to be interpreted as a coded, numerological reference to Bahá’u’lláh as the bringer of salvation foretold by the Báb (Logos and Civilization 271-274, 384-385). A passage in the texts in which ‘Abdu’l-Bahá places strong emphasis on the individual’s obligation to make his own will would seem to lend support to this interpretation: “The wisdom of this perspicuous and most mighty ordinances is that no one should draw breath without a will . . . . The will . . . is the settler of every dispute, and the course of ease for all, for in it the testator disposeth of his property in whatsoever manner he desireth and how agreeable it is for the estate in its entirety to be disposed of in accordance with the testator’s will and pleasure!” (quoted from Saiedi, *id.*, 385).
299. Shoghi Effendi, quoted in Kitáb-i Aqdas Note 38.
300. The elected organs of the community and the world community, see below §VII, 3a.
301. See n. 305 infra.
divided into two thousand five hundred and twenty parts and shared among seven categories of heirs, namely the children, spouse, father, mother, brothers, sisters and teachers of the deceased. Persons who are not Bahá’ís are excluded from the legal line of succession. If the decedent’s estate contains a residence, this passes exclusively to male offspring, not female, namely to the eldest son. If there is no male offspring, one third of the residence passes to the House of Justice.

The separation of the residence from the rest of the decedent’s estate and its allocation to the male offspring (and only secondarily to female offspring) is—as already mentioned—an exception to the principle of gender equality. With regard to the staggered allocation of shares, the question arises as to whether the clearly disadvantaged

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303. The number is of esoteric significance, as it is the lowest number that is divisible by all the numbers from one to nine. Nine is the numerical value of Bahá’í.


305. The children receive one thousand and eighty parts of the heritage, the husband or wife three hundred and ninety parts, the father three hundred and thirty parts, the mother two hundred seventy parts, the brothers two hundred and ten parts, the sisters one hundred and fifty parts, the teacher or teachers ninety parts (id. 20; Note 38; cf. the Synopsis, id., 153ff). If there are no children, their share falls to the House of Justice for spending “on the orphaned and widowed, and on whatsoever will bring benefit to the generality of the people” (Kitáb-i Aqdas 21). If the testator leaves children but heirs from the other categories do not exist, the children receive two thirds of the heritage, and the rest falls to the House of Justice. (id. 22). If there are no heirs in any of the categories, two thirds of the heritage goes to nephews and nieces of the testator; if there are none, the same proportion goes to his uncles and aunts; if there are none of these either, then it is transferred to their sons and daughters. (id. 23). The remaining third goes to the House of Justice. (id.). If the testator leaves none of the above heirs, the entire heritage falls to the House of Justice. (id. 24). For further details on the distribution of the heritage, see Kitáb-i Aqdas Questions 6. If the son of the testator has died during the testator’s life, his share of the heritage goes to his children (Kitáb-i Aqdas 26). If his daughter has already died, her share of the heritage is divided among the seven categories of heirs. (id. Questions 54, Note 45). As regards the share due to the “teacher,” this share is to be divided among the teachers, if there is more than one. If the teacher has died, two thirds of his share goes to the children of the testator, the rest to the House of Justice. (id. Questions 33). The inclusion of the “teacher” among the heirs is an expression of the exceptional importance attached in Bahá’í doctrine to education and thus also to the education system. This provision is in need of legal specification. In view of the very complex nature of urban society, the term “teacher” is probably to be interpreted as a synonym for the education system.

306. Kitáb-i Aqdas Questions 34. For the probable reasons, see Saiedi, Logos and Civilization 273. In their will, Bahá’ís can name heirs irrespective of their religion (Kitáb-i Aqdas Note 38, no. 9).


308. Id.

309. On the subject of primogeniture, see ‘Abdu’l-Bahá, Kitáb-i Aqdas Note 25.

310. As will be explained below, Bahá’u’lláh has ordained two “Houses of Justice” in the Kitáb-i Aqdas, the local (Kitáb-i Aqdas 30) and the international (“Universal House of Justice;” for details, see below § VII, 3a). The specific type of this institution, which is generally referred to in the texts only as the “House of Justice,” is usually evident from the context. According to ‘Abdu’l-Bahá, the passages in the Kitáb-i Aqdas concerning heritage law refer to the local institution. (Kitáb-i Aqdas, Questions 42).

311. I.e., if there are no male offspring (see Kitáb-i Aqdas, Questions 72).
position of female relatives (mother and sisters) in comparison with their male counterparts (father and brothers)\(^{312}\) is also an exception to the principle of equality. If one assumes that the legal line of succession applicable to the man is also to be applied to the woman according to the *mutatis mutandis* principle, then it would appear feasible that, as McGlinn has rather convincingly argued, the distribution of shares to parents and siblings from the inheritance of a woman should be the mirror image of that applicable to a man,\(^{313}\) resulting more or less in “symmetrical equality between the sexes.”\(^{314}\)

VII. THE CONSTITUTION OF THE COMMUNITY\(^{315}\)

A. Spirit and Law

The Bahá’í community is not a purely spiritual, charismatically governed community; it has the character of a legally constituted organism. The believers are united not only by a bond of faith and love, but also by law. Thus, the community of faith is also a community of law. In unambiguously documented form,\(^{316}\) Bahá’u’lláh has given his community its unchangeable legal form which is valid *per se*,\(^{317}\) while ‘Abdu’l-Bahá has merely set out this form in detail in his testament. The institutionalization of the community, its organs and legal structures is part of the “Lesser Covenant” that Bahá’u’lláh has concluded with the believers, which is therefore an integral component of the religion.\(^{318}\) This covenant revolves around ‘Abdu’l-Bahá, who is known as “the Centre of the Covenant.”\(^{319}\) Hence, the process of the community’s legal institutionalization which began during the life-time of ‘Abdu’l-Bahá is

\(^{312}\) Cf. id. 20; see Questions 54.

\(^{313}\) Thus, the mother would receive three hundred and thirty, the father two hundred and seventy, the sisters two hundred and ten, and the brothers one hundred and fifty shares.

\(^{314}\) Some Considerations Relating to the Inheritance Laws of the Kitáb-i Aqdas 41.

\(^{315}\) This overview can provide no more than an outline of the order of the community. Detailed discussion can be found in my 1957 doctoral thesis, Grundlagen, and in Schaefer, The Imperishable Dominion 239-251. A fundamental work is Shoghi Effendi, World Order 140-157.

\(^{316}\) The Kitáb-i Aqdas and ‘Abdu’l-Bahá’s Will and Testament are “inseparable parts of one complete unit” (Shoghi Effendi, World Order 4) and form the constitutional charter of the community, so to speak. Referring to this, Shoghi Effendi states that for the first time in religious history the law of the community has not been left in human hands but is an explicit component of the revelation. (id., 19ff, 146ff).

\(^{317}\) Schaefer, Grundlagen 99ff.

\(^{318}\) This is the “mighty stronghold” (‘Abdu’l-Bahá, Will and Testament 1: 17), a “fortified fortress of the Cause of God and the firm pillar of the religion of God.” (‘Abdu’l-Bahá, Tablets of the Divine Plan 49). Faithfulness to the Covenant, obedience to God and the revealers of his Word, corresponds in the “Lesser Covenant” to obedience to the divinely ordained order and its institutions. (cf. below Section § VII, 4).

