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AN INTRODUCTION TO BAHĀ'Ī 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 Bahā'ī Faith, displays all the characteristics of a universal religion.¹ Whereas 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 Bahā'ī Faith as one of the world religions.²

The present study aims to provide an overview of the revealed law³

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1. On this term cf. Meinhold, *Die Religionen der Gegenwart* 21.

2. Cf. for example, F. Vahman in *Theologische Realenzyklopädie* (TRE) 131, vol. 5; Manfred Hutter (*Die Bahā'ī. Geschichte und Lehre einer nachislamischen Weltreligion* (Marburg 1994)); Ulrich Dehn, *Postislamische Weltreligion*, in *Materialdienst*, issue 1 (Evangelische Zentralstelle für Weltanschauungsfragen ed., 1997); Mircea Eliade/I.P. Culiano, *The Eliade Guide to Worldreligions*. 264 (N.Y. 1991); Hutter, Manfred, *Gutachten: Die Bahā'ī in Österreich—Sekte oder eigenständige Weltreligion?*, in *Österreichisches Archiv für Recht und Religion* 486ff.; Schaefer, *The Bahā'ī Faith: Sect or Religion?*. An overview gives Seena Fazel, *Is the Bahā'ī Faith a world religion?*, in vol. 6, no. 1 *J. Bahā'ī Studies* 1-15 (Mar.-June 1994).

3. An initial outline (*Bahā'ī 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 Bahā'ī 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 Bahā'ī jurisprudence been established that might compare with the Islamic *Uṣūlu'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 Bahā'ī community, some basic background information about the faith will be provided first.

I. THE BAHĀ'Ī FAITH: ITS HISTORY AND DOCTRINES

Bahā'īs 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 Bahā'ī Faith was nineteenth-century Iran. This religion, whose relationship to Shī'a 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.”⁶

What we encounter in Bahā'ism is an archetype of religious history: an announcement by a forerunner and herald (the Bāb)⁷

systematic compilations (Ishrāq Khavarī, Abdu'l Hamid, *Ganjīnih-yi-Hudūd wa Ahkām* (New Delhi 1980) and Fāḍil-i Māzandarānī, *Amr wa Khalq*. vols. 1-4 (Tehran 1965-1974)) could not be taken into consideration here, as they have not yet been translated. Two doctoral theses concerning the order of the community and its organs have so far been produced, one in the field of law and one in that of the social sciences: Schaefer, *Die Grundlagen der Gemeindeordnung der Bahā'ī* (Heidelberg 1957) (downloaded at <www.udoschaefer.com>); Kent Beveridge, *Die gesellschaftspolitische Rolle der Bahā'ī-Verwaltungsordnung innerhalb der Gemeinschaft der Bahā'ī, unter besonderer Betrachtung der zwei leitenden Institutionen* (Vienna 1977). A doctoral thesis in the field of political science (Ulrich Gollmer, *Gottesreich und Weltgestaltung. Grundlegung einer politischen Theologie im Bahā'itum*) has, unfortunately, not been published. It is remarkable that, apart from Waldbridge's overview and Roshan Danesh's article, (*Beyond Integration and Separation. The Dynamic Nature of Bahā'ī Law* <<http://www.telosplanet.com>>), this subject has not yet been taken up in the generally much more abundant literature published in English. Concerning the references to literature, it should be pointed out that while it is usually regarded as undesirable to quote frequently from one's own publications, I have done so for the simple reason that other relevant academic literature on this subject scarcely exists.

4. Friedrich Nietzsche, *The Joyful Wisdom*, nos. 125, 343; *id.* *Thus Spake Zarathustra*, Part I (“Backworldsmen”); Ludwig Feuerbach, *The Essence of Christianity*; Karl Marx, *Critique of Hegel's “Philosophy of Right”* 131.

5. See Exod 3: 6; Acts 3: 13; *Qur'ān* 12: 38; Bahā'u'llāh, *Tablets* 17: 122.

6. In his Tablet to Pope Pius IX., Bahā'u'llāh expressly referred to the promised return of Christ (published in: *The Proclamation of Bahā'u'llāh to the Kings and Leaders of the World* 81ff.; cf. *Gleanings from the Writings of Bahā'u'llāh* 116: 1; *Tablets* 2: 1-25).

7. *The gate* (1819-1850); Literature: Abbas Amanat, *Resurrection and Renewal*; Peter Smith, *The Babi and Baha'i Religions. From Messianic Shi'ism to a World Religion* (Cambridge

preparing the way for the Promised One, who is also the prophet-founder (Bahā'u'llāh)⁸ of a new religion. Bahā'īs 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.”⁹ His mission is to establish the Kingdom of God on earth, through the unification of mankind in one global family. Bahā'īs allegorical exegesis of eschatological signs in the Bible and Qur'ān,¹⁰ and the claim to a post-Qur'ānic divine revelation,¹¹ especially the abrogation of the *Sharī'a*,¹² are regarded by Islamic orthodoxy as heresy and apostasy, a *skandalon* that led to the public execution of the Bāb,¹³ to bloody massacres among the early community of believers, and to the imprisonment and banishment of Bahā'u'llāh throughout the forty years of his ministry. Baghdad, Istanbul, Edirne and 'Akkā¹⁴ in the Holy Land were the stations of his exile. The conflict which continues to this day has resulted in the persecution of the Iranian Bahā'īs under the regime of the Ayatollahs.¹⁵

Bahā'u'llāh's Message¹⁶ is universal in scope: its central theme is the idea of unity manifested in the oneness of God,¹⁷ the unity of his prophets¹⁸ and the oneness of humanity.¹⁹ God's self-revelation in

U. Press 1987); Hasan Balyuzi; *The Bāb. The Herald of the Day of Days* (George Ronald 1973). On the term Bāb cf. Todd Lawson, *The Terms “Remembrance” (dhikr) and “Gate” (bāb) in the Bāb's Commentary on the Surah of Joseph*, in Momen (ed.), 5 *Studies* 1-63.

8. “Glory of God” (1817-1892), born as Mīrzā Ḥusayn 'Alī Nuri; on this subject cf. J.R. Cole, key word “Bahā'-Allāh”; in *Encyclopaedia Iranica* vol. III, 422; Hasan Balyuzi, *Bahā'-u'llāh. The King of Glory* (George Ronald 1980); Shoghi Effendi, *God passes by*, Wilmette, Ill.: Bahā'ī (Publ. Trust 1979); Schaefer, *Leben und Werk Bahā'u'llāhs*, in *Dokumentation* 37ff.

9. Shoghi Effendi, *God Passes By* 239.

10. See Bahā'u'llāh, *Lawḥ-i Aqdas* in *Tablets* 9ff.; *Kitāb-i Īqān*. Literature: Christopher Buck, *Symbol & Secret. Qur'ān Commentary in Bahā'u'llāh's Kitāb-i Īqān*, *Studies in the Bābī and Bahā'ī Religions*, vol. 7 (Los Angeles 1995).

11. Cf. Fazel/Fananapazir, *A Bahā'ī Approach to the Claim of Finality in Islam*; Schaefer, *Beyond the Clash of Religions* 70ff.

12. Cf. Amanat, *Resurrection & Renewal* 393; Shoghi Effendi, *God passes by* 34ff.

13. 1850 in Tabriz

14. The ancient city of Ptolemaeus, called Saint Jean d'Acre by the Crusaders.

15. For further detail, see Douglas Martin, *The Persecution of the Bahā'īs of Iran 1844-1984*, in *Bahā'ī Studies. A Publication of the Canadian Association for Bahā'ī Studies*, no. 12/13 (Ottawa 1984); cf. Schaefer, *Glaubenswelt Islam* 129ff.

16. The canon of Arabic and Persian texts regarded by the Bahā'īs as the Word of God has not yet been completed, the process of collecting the sacred texts is still going on.

17. *Al-tawḥīd*. On the concept of God, see Towfiq, *Schöpfung und Offenbarung* 10ff & 48ff; Schaefer, *Beyond the Clash* 122ff; Lambden, *The Background and Centrality of Apophatic Theology in Bābī and Bahā'ī Scripture*.