\(^{319}\) Cf. Kitáb-i Aqdas 121, 174; Tablets 15: 9; Shoghi Effendi, World Order 132.
“not an innovation imposed arbitrarily upon the Bahá’ís of the world, nor a “surrogate replacing the Holy Spirit,” but the expression of the divine will to create order.

The purpose of the order of the community is the protection of the community from schism and sectarianism, the preservation of the identity and integrity of the faith and the continued provision of divine guidance. At the same time, the institutions are intended as “channels” for this divine guidance. The founder’s binding of the divine spirit to objective institutions excludes the possibility of any kind of charismatic trends in the community: no one is permitted to claim authority on the basis of apparent gifts of grace or pseudo-prophetic inspiration. This does not mean that the divine spirit is not capable of directly inspiring individuals. Prayer and meditation are of great importance in community life. However, personal inspiration is no

320. Shoghi Effendi, World Order 5; Gollmer, in Schaefer, Towfigh, Gollmer, Making the Crooked Straight 762ff.
321. As Rudolf Sohm denoted the legally constituted Catholic church in his sensational work (at that time) on church law (Kirchenrecht, vol. I,1). On this subject see my elucidations in Schaefer, Towfigh, Gollmer, Making the Crooked Straight 145ff.
322. Nevertheless, there was protest against the introduction of legally constituted organs and structures after the death of ‘Abdu’l-Bahá (1921). A small group of German dissidents, who regarded ‘Abdu’l-Bahá’s testament as a forgery, rejected the legal incorporation of the community and broke away from it (cf. Peter Smith, The Bahá’í and Bahá’í Religions 183ff). These events were nothing more than a footnote in the history of the Faith (for details see Gollmer in Schaefer, Towfigh, Gollmer, Making the Crooked Straight 674-776), but they were blown out of proportion by church critics (Kurt Hutten, Seher, Grübeler, Enthusiasten 305ff; Rainer Flasche, key word “Bahá’í—Religion”, in Lexikon für Theologie und Kirche 1993) and by a renegade (F. Ficicchia, Der Baha—Religion—Religion der Zukunft? Geschichte, Lehre and Organisation in kritischer Anfrage (Stuttgart 1981)) and were exploited in polemical fashion. Hutten, himself a representative of a legally constituted church, saw the handful of dissidents who rejected the institutions as the “true heirs” and regarded the legally constituted community as amounting to renunciation of “the spiritual legacy of the Prophet,” as the start of what he called “churchification.” (id. at 319). The picture of the community painted by Ficicchia is a mere caricature. These arguments have been subjected to critical analysis. (Schaefer, Towfigh, Gollmer, Making the Crooked Straight) and can now be regarded as outdated.
323. Promulgation 455.
325. Id., 212; Schaefer, Grundlagen 91ff.
327. For further discussion on pneumatic guidance, see below §VII, 4.
328. Rudolf Sohm’s hypothesis of the alleged incompatibility of spirit and law (“The spirit ‘bloweth where it listeth’” (John 3: 8; Kirchenrecht X, vol. 1) which is based on a spiritualist-charismatic concept of religion and a purely positivist understanding of the concept of law, found approval with the Swiss theologian Emil Brunner (Das Mißverständnis der Kirche (Stuttgart 1952)) and was later echoed in the sociology of religion (Gustav Mensching, Soziologie der Religion 186 (Bonn 1949)). As far as the study of church law is concerned, this hypothesis can now be considered outdated. In any case, with regard to the foundations of Bahá’í law, it is irrelevant (see Schaefer, Grundlagen 59ff; Schaefer, Towfigh, Gollmer, Making the Crooked Straight 142-149.)
basis for any claim to general validity because “we cannot clearly distinguish between personal desire and [divine] guidance.” The community is not a “pneumatic anarchy” or “pneumocracy.” These principles find practical application in Bahá’í law regarding community structures, membership exclusion, and governing bodies.

B. The “People of Bahá”

The world community regards itself as the new people of God, “the people of Bahá.” It is not an amorphous mass, but rather a living organism with a legally constituted hierarchical structure. The local and national communities are not a formless assemblage of autonomous associations, but divisional sections of a world community. This accounts for the vertical structure of the elected institutions:

The internal organisation of the community—in particular, the hierarchical integration of the individual communities in the overall world-wide community—ensures the unity of that world community and guarantees identity of doctrine and ethics, and the identity and continuity of the Law.

However, it is important to understand that the legally structured form of the Bahá’í community does not embrace the traditional concept of a priesthood.

1.) Governing Structures

The “people of Bahá” is a societas aequalis insofar as there is no division of believers into clergy and lay people. There is neither a priesthood (sacerdotium) nor are there ministers. All believers have the same rights, and no one has authority over anyone else. Binding authority is the exclusive prerogative of the elected organs. This abolition of the clergy correlates with the prohibition of pulpits and

331. Sohm, Wesen und Ursprung des Katholizismus 61. These are the terms he uses for the early church, which was not guided by legally constituted organs and structures, but by the Holy Spirit alone. The word “pneumatic,” which is frequently used in this paper, is a theological term derived from the Greek pneuma (lat. spiritus), spirit, i.e., the Holy Ghost. It occurs frequently in the New Testament especially in the gospels of St. Luke and in the letters of St. Paul (cf. “Pneuma”, in LThK 8: 568-576).
332. In the spirit of the words of Christ, “Where two or three are gathered together in my name, there am I in the midst of them” (Matt 18: 20) and “The wind bloweth where it listeth” (John 3: 8).
333. Statutes of the National Spiritual Assembly of the Bahá’ís in Germany, preamble.
334. That is a “society of equals.”
335. In the Lawh-i Ittihád; on this subject, see Taherzadeh, The Revelation of Bahá’u’lláh 191ff, vol. 4. A provisional translation of the text is provided by Moojan Momen (The Tablet of
hence also of preaching in the Houses of Worship, as well as the forbidding of the kissing of hands, prostration before other people, and similar forms of behavior as signs of reverence and submission to religious authority.\(^{337}\)

Since there is no administration of sacraments in the Bahá’í Faith, and thus no objectification of grace, the community of the faithful have no need of a special rank of believers with authority\(^{338}\) to confer divine grace \textit{ex opere operato}. Bahá’u’lláh has expressly forbidden the confession of sins before human beings.\(^{339}\) Therefore, there is also no \textit{forum internum sacramentale}: the sphere of conscience is an unlegislated area.\(^{340}\) Because there is nobody with authority to confer divine grace, the community cannot be described as a “sacramental steward of grace”\(^{341}\) and its character is not that of a “church.”\(^{342}\) Moreover, Bahá’u’lláh has rejected claims to authority resulting from alleged esoteric knowledge:\(^{343}\) “... he who layeth claim to inner knowledge, and still deeper knowledge concealed within this knowledge. What thou dost possess is naught but husks which We have left to thee as bones are left to dogs.”\(^{344}\)

Neither is proclamation of the doctrines of the Faith \textit{(tablígh)} reserved for a specific rank of believers. The entire community is a lay apostolate; every believer is called upon to pass on the message of Bahá’u’lláh.\(^{345}\) Everyone is free to teach the Faith,\(^{346}\) and the believer has an inviolable right to his own understanding of the scripture, provided the scripture remains the binding frame of reference for all interpretation. Since a

\textit{Unity—a Provisional Translation} <http://www.bahai-library.org/provisionals/ittihad.html>). A detailed critique of the role of the clergy is to be found in Bahá’u’lláh’s \textit{Kitáb-i Íqân} (paras 15, 90, 114, 177, 199, 238, 246, 255, 265).

337. \textit{Kitáb-i Aqdas} 34, Note 57.
338. As in the Catholic church the \textit{potestas ordinis}.
339. \textit{Kitáb-i Aqdas} 34, Note 58; \textit{Tablets} 3: 14.
341. On this subject, see Schaefer, Towfigh, Gollmer, \textit{Making the Crooked Straight} 160ff.
342. The community lacks one of the two constitutive elements of all churches. In terms of church law, there is “administration of the Word” but no “administration of sacraments.” For details, see Schaefer, \textit{Grundlagen} 114-120; id.; \textit{The Bahá’í Faith: Sect or Religion?} 10ff. Moreover, I regard it as terminologically incorrect to speak of a “Bahá’í church” or to call the legal incorporation of the community as prescribed by the founder “churchification.” (see Schaefer, \textit{Grundlagen} 84ff).
343. \textit{Id.}, Note 60.
344. \textit{Kitáb-i Aqdas} 36. See \textit{Gleanings} 160: 4, where it is stated: “They that are the worshipers of the idol which their imaginations have carved, and who call it Inner Reality, such men are in truth accounted among the heathen.”
345. Some of the many passages referring to this are \textit{Gleanings} 128: 10; 154: 2; 157: 1-2; 158: 161: 2; \textit{Tablets} 2: 12; 3: 26; 6: 3; 5: 17; 6: 3; 7: 5: 13: 5.
346. On this subject see Schaefer, Towfigh, Gollmer, \textit{Making the Crooked Straight} 194-209.
monopoly on authoritative interpretation was invested in the teaching office (‘Abdu’l-Bahá and Shoghi Effendi), no believer is entitled to claim authority for his opinions on matters of doctrine.

Finally, the development of the law is also not entrusted to a specific rank of believers. It is true that the “learned in Bahá’í” (al-’ulamá’ fi’l-Bahá‘) are praised in the Kitáb-i Aqdas. These scholars certainly play an important role in the analytical and systematic study of the theological and philosophical aspects of doctrine, as well as in the development of Bahá’í jurisprudence, and hence also in the proclamation of the Faith. However, this does not make them a kind of “clergy,” because—unlike in Islam—their deductions are not authoritative.

The same applies to the members of the Continental Boards of Counsellors, whose function, as the name implies, is entirely advisory.

2.) Membership

As one might expect given this democratic concept of a religious community, conferred membership is based on human volition. One becomes a Bahá’í through accepting the message of Bahá’u’lláh, whether this occurs as a consequence of a personally motivated search or of parental education. Bahá’ís are not born into the community, rather it is every person’s free decision to apply for membership. One becomes a member of the community of Bahá’u’lláh voluntarily, through personal choice. The principle of individual, independent search for truth by itself rules out coerced membership.

There is neither an initiation nor a ritual (as baptism in Christianity) to which an initiate is subjected, nor is there an examination (examen rigorosum) of his or her morality. The Bahá’í community does not see itself as an elitist group. It is expected that every believer will live according to the teachings and commandments

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347. An example are the Mujtahidin in Shi‘a Islam. The Usúl school divides the community into the Mujtahidin and the Muqallidin. The Mujtahidin are the small circle of scholars who are appointed to determine what is legal (ijtiha-d), whereas the rest of the community is obliged to exercise taqlid, that is, to follow a Mujtahid (cf. Halm, Der schiitische Islam 113-120; Momen, Shi‘ih Islam 175ff, 185ff, 223ff).

348. Without their work, a systematic legislative procedure would be impossible. This is probably what is meant when ‘Abdu’l-Bahá says that “the focal centre . . . of the legislative is the learned [‘alim]” (Secret of Divine Civilization 37). The “learned” means those skilled in Bahá’í jurisprudence.

349. This interpretation excludes the possibility of the model of “rule by experts in religious law” (Wilayat al-faqih, see Halm, Der schiitische Islam 153ff), as set out in the Constitution of the Islamic Republic of Iran.


351. This practice is known in some Christian denominations.
of Bahá‘u’lláh, adopt spiritual qualities and virtues and strive for perfection; but no one is regarded to give account for his prior life, no one other than God has the right to pass judgment on the morality of another one.

As the membership of a Bahá‘í is based on volition and not as church membership on a sacramental act, every believer who has lost his faith has the right to leave the community without any form of stigmatization, for God does not compel the soul to become spiritual; the exercise of the free human will is necessary. Man has liberty also before God: “Whosoever desireth, let him turn aside from this counsel, and whosoever desireth, let him choose the path to his Lord” — a concept that runs as a leitmotif throughout Bahá‘u’lláh’s work. Thus, anyone who renounces “falls into the same category as any nonbeliever and incures no blame.”

3.) The Law of Excommunication

Even though involved choice is key to the Bahá‘í Faith, it is possible for a member to be excluded from the community against his will in limited circumstances. Wherever people join together and form an association, rules are adopted to prevent constant damage being inflicted by disloyal members. This practice is not different with religious communities, where the danger of factional divisions and false claims to authority is greater than elsewhere. As pointed out elsewhere, the order of the community is an integral part of the Covenant of God established between Bahá‘u’lláh and the believers. Acknowledgement of this order is an indispensable element of Bahá‘í doctrine. The Covenant serves to preserve the unity of the community, and is therefore “the mightiest stronghold,” the “firm...
pillar of the religion of God.\textsuperscript{361} A loss of the unity would mean religious division, which would inevitably lead to the splintering of the creative power immanent in the divine revelation. Hence Bahá’u’lláh warns his followers: “Let not the means of order\textsuperscript{362} be made the cause of confusion and the instrument of union an occasion for discord.”\textsuperscript{363} The community would be at the mercy of human arbitrariness without certain precautions against subversive attacks from within that threaten the faith’s doctrinal unity and the unity of its adherents.