18. As well as the Qur'ānic terms *nabī* and *rasūl*, Bahā'u'llāh uses the term *al-maẓharu'llāh* = “Manifestation of God:” God “manifests himself” in the announcers of the divine will (rejecting the concept of incarnation (*ḥulūl*) cf. *Gleanings* 20; 84: 3; *Kitāb-i Īqān* 105), who are identical in essence (*Gleanings* 34: 3; 24) and are on a higher ontological plane (*maqām*) than human beings:

history is dynamic: He reveals Himself to mankind not “once for ever”²⁰ 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.²¹ The new revelation at the “time of the harvest”²² is the divine Reformation,²³ through which “the one and indivisible religion of God”²⁴ is creatively adapted to the needs of a new age and the dwindling vitality of faith in God²⁵ is restored.

The doctrine of “progressive revelation”²⁶ 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.²⁷ All revealed religions are “facets”²⁸ 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.”²⁹ Salvation is therefore a continuous, never-ending process that is open to the future; its goal the progressive divine education of the human race.³⁰

The Bahā’ī Faith sees itself not only as a doctrine of salvation, but also as a concrete prescription for living. For Bahā’īs, Bahā’u’llāh is *redemptor*³¹ and *legislator*.³² A major constitutive element of Bahā’ī

they have the qualities of pre-existence and innate, existential knowledge (cf. ‘Abdu’l-Bahā, *Some Answered Questions* 40: 6). On the subject of Bahā’ī prophethood, see Schaefer, *Beyond the Clash* 123-135.

19. On this subject, cf. Schaefer, *The Imperishable Dominion* 133-144, 351ff.; Schaefer, *Das Bild von der Menschheitsfamilie* 91-103.

20. See the concept of *epiphax*, a Christian formula derived from Rom 6: 10; Heb 7: 17; 9: 12; 10: 10; Judas 3.

21. Cf. ‘Abdu’l-Bahā, *Selections from the Writings of ‘Abdu’l-Bahā* 23: 4.

22. Matt 13: 30. In his Tablet to Pope Pius IX. Bahā’u’llāh, obviously alluding to *Matthew*, states that “The day of ingathering is come, and all things have been separated from each other.” (Cited in *The Proclamation of Bahā’u’llāh* 86.)

23. Cf. Schaefer, *Beyond the Clash* 144ff.

24. Bāb, *Selections* 2: 24.

25. See *Gleanings* 99.

26. Cf. *id.* 31; 27: 6.

27. See Bahā’u’llāh, *Hidden Words*, Arabic 67; *Gleanings* 38; 89: 3. Literature: Momen, *Relativism: A Basis for Bahā’ī Metaphysics*; McLean, *Prolegomena to a Bahā’ī Theology* 37ff.; Schaefer, *Beyond the Clash* 60ff., 135ff. The relativity of religious truth should not, of course, be misunderstood in a post-modern spirit of “anything goes.”

28. Shoghi Effendi, *Guidance for Today and Tomorrow* 2.

29. Bahā’u’llāh, *Epistle to the Son of the Wolf* 18. This idea is not new, it is found as early as 1453 in the writings of Cusanus: “*Una religio in rituum varietate*” (*De pace fidei*).

30. See Schaefer, *Beyond the Clash* 139ff. On the oneness of the religions, see Schaefer, *Bahā’u’llāh’s Unity Paradigm: A Contribution to Interfaith Dialogue on a Global Ethic in Dialogue and Universalism* 23ff, 6.11-12/1996.

31. On the soteriological dimension of his works, see *Hidden Words*, Persian 52; *Gleanings* 45; 141: 2; 142: 2; 146; *Tablets* 2: 7; *Prayers and Meditations* 32: 3; 34: 1 and others.

32. Shoghi Effendi calls him “the Judge, the Lawgiver and Redeemer of all mankind” (*God*

theology is Bahā'u'llāh's doctrine of the Covenant,³³ 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.³⁴

For Bahā'īs, 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,³⁵ but are instead "the breath of life unto all created things,"³⁶ "the keys of My mercy for My creatures."³⁷ At the same time, however, they constitute "the means of order" and "the instrument of union."³⁸ They maintain "order in the world" and guarantee "the security of its peoples."³⁹

Hence, in addition to its "vertical" dimension relating to the salvation of the individual, salvation also has a "horizontal," intrinsically political⁴⁰ 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,⁴¹ is the establishment of world

passes by 93).