The protection against division and sectarianism in the Bahá’í community is the expulsion of a community member who threatens the Covenant by attacking the divinely ordained order and its institutions. Excommunication under Bahá’í law differs from that in ecclesiastical law, with regard to both its preconditions and to its effects. It is applicable only in cases of covenant-breaking. The divine law does not contain a legal definition of this offense, but from the scriptural passages, it is clear that only exponents of subversion and sedition are covenant-breakers (nāqiḍu’ll-mithāq).\textsuperscript{364} They who “sow the seeds of doubt in the hearts of men”\textsuperscript{365} and promote “discord” and bring about “division.”\textsuperscript{366} ‘Abdu’l-Bahá calls them “mischief-makers” who are “seeking leadership.”\textsuperscript{367} Because they do not declare their evil intentions openly but instead “they secretly sow the seeds of suspicion”\textsuperscript{368} —“sweet in words, . . . but at heart a deadly poison”—they are also referred to as “hypocrites” (al-munāfīqūn).\textsuperscript{370} As the covenant-breaker has struck with his axe at “the root of the Blessed Tree”\textsuperscript{371} the divine law provides that covenant-breakers, along with all who continue to associate with them, be cast out from the congregation of the people of Bahá’. The believer who has been excommunicated is no longer a member of the Bahá’í community.\textsuperscript{372}

\textsuperscript{361} ‘Abdu’l-Bahá, Tablets of the Divine Plan 49.
\textsuperscript{362} I.e., the religion.
\textsuperscript{363} Tablets 15: 12; 4.
\textsuperscript{364} A term of Qur’anic origin (2: 27; 4: 155; 5: 13, etc.).
\textsuperscript{366} Id. 1: 10, 17; 2: 12.
\textsuperscript{367} Selections 186: 6.
\textsuperscript{368} Id. 185: 4.
\textsuperscript{369} Id. 233: 18.
\textsuperscript{370} In the Qur’an Sûra 63 is entitled “Al-Munāfīqūn.” These are “the diseased in heart” (8: 51; 5: 57; 2: 9), “who profess that they believe” (4: 63; 63: 2), but in reality “lie” (\textit{id.}). On this subject see Schaefer, Towligh, Gollner, Making the Crooked Straight 45f.
\textsuperscript{372} According to Catholic theology baptism imparts a \textit{character indelebilis}, an indestructible spiritual quality by virtue of which a Christian is incorporated irrevocably into the organisation of the church (which is the \textit{corpus Christi}, cf. Eph 1: 28: 4: 12); with the result that, according to church law, a Christian can never resign from the Church nor can his membership be totally
Covenant breaking is an offense *sui generis*, its closest similarity in canon law being the concept of schism.\(^{373}\) Only divisive activities, sectarianism, and attacks on the authority of the institutions constitute this offense. Expulsion from the community is a constitutive act by means of a declaration; it cannot, by contrast to canon law, take place automatically (*ipso iure*). Excommunication, an act of self-purification on the part of the community, implies that contact is not permitted between the believers and the covenant-breaker. A covenant-breaker is to be avoided.\(^{374}\) Someone who has been excommunicated can be readmitted to the community, and this has indeed occurred “whenever the sincerity of the intensions were proven.”\(^{375}\)

C. The Institutions\(^{376}\)

As with rules regarding membership and exclusion, Bahá’í values can be seen in the way in which the governance structures of the Bahá’í community were developed. The transfer of institutional legitimacy in Bahá’ísm came about through the establishment of the “twin institutions,”\(^{377}\) the Universal House of Justice and the Guardianship, and the subordinate institutions. The order of the community is thus based on two pillars: the elected bodies (*Baytu’l-’adl*, “Houses of Justice”) and those who hold positions of office through heredity or by appointment.

1.) Elected Bodies

Of the elected institutions, the local “House of Justice” (*Baytu’l-’adl*) and the international body responsible for the entire globe (*Baytu’l-’adl-i a’zam*) are both ordained in the Kitáb-i Aqdas. As to the local body verse 30 reads:

> The Lord hath ordained that in every city a House of Justice be

rescinded: *Semel christianus, semper christianus* [“Once a Christian, forever a Christian”]. Therefore, according to Canon law, even after his excommunication, he remains a member of the church. He loses his active rights, but his obligations (i.e., to pay church-tax) continue to exist. Thus, the coercive nature of infant baptism is obvious. Resignation from the church became possible through the secular state (*cf. LThK*, 6: 197-198). For a discussion of the differences between Bahá’í law and Canon law concerning the law of excommunication see my doctoral thesis (Schaefer, *Grundlagen* 36ff).

\(^{373}\) *Corpus Iuris Canonici*, can. 751. On covenant breaking see Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 224-238; 44-49.

\(^{374}\) *‘Abdu’l-Bahá*, *Will and Testament* 2: 9. He is, as in the old CIC (1917) a *Vitandus*.

\(^{375}\) R. Rabbani, *Twenty-five Years of the Guardianship* 21.

\(^{376}\) On this subject as a whole see Schaefer, *Grundlagen* 100ff, 124ff.

established wherein shall gather counsellors to the number of Bahá’, and should it exceed this number it doth not matter. They should consider themselves as entering the Court of the presence of God, the Exalted, the Most High, and as beholding Him Who is the Unseen. It behoveth them to be the trusted ones of the Merciful among men and to regard themselves as the guardians appointed of God for all that dwell on earth. It is incumbent upon them to take counsel together and to have regard for the interests of the servants of God, for His sake, even as they regard their own interests, and to choose that which is meet and seemly.

The international body, the Universal House of Justice is not named in the scripture of Bahá’u’lláh and can only be deduced by reference to the functions ascribed to it. The name “Universal House of Justice” derives from ‘Abdu’l-Bahá. The intermediate body, the “subordinate” or “national” House of Justice (Baytu’l ‘adl-i khusúsí or Baytu’l ‘adl-i millí) was ordained by ‘Abdu’l-Bahá. In order to express the embryonic character of the local and national “Houses,” they are at present called “Spiritual Assemblies.” This is, as Shoghi Effendi indicated, a “temporary appellation,” which “as the positions and aims of the Bahá’í Faith are better understood and more fully recognized, will gradually be superseded by the permanent and appropriate designation of ‘House of Justice.’”

A Bahá’í community can be established in any locality where at least nine adult Bahá’ís reside. On the first day of the festival of Ríḍván they elect from among their number a “Spiritual Assembly” consisting of nine persons, and this body then leads the community and represents it in the outside world. The National Spiritual Assembly is elected annually by delegates who have been elected in special regional elections. The Universal House of Justice, which has its seat at the

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378. According to the ancient Arabic Abjad system, the “number of Bahá” is nine.
379. See Kitáb-i Aqdas 42; Qur’án 49, 50; cf. Tablets 7:19; 7:30; 8:52; 8:61; 8:78.
381. Quoted from Kitáb-i Aqdas, Note 49.
382. Later also Baytu’l ‘adl-i millí (National House of Justice).
383. Cf. Shoghi Effendi, World Order 6; God passes by 331; Bahá’í Administration 20, 37, 39.
384. Quoted from Kitáb-i Aqdas, Note 49.
385. From Apr. 21 to May 2.
386. Their number is set by the Universal House of Justice in proportion to the number of believers living in each respective country and according to the specific conditions in the respective countries. In Germany there are currently 57 delegates, in the United Kingdom 95, in the United States 171.
slopes of Mount Carmel in Haifa, is “universally elected” every five years, i.e., by the assemblage of all the National Spiritual Assemblies, which represents the entire world community, the electors being not the corporate bodies but the individual members of the assemblies. The relationship between the leadership bodies at these three levels is hierarchical, with the spheres of responsibility of each laid down in the statutes.

The world community has the same legal structures everywhere. However, national statutes differ in their formulation in compliance with the respective law of the country in question, insofar as this does not conflict with the inalterable Law of God. Thus, for example, since the German Bahá’í community is not yet a public law corporation, its institutions are currently organized in accordance with the law of associations in compliance with the German civil code. Structural problems that have arisen due to conflict between the divine law and the principle of the autonomy of associations laid down in the German civil code have been solved by the Supreme Federal Constitutional Court in favor of the primacy of religious freedom.

2.) Hereditary and Appointed Bodies

The second pillar is also established in the Kitáb-i Aqdas as a result of the designation of ‘Abdu’l-Bahá as Bahá’u’lláh’s successor and as head of the community. The office held by ‘Abdu’l-Bahá was unique in the history of religion, in particular because he has a unique role for believers: he is regarded as the “perfect Exemplar” and

388. Id. 1: 25; 2: 7.
389. Currently (2002), there are 182 national assemblies. Thus, the electorate consists of 1638 persons.
391. In its decision of 4 Feb., 1991 (BVerfG 83, 341 ff–NJW 1991, 2623) this court held that in so far as the legal structures of the Bahá’í community are viewed as ius divinum, this has priority over the laws on association in the German Civil Code (BGB), in accordance with the constitutionally guaranteed right of “freedom of faith and conscience” (art. 4 of the German Constitution). This applies, in particular, to the hierarchical structure of the community. Despite the right of intervention on the part of superordinate institutions, the local community has—according to the Federal Constitutional Court—a sufficient degree of “self-determination and independence.” On this subject as a whole cf. the review by Bernd Jean d’Heure, Ius divinum oder Eintragung von Religionsgemeinschaften in das Vereinsregister?, in: Jus 830ff, Issue 10 (1992).
392. Verses 121, 174; see Bahá’u’lláh’s Testament (Lawh-i Aqdas) in Tablets 15: 9.
393. See n. 95, supra.
“stainless Mirror of His light,” as “the incarnation of every Bahá’í virtue.”

394 His function as an infallible interpreter of the holy writ, i.e., his teaching authority as “Mubayyin” (=explainer) was institutionalized and perpetuated by his testamentary appointment of Shoghi Effendi as “Guardian of the Cause of God:”

395 “He is the sign of God, the chosen branch, the guardian of the Cause of God [Walî’u Amri’l-lâh], ... the expounder of the word of God [Mubayyin-i Kitâb].”

396 The function of “perfect exemplar”, as Shoghi Effendi emphasizes, was not transferred to the Guardianship, and the Guardian is not regarded sinless.

The office of Guardian was conceived in ‘Abdu’l-Bahá’s testament as an ongoing institution. The hereditary principle and the principle of lineal primogeniture determined the order of succession: “... and after him will succeed the first-born of his lineal descendents.”

However, since Shoghi Effendi died without issue in 1957, the office of Guardian is now permanently vacant. The Universal House of Justice has not perceived any possibility of appointing a successor.

Owing to the permanent vacancy of the Guardianship, the community no longer has an authoritative teaching office. Binding interpretation of the scripture therefore ended with the death of Shoghi Effendi. Since the “Hands of the Cause of God” (Ayâdî i-amru’llâh)—who, according to the testament of ‘Abdu’l-Bahá were to have been subordinate to the Guardian—could no longer be appointed and guided by him, the Universal House of Justice created new institutions to fulfill most of the functions of the “Hands” in 1968, these functions being primarily the protection and proclamation of the Faith. These institutions are the

395. For details, see Grundlagen 124ff.; Gollmer, in Schaefer, Towfigh, Gollmer, Making the Crooked Straight 687ff.
397. World Order 151.
398. Comparisons with the papacy, the caliphate and the imamate can be found in Schaefer, Grundlagen 151ff.
399. ‘Abdu’l-Bahá, Will and Testament 1:16; 1: 18. The principle of “the Book and the successors of the Prophet” (Ahl al-Bayr=“the people of the House”) is familiar from Shi’i Islam (for details, see Momen, Shi’i Islam 16), in which the genealogical succession determined the succession to the imamate (Momen, id. 11-22). This principle also existed in early Christianity. According to H.-J. Schoeps, a “Jesus dynasty” can be traced up to the third century. (Judenchristentum 21). Since von Harnack, this phenomenon has been discussed under the (inappropriate) heading “The caliphate of James” (Kirchenverfassung 28; see Stauffer, Zum Kalifat des Jakobus 204).
International Teaching Centre in Haifa and the Continental Boards of Counsellors.\textsuperscript{402}

D. Separation of Powers, Authority and Pneumatic\textsuperscript{403} Guidance

All jurisdictional powers invested in the elected bodies, whose major functions are outlined in the Constitution of the Universal House of Justice and those of the national and local Spiritual Assemblies. It is evident from the functions ascribed to these institutions that the power of jurisdiction covers the classical powers of the legislature, judiciary and the executive.\textsuperscript{404} In this field, there is a distinction of powers, but not a complete functional separation of the individual powers.\textsuperscript{405} Teaching authority,\textsuperscript{406} which embraces the authoritative interpretation of the scripture and the protection of the faith, was invested in the Guardian, who was also the head of the Faith. Thus, jurisdictional power and teaching authority were separated.\textsuperscript{407} This principle of the separation of powers (which in no wise implies the concept of “checks and balances”)\textsuperscript{408} is strongly emphasized:

The interpretation of the Guardian, functioning within his own sphere, is as authoritative and binding as the enactments of the International House of Justice, whose exclusive right and prerogative is to pronounce upon and deliver the final judgment on such laws and ordinances as Bahá’u’lláh has not expressly revealed. Neither can, nor will ever, infringe upon the sacred and prescribed domain of the other. Neither will seek to curtail the specific and undoubted authority with which both have been divinely invested.\textsuperscript{409}

\textsuperscript{402} Cf. Art. IX & X of the Constitution of the Universal House of Justice (\emph{Verfassung} 36 and the document published by the Universal House of Justice entitled \emph{The Institution of the Counsellors} (Haifa 2001)).

\textsuperscript{403} I refer to footnote 331.

\textsuperscript{404} For further detail see Gollmer, in Schaefer, Towfigh, Gollmer, \emph{Making the Crooked Straight} 692ff.

\textsuperscript{405} Cf. Schaefer, \emph{Grundlagen} 105; Schaefer, Towfigh, Gollmer, \emph{Making the Crooked Straight} 154ff, 247ff.

\textsuperscript{406} Cf. Schaefer, \emph{Grundlagen} 107ff.

\textsuperscript{407} In the sense of Montesquieu (\emph{De l’esprit des lois}, 1748, book XI, ch. 4 or John Locke, \emph{Two Treatises on Government}, 1690).

\textsuperscript{408} In canon law, the \emph{potestas regiminis} also covers teaching authority (cf. can. 331 CIC). On the relationship between the Guardianship and the Universal House of Justice, see Sen McGlinn’s unpublished manuscript \emph{The Guardianship and the Universal House of Justice} <http://www.bahai-library/unpubl.articles/guardianship.html>.