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. Bahā'u'llāh, *Kitāb-i Aqdas 1*.

35. Gogarten, *Die Verkündigung Jesu Christi* 58.

36. *Kitāb-i Aqdas 2*.

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 218f.*) and in Sufism (*cf. Saiedi, Logos and Civilisation 216-224*). On Bahā'u'llāh's doctrine concerning divine grace, *see Making 267ff.*

38. Bahā'u'llāh, *Tablets 15: 12*.

39. *Kitāb-i Aqdas 2*.

40. *Cf. Schaefer, Beyond the Clash 141ff.* On society's need for salvation *see Schaefer, Imperishable Dominion 128ff.* On the political dimension of revelation *cf. Gollmer, in Schaefer, Towfigh, Gollmer, Making the Crooked Straight, ch. 6; Schaefer, Universaler Friede? 245ff.*

41. *Cf. Isa 2: 2 ff.; 65: 17; Zech 9: 9.* On the messianic promise of peace on earth from the point of view of Judaism, *see Cohen, Religion of Reason 216ff.* On Bahā'ī expectations concerning peace *cf. Gollmer, in Making the Crooked Straight 427ff., 435ff.*

peace in a global order,⁴² and the unity of mankind in a *civitas maxima*, a *res publica mundialis*.

II. THE THEOLOGICAL FOUNDATION OF THE LAW

A. Religion and Society⁴³

The political dimension of religion⁴⁴ and its indispensable function in ensuring the stability of the state and society is a central theme in the scripture of Bahā'u'llāh. 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.⁴⁵

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 motivation⁴⁶ 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 unflinching 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.⁴⁷

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. *Kitāb-i Aqdas* 181.

43. On this subject cf. Heller, *The Religious Foundations of Civil Society*.

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 Bahā'u'llāh* (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; *Kitāb-i Aqdas* 3).

47. ‘Abdu’l-Bahā, *Secret of Divine Civilization* 98.

faith that is the ultimate foundation of social order and of the state. This idea, which is by no means new,⁴⁸ is expressed repeatedly in the scripture of Bahā'u'llāh: "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."⁴⁹

The frequently cited crisis of religion,⁵⁰ the decline in the practice of religion as a way of life, demonstrates the connection between religion and morality more clearly than ever.⁵¹ Sociologists and economic experts are gradually coming to realize that man's "limited rationality"⁵² 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"⁵³ and that the secular state is dependent on religion for the provision of meaning and values.⁵⁴ No society can be kept under control by laws alone: *Quid leges sine moribus vanae proficiunt?*⁵⁵

48. The idea can be found in the works of Cicero (*De officiis*) and John Locke (*Political Essays*). Francis Bacon formulated it thus: *Religio praecipuum humanae 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 *Kitāb-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.

53. Schmidt, *Der geforderte Staat*, *NJW* 161 (1980).

54. Cf. Bell, *The Cultural Contradictions of Capitalism* 95, 155ff., 202ff., 250f.; Steinbuch, *Maßlos informiert?* 161, 190, 204, 272; Brezinka, *Erziehung* 239.

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 anarchic 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.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. Bahā'u'llāh 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 shine⁵⁷ 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.⁵⁸

Thus, for Bahā'īs religion plays a critical role in maintaining social life.

B. The Concept of the State

Bahā'u'llāh'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 Testament⁵⁹ and the Qur'ān,⁶⁰ which insist that all power is "from God" and the kings and rulers should be "the emblems of justice:"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."⁶²

Should the governors fail in this duty, they will "be called upon to answer" before God.⁶³ There is little that comes in for greater or more insistent condemnation by Bahā'u'llāh 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

56. Bahā'u'llāh 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).

57. *Tablets* 8: 53.

58. *Tablets* 6: 20.

59. Matt 22: 21 and Rom 13: 1ff.

60. Sūra 4: 59.

61. *Gleanings* 118: 3; *Epistle to the Son of the Wolf* 143.

62. *Gleanings* 116: 3; *Kitāb-i Aqdas* 88.

63. *Gleanings* 118: 5.

legal rights for the ordinary subjects.⁶⁴ His scripture frequently takes up the theme of the structural elements of a just system of government,⁶⁵ gives legitimation to democratic rule⁶⁶ and emphasizes obedience to the law and the state as a religious duty.⁶⁷

C. Justice in the Revelation of Bahā' u' llāh

The norms of law (*fiqh*),⁶⁸ ethics (*akhlāq*)⁶⁹ and rituals (*'ibādāt*) emanate from the justice of God, their source is divine revelation. God's laws and ordinances (*ḥudūd*, *aḥkām*) are contingent expressions of His sovereign, unfathomable Will and are therefore "the essence of justice and the source thereof."⁷⁰ The revealer of God's purpose, who is His "representative and mouthpiece,"⁷¹ "incarnate[s] the highest, the infallible standard of justice [*'adl*] unto all creation."⁷² That is why Bahā' u' llāh calls his Book of Laws, the *Kitāb-i Aqdas*, "the unerring balance (*qisṭāsu'l-ḥaqq*)"⁷³ established among men."⁷⁴ To the Bahā'īs 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 Bahā' u' llāh is evident from the status assigned to justice (*al-'adlu wa'l-inṣāf*)⁷⁵ in his system of values, for the goal of justice

64. See *Hidden Words*, Persian 64; *Kitāb-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.

65. Cf. Gollmer, *Der lange Weg zum Größten Frieden* 211-227.

66. Cf. *Tablets* 3: 28, 31; Bahā' u' llāh, *Epistle to the Son of the Wolf* 104, 105; on this subject cf. Gollmer, in Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 468.

67. Cf. *Kitāb-i Aqdas* 64; 95; *Tablets* 5: 8; 15: 5; *Gleanings* 102; 'Abdu'l-Bahā, *Selections* 225: 28-30; 229: 21; 236: 6; 'Abdu'l-Bahā, *Will and Testament* 1: 8, 28.

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 Bahā'ī 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.

73. Also *qisṭāsu'l-hudā* (*Kitāb-i Aqdas* 183). On the eschatological metaphor of the "balance," see *Qur'ān* 7:89; 21:47; 42:18-19 and elsewhere; cf. Schaefer, *Die Freiheit*, 13ff. on this subject.

74. *Kitāb-i Aqdas* 99. Infallible judgment and moral immaculacy (sinlessness) is a characteristic feature of prophethood. On the doctrine of the "Most Great Infallibility" (*al-'iṣmatu'l-kubrā*), see *Kitāb-i Aqdas* 47 and *Tablets* 8: 17-19. Literature: Hatcher, *The Doctrine of the "Most Great Infallibility" in Relation to the Station of Distinction* 59ff.; Schaefer, *Infallible Institutions?* 22ff.

75. This is a complex concept that cannot be given detailed consideration here. It is discussed in my article *Crime and Punishment: Bahā'ī Perspectives for a Future Criminal Law* and in my forthcoming *Introduction to Bahā'ī Ethics* (forthcoming George Ronald Publisher

(‘*adl*) is the rule of law. Justice (the sign of the Messiah⁷⁶ 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 tradition⁷⁹—“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 [*uṣūl*] and ordinances [*aḥkām*] 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 LAW⁸⁶

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

2005).

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” (*Ḥadīth*, 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.

82. *Kitāb-i Aqdas* 181. Cf. Shoghi Effendi, *World Order*; Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 418-477; Saiedi, *Logos and Civilization* 317ff.

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;⁸⁸ instead, they constitute supreme norms (as in the case of legal provisions in the Qur'ān) 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.⁸⁹

In the canon of the normative prescriptions set out in the Kitāb-i Aqdas a clear distinction between law and morality is perceivable, a difference that was emphasized by Immanuel Kant.⁹⁰ Nevertheless, these two types of norms are mutually related,⁹¹ as both are facing the same philosophical problems as to right action.⁹² Divine law must always be seen and interpreted in the light of the moral instructions and demands set out in the scripture. As Bahā'u'llāh emphasizes (possibly with regard to the Sufi's disdain for law), the Kitāb-i Aqdas is not “a mere code of laws [*aḥkām*]⁹³,” not a dry codex, but is—on account of its unprecedented dogmatic rooting,⁹⁴—the unshakeable foundation of a Bahā'ī legal system which will develop in the fullness of time. *Ius divinum* is contained also in the testament of 'Abdu'l-Bahā,⁹⁵ which

term see *Qur'ān* 43: 3; 13: 41; 85: 22.