\textsuperscript{409} Shoghi Effendi, \emph{World Order} 150; see Schaefer, \emph{Grundlagen} 110ff. Since the office of Guardian did not possess power of jurisdiction, the assertion that the testament provided him with “dictatorial power” (Hatten, \emph{Seher}, Gräbler, \emph{Enthusiasten} 318f (12th ed.)), or that he practiced a “one-man dictatorship” (Flasche, \emph{Die Bahá’í-Religion} 95) is false. On this subject as a whole, see Schaefer, Towfigh, Gollmer, \emph{Making the Crooked Straight} 154ff.
This principle is not altered by the fact that the office of Guardian is vacant. Only the function of the Guardian as head of the world community has been transferred to the Universal House of Justice.

The two supreme institutions of the Bahá’í community, the office of the Guardian and of the Universal House of Justice are invested with the highest degree of legal authority. Obedience to these institutions is obligatory upon believers, and this obligation is strongly impressed upon them: disobedience toward the Guardian or the Universal House of Justice is disobedience toward God:

Whoso obeyeth him not, neither obeyeth them, hath not obeyed God; whoso rebelleth against him and against them hath rebelled against God; whoso opposeth him hath opposed God; whoso contendeth with them hath contended with God; ... whoso disputeth with him hath disputed with God; whoso denieth him hath denied God; whoso disbelieveth in him hath disbelieved in God; whoso deviatheth, separateth himself and turneth aside from him hath in truth deviated, separated himself and turned aside from God.

Emphatic warnings are issued against rebellion and schism. Anyone who rebels against the divinely ordained order and attempts to divide the community is warned, “the wrath of God and His vengeance will be upon him . . . for he will have caused a breach in the true Faith of God.”

The unity of the community is ensured by means of the law on excommunication previously described. Excommunication of a believer is highly exceptional, applicable as previously noted only in cases of “covenant-breaking.” It is a singular procedure which (in contrast to canon law) never takes place ipso iure.

In addition to their legal authority, the two supreme decision-making bodies, the Guardian and the Universal House of Justice, are also invested with the charisma of infallibility (‘isma).

410. Meinhold’s (Religionen 35) and Ficicchia’s (Bahá’ísmus 363) statement that teaching authority has been transferred to the Universal House of Justice is incorrect. On this subject cf. Gollmer, in Schaefer, Towfigh, Gollmer, Making the Crooked Straight 703f.
413. Cf. above 346.
414. Id. 1: 17; 1: 20.
415. Id. 1: 20. The many condemnations of the divisions in the community found in the New Testament (2 Pet 2: 17, 22; Judas 12ff), in the Qur’an (see Sūra 63, Al-munāfiqīn, and also 2: 9; 27; 13: 25; 33: 60, etc.) and in the Buddhist canon (Iti-Vuttaka §18 (31)) are much stronger (cf. Schaef, Towfigh, Gollmer, Making the Crooked Straight 44ff, 229, n. 442).
417. For details on this term, see Schaef, Towfigh, Gollmer, Making the Crooked Straight 166-194; Schaef, Infallible Institutions?. ‘Abdu’l-Bahá distinguishes between essential infallibility (al-’ismatu’l-dhātiya), which is an essential characteristic of the station of
guidance (hudâ) did not cease at the end of the revelation (wahy). It continues in the guidance given to the community through the teaching office of ‘Abdu’l-Bahâ and the Guardian, and through the legislation of the Universal House of Justice. This article of faith is not the result of exegetic deductions but an explicit component of the sacred texts. The scripture states regarding both institutions, that: “Whatsoever they decide is of God.”

Of the Universal House of Justice, scripture states that:

God will verily inspire them with whatsoever He willeth, for he has ordained it as the source of all good and freed from all error. That which this body, whether unanimously or by a majority doth carry, is verily the Truth and the Purpose of God himself.

By virtue of this charisma, the two supreme institutions are the conveyors of divine salvation, but the charisma has internal limitations. The Guardian is only infallible in the conduct of his teaching office, i.e., in the interpretation of the scripture and revealed doctrine, and in questions relating to the protection of the Faith. The charisma is invested in the office, not in the person holding it. The decisions on matters of doctrine and morals of the Guardian have binding authority and, together with the writings of ‘Abdu’l-Bahâ, they are in a broad sense a depository of the Faith.

It has not yet been finally established where the pneumatic

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Prophet (Bahâ’u’l-lâh calls it the “Most Great Infallibility” (al-‘ismatu’l-kubrâ, cf. Kitâb-i Aqdas 47; Tablets 8: 17-19) and conferred, institutional infallibility (al-‘ismatu’l-sifa’iyya, Some Answered Questions 45 4). Essential infallibility means immunity to error and sin, whereas conferred infallibility means immunity to error, but not sinlessness.

418. According to the context, this refers to the Guardian and the Universal House of Justice.
420. This passage refers to the members of this body.
423. Id. 2: 7. The parallel occasionally drawn with the Islamic principle of consensus (ijma’ =consensus doctorum) in the development of the Shari’a (cf. Römer, Die Babi-Beha’i 118 and Ficicchia, Baha’ismus 162, 281) is wrong for many reasons. A detailed comparison can be found in Schaefer, Towfigh, Gollmer, Making the Crooked Straight 184, n. 217.
424. This conveyance of salvation for the community, not for the individual believer.
425. For a comparison of his infallibility with that of the papal teaching authority, see Schaefer, Towfigh, Gollmer, Making the Crooked Straight 174, n. 187.
427. These decisions are without doubt frequently dogmatic in character, but are not dogmatic formulae defining what is to be believed, nor decrees ordering belief. Hence, they are not dogmas in the narrow sense of canon law (cf. Schaefer, Grundlagen 133ff), nor are they scholarly commentaries comparable with the Islamic tafsîr. Instead, they have the character of explanations and clarifications of the revealed text.
428. I am of the opinion that the guardian’s infallibility extends also to his judgment on issues of morality, see discussion of this issue in Schaefer, Infallible Institutions? 28, n. 93.
guidance of the Universal House of Justice ends and which of its functions it embraces—academic discourse on these questions has just begun. Important reasons point to a restrictive interpretation, suggesting that only legislative acts are covered by this charisma. The Universal House of Justice is intended as a legislative body responsible for supplementary legislation and thus for the further development of the Bahá’í legal system, whereas the ordinances concerning rituals (‘ibádát) are definitely regulated in the “Book.” The House cannot issue any prescriptions concerning rituals or morals. The relevant passages in the scripture where this charisma is mentioned constantly appeal to the sacred text. The supreme “House of Justice” is obliged to regulate that which has remained unregulated in the “Book;” it must issue “ordinances and regulations that are not to be found in the explicit Holy Text.” Hence, its primary task is that of legislation, i.e., the establishment of universal abstract legal norms that—like the “Book”—are binding upon the entire world community.

It is clear from this that the system intended by Bahá’u’lláh is to develop along a different path from that of the Halacha and Shari’a. The Law of God, the ius divinum conveyed by Bahá’u’lláh, is valid for a long period of time (until the next divine revelation) and requires supplementation and specification. As already discussed, the further development of the law takes place not on the basis of casuistry, as in Judaism and Islam, i.e., through authoritative interpretation of the sacred texts, but rather by means of pneumatically guided legislation that is capable of taking into account the conditions of a constantly changing world. When the scripture provides that “Whatsoever they decide,”* it must issue

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429. Cf. Schaefer, Infallible Institutions?.
430. I presented this view in my 1957 doctoral thesis (Schaefer, Grundlagen 174) and again more recently in Schaefer, Towfigh, Gollmer, Making the Crooked Straight 164ff; Schaefer, Infallible Institutions? 30ff.
433. The norms of morality are scattered throughout Bahá’u’lláh’s scripture. They are subject to authoritative interpretation by the Guardian, but not to supplementary legislation. The moral values constitute the eternal law, “revealed to the prophets of old” (Bahá’u’lláh, The Hidden Words, Preamble) that “does not change nor alter” (‘Abdu’l-Bahá, Some Answered Questions 11: 9). Bahá’u’lláh’s reference to “the needs and requirements of the time” (Tablets 8:61) that have to be solved by supplementary legislation of the Universal House of Justice clearly focuses on the conditions of society which are in constant flux, whereas the human nature, the conditio humana, is timeless and not influenced by external conditions. The realm of moral virtues is therefore beyond supplementary legislation.
434. For discussion of the details, see Schaefer, Infallible Institutions? 31f.
436. ‘Abdu’l-Bahá has explained this difference (cf. Kitáb-i Aqdas, Introduction 4-6).
437. See below §IV.
438. This passage refers to the members of this body.
the same effect as the Text itself,” this equating of “decisions” of the Universal House of Justice to the sacred text makes sense only if these decisions do not relate to specific cases, but to the establishment of general, abstract norms that, like the text, claim universal validity.

What is the point of “infallible” legislation, for which there is no model in the history of religion? Owing to the pneumatic guidance given to the legislator, established law—which would normally be ius humanum—is raised to the rank of ius divinum and becomes ius divinum supplementum, so to speak. Both categories taken together constitute sacred law, which is complemented by profane law (ius humanum) when the subordinate “Houses of Justice” subsequently carry out their legislative functions.

As an emanation of the divine Will, the supplementary law would be as unalterable as the divine law if ‘Abdu’l-Bahá’s testament did not contain the clause stating that this type of law can be repealed and amended “according to the exigencies of the time.” Since this process enables social change to be taken into account, the sacred law is protected from the danger of gradual petrification. So far, there have been only sporadic legislative acts by the Universal House of Justice, which was established in 1963. Time is not yet ripe for supplementary legislation.

By contrast, the other decision-making institutions, the local and

439. ‘Abdu’l-Bahá, Will and Testament 2: 8, literally: “. . . as if it were the Text itself” (“. . . hamán mánand-i nass. ast”).

440. When one refers to the making of laws, the term “infallible” has a different quality than when one is referring to authoritative interpretation. A law that has been made in an “infallible” way is not “true” but an outpouring of divine justice and thus absolutely appropriate to the social conditions and requirements, and absolutely just. (see Schaefer, Grundlagen 174).

441. The laws given by the Pope or the General Council are seen as ius humanum.


444. This problem of static law has become a problem in Islam. Antes speaks of the “petrification of Islamic jurisprudence at the medieval stage.” (Ethik und Politik im Islam 65), because since the third century the “gate of free research” (bāb al-ijtiḥād) has been closed (cf. Nagel, Die Festung des Glaubens 9). Thus, law fell into complete dependence on the authority of medieval legal scholars, whose texts have been “declared primary texts and have been endowed with a sacred status that is in many cases not lower than that of the primary text.” (Nasr Hamid Abu Zaid, Islam und Politik 30). Any Muslim who rejects the interpretative monopoly of Islamic orthodoxy is declared a heretic (takfīr), as demonstrated by the Egyptian professor Nasr Hamid Abu Zaid, who has found asylum in the Netherlands after having been forcibly divorced from his wife and after professors of the Al-Azhar-University had published a resolution demanding his execution as an apostate (murtadd) and heretic (kāfir). On the whole subject, see Schaefer, Towfigh, Gollmer, Making the Crooked Straight 362ff. For detailed treatment of this subject, see Nagel, Die Festung des Glaubens, especially 360ff.

445. The laws promulgated so far have been enacting laws. For further detail, see Schaefer, Infallible Institutions? 33ff; Schaefer, Towfigh, Gollmer, Making the Crooked Straight 183, n. 215.
national “Houses of Justice,” do not share in the charisma of infallibility. They are promised divine guidance, but only under certain, legally unverifiable circumstances that have been defined by ‘Abdu’l-Bahá that cannot be legally verified: that the process of consultation among the members be conducted in a spirit of absolute purity, selflessness, detachment and devotion, love and harmony; and that the assemblies must have opened themselves to the divine spirit and “reflect the perfections of the Heavenly Kingdom.” Such high moral demands, requiring an exceedingly high degree of self-discipline on the part of each member of the consultative body, are not only difficult to fulfill but also impossible to demonstrate. Thus, two categories of divine guidance are observable in the scripture:

1.) A general divine guidance that is promised to all elected bodies which is a relative one, because it depends on certain preconditions, “prime-requisites for them that take counsel together” and

2.) The specific divine guidance conferred on the twin-pillars that is an absolute one, because it is not made dependent on preconditions. This absolute divine guidance is infallibility.

E. Principles of the Electoral Law, Consultation and the Conduct of Holders of Office

Because of the unique and important function of Bahá’í legislation, the method for selection of legislators is of utmost concern in Bahá’í law. The Kitáb-i Aqdas does not contain any provisions as to how the “Houses of Justice” are to be “established.” However, the testament of ‘Abdu’l-Bahá grants the believers “universal suffrage” and prescribes indirect elections to the Universal House of Justice. This body is elected by all the national “Houses of Justice.” Taken together, they represent the entire world community. Express passages suggest that these elections should be held “after the manner of the customary elections in Western countries such as those of England.” Hence, the Bahá’í institutions are elected democratically, i.e., by universal, equal, free and

446. This is already evident from the fact that their statutes and the Constitution of the international “House of Justice” include stages of appeal by which wrong decisions of the local and national bodies can be corrected. Ficicchia’s assertion to the contrary (Bahá’ísmus 28, 161, 290, 371, 372, 374, 393, 413, 429) is erroneous (cf. Schaefer, Towfigh, Gollmer, Making the Crooked Straight 166ff).
448. Id. nos. 43-45.
449. Id. §43.
450. 1: 25.
452. Id. 2: 7.
secret ballot. The system of electing the National Spiritual Assemblies (election by delegates) was instituted by Shoghi Effendi.\footnote{Cf. Shoghi Effendi, \textit{Bah	extasciiacute;i Administration} 40.}

The Bah	extasciiacute;i elections are to be conducted in a spirit of prayer. Each elector is called upon to beseech the assistance and guidance of God and “without the least trace of passion and prejudice, and irrespective of any material consideration,”\footnote{Id., 88.} he should choose only those “whom prayer and reflection have inspired him to uphold”\footnote{Id., 136.} and who have the qualities of “unquestioned loyalty, of selfless devotion, of a well-trained mind, of recognized ability and mature experience.”\footnote{Id., 88, \textit{Verfassung} 65.} The result of the election should be a manifestation of God’s guidance. This theocratic element is safeguarded by the prohibition of the selection or proposal of candidates, election agreements, electoral groups and any form of campaigning or electioneering. Thus, it is intended that demagogic practices, populism, competition, personal ambition and material interests, which have always endangered the democratic system and occasionally corrupt it,\footnote{A danger against which even Aristotle warned (\textit{The Politics of Aristotle}, Book II, 1270b, 1271a 11).} should be avoided.\footnote{On electoral law, see Schaefer, \textit{The Imperishable Dominion} 245-247; Gollmer, in Schaefer, Towfigh, Gollmer, \textit{Making the Crooked Straight} 472 ff.}

Bah	extasciiacute;i consultation (\textit{mashwirat}),\footnote{The Persian term is related to the Qur	extasciiacute;nic term \textit{shu	extasciiacute;ra} (\textit{cf.} 42: 38), which has not been endowed with a specific form in the Islamic legal system. It was only discovered in the political sphere in the 19th century and has hardly been made use of for the development of democratic structures (\textit{cf. El}, key word “\textit{shu	extasciiacute;ra}”).} is of outstanding importance because Bah	extasciiacute;u’ll	extasciiacute;h has raised it to the status of a fundamental principle of human social interaction:

\begin{quote}
The heaven of divine wisdom is illumined with the two luminaries of consultation and compassion. Take ye counsel together in all matters, inasmuch as consultation is the lamp of guidance which leadeth the way, and is the bestower of understanding\footnote{Tablets 11: 16; 7: 29.} . . . . Be united in counsel, be one in thought.\footnote{Id. 9: 4.}
\end{quote}

Bah	extasciiacute;i consultation is a new type of discourse, qualitatively different from all other forms of consultation (particularly that of parliamentary debate) in both its method and the spirit in which it is conducted. Saiedi points out that

Bah	extasciiacute;i consultation is selfless devotion to truth, to the universal interests of humanity, and to the will of God . . . . The centrality

\footnotesize
\begin{itemize}
\item \footnote{Cf. Shoghi Effendi, \textit{Bah	extasciiacute;i Administration} 40.}
\item \footnote{Id., 88.}
\item \footnote{Id., 136.}
\item \footnote{Id., 88, \textit{Verfassung} 65.}
\item \footnote{A danger against which even Aristotle warned (\textit{The Politics of Aristotle}, Book II, 1270b, 1271a 11).}
\item \footnote{On electoral law, see Schaefer, \textit{The Imperishable Dominion} 245-247; Gollmer, in Schaefer, Towfigh, Gollmer, \textit{Making the Crooked Straight} 472 ff.}
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\item \footnote{Tablets 11: 16; 7: 29.}
\item \footnote{Id. 9: 4.}
\end{itemize}
of its spiritual dimension becomes clear when we observe that in one tablet Bahá’u’lláh has identified consultation as the means of the advent of reason [khírad] and defines reason as a heaven whose sun and moon are forbearance and fear of God.462

In the administrative bodies of the Bahá’í Faith, in particular, consultation is not a mere technique, it has rather a religious, spiritual and moral dimension.463 It should be characterized by “detachment from all else save God”464 and be conducted in a spirit of “servitude to His exalted Threshold.”465 Those engaged in it should practice the virtues of moderation and courtesy, be open with regard to the result, and follow the principle of freedom of opinion.466 A variety of opinions in the community are, as already expressed in a Hadith467 attributed to the Prophet Muhammad, a “blessing,” for the “shining spark of truth cometh forth only after the clash of differing opinions”.468 Seen in this light, consultation is the employment of collective reason. The use of obstructive tactics, and the formation of factions and interest groups are incompatible with this type of consultation and are therefore not allowed.469

Over the years, Shoghi Effendi also gave a large number of instructions and recommendations to guide the work of the Spiritual Assemblies. Many of these set out fundamental principles of practice, and some have been included in the statutes of the Spiritual Assemblies, as for instance in Germany.470 Among these are warnings concerning the dangers of centralism, and the equal dangers of excessive decentralization,471 cautions against dictatorial behavior, the arbitrary exercise of power, the spirit of secrecy, tendencies towards self-glorification and presumptuousness, prejudice and passion. There are also admonitions to observe humility, tolerance, courtesy, unity and justice. The Assembly members should be like “shepherds:” “The trusted ones of the Merciful among men.”472

462. Saiedi, Logos and Civilization 357.
463. Id. 342.
464. ‘Abdu’l-Bahá, Selections, no. 43.
465. Id.
466. Cf. id. no. 45.
468. ‘Abdu’l-Bahá, Selections, no. 44.
F. The Community’s Basic Structural Elements

Both Bahá’u’lláh and ‘Abdu’l-Bahá express a concept of the community as an evolving organism. As it grows, its legal form will continue to develop. The structural elements outlined here are, of course, constitutive. An outstanding feature is the fact that, for the first time in religious history, the development of a clergy is legally prohibited in the sacred texts themselves. Bahá’ís see this truly revolutionary precaution as an expression of the “stage of maturity” into which mankind has now advanced.473

According to Shoghi Effendi, the order of the community combines elements “which are to be found in each of the three recognized forms of secular government.”474 The monarchical element is no longer effective, owing to the vacancy of the office of Guardian. The basic structure is democratic, since all power of jurisdiction rests with the elected bodies and because the principles of self-government, collegiality and consultation are brought to bear.

However, the system is not a purely democratic one, because its legitimacy derives not from the sovereignty of the community of believers, the “people,” but ultimately from the sovereignty of God, and because it contains a number of theocratic elements.475 The legally constituted Bahá’í community regards itself as a kind of “theocracy”476 in so far as God governs His people through the laws sent down by him, and through the legal organs He has appointed and to whom He has promised the assistance of the Holy Spirit in a certain defined sphere. The theocratic element is also evident in Bahá’í elections and in Bahá’í consultation. Through the combination of democratic and theocratic elements and the absence of priestly functions and official bearers of clerical office, a system has been created for which there is no historical precedent and which, Bahá’ís believe, is safeguarded against the danger of autocratic developments.

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474. World Order 152.
475. Shoghi Effendi, id. 153; Schaefer, Grundlagen 120ff; Schaefer, Towfigh, Gollmer, Making the Crooked Straight 245ff.
476. Nota bene: this is not to be understood as a form of rule in which the state and religion are united in the sense of the fundamentalist Islamic idea of Ḥakimiat Allah, but as one structural element of the community among others.
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Qurʾān, see under Arberry


Saiedi, Nader, *Logos and Civilization. Spirit, History and Order in the


COMPILATIONS


JOURNALS


ABBREVIATIONS

LThK=Lexikon für Theologie und Kirche
CIC=Corpus Iuris Canonici
SEI=Shorter Encyclopaedia of Islam
WA=Martin Luther’s works “Weimarer Ausgabe”=Weimar edition

MANNER OF QUOTATION

In quotations from the works of Bahá’u’lláh, and ‘Abdu’l-Bahá numbers cited refer to the section and paragraph numbers of the work, which appear in the margins of the most recent publications.

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