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, Gollmer, *Making the Crooked Straight* 338ff.; Saiedi, *Logos and Civilization* 235ff.

89. For further detail, see below §VII, 3a.

90. 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-Bahā, *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).

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

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

93. “Think not that We have revealed unto you a mere code of laws. Nay, rather, We have unsealed the choice Wine (*al-rahīq al-makhtūm*) with the fingers of might and power.” (*Kitāb-i Aqdas* 5). “Sealed wine” is a Qur'anic metaphor for the delight of those who are close to God on the Day of Judgement (cf. *Qur'ān* 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, *Logos and Civilization* 217; see *id.* 216–224).

94. Schaefer, Towfigh, Gollner, *Making the Crooked Straight* 396ff.

95. In the Kitāb-i Aqdas (121, 174) and in the Kitāb-i 'Ahd (*Tablets* 15: 1-14), Bahā'u'llāh

supplements and puts into concrete terms⁹⁶ the constitutional order of the community, the outlines of which had already been drawn up by Bahā'-u'llāh, and described in the Tablets of 'Abdu'l-Bahā relating to the principle of consultation.⁹⁷

Further sources of law are the numerous letters⁹⁸ 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;⁹⁹ but until the establishment of the supreme legislative body endowed with this power,¹⁰⁰ 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,¹⁰¹ which were integrated into the statutes of these bodies,¹⁰² were made subject to approval by the Universal House of Justice.¹⁰³

Finally, the Bahā'ī 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.¹⁰⁴ The published laws established by this body are therefore also sources of law.¹⁰⁵ Thus, the Bahā'ī divine law is a *ius divinum positivum*¹⁰⁶ with

appointed his eldest son 'Abdu'l-Bahā (1844-1921) the "Centre of the Covenant" and entrusted him with the leadership of the community following his own death. 'Abdu'l-Bahā 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* 349f., 684ff.), enabling him to draw up details of the institutional structure of the community, which Bahā'u'llāh 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-Bahā see Shoghi Effendi, *God passes by* 309-320 and *World Order* 131-139; Balyuzi, 'Abdu'l-Bahā.

96. See below §§VII, 3-5.

97. *Selections* 48-45; see below §VII, 5b.

98. Selected letters are published in Shoghi Effendi, *Bahā'ī Administration; id. Messages to America*.

99. Cf. *World Order* 149. His interpretations of the sacred texts are binding on the Universal House of Justice.

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, *Bahā'ī Administration; id., Messages to America. Selected Letters and Cablegrams Addressed to the Bahā'īs of North America 1932-1946*; *id. World Order of Bahā'u'llāh*.

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 Bahā'ī community (cf. Schaefer (ed.), *Die Verfassung der Bahā'ī-Gemeinde* 65ff & 90ff.).

103. *Bahā'ī 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*¹⁰⁷ and *ius divinum supplementum*,¹⁰⁸ which together constitute the Bahā'ī sacred law.

The following, however, are not sources of law:

a) *the scripture of the Bāb*. As the Word of God, these texts are sources of faith and an authoritative and integral component of doctrine,¹⁰⁹ but the legislation set out by the Bāb in the *Bayān*¹¹⁰ (which repealed the Islamic *Shari'a*) was abrogated by Bahā'u'llāh's *Kitāb-i Aqdas*,¹¹¹

b) *oral tradition*. The revelation of Bahā'u'llāh is attested by the authentic texts that have been preserved in writing. Oral reports about the sayings and actions of the Prophet (*sunna*) do not possess any authority and are therefore a source for neither belief nor law. Hence, the Bahā'ī Faith is exclusively a “religion of the book;” and the Reformation principle *sola scriptura*¹¹² is consistently put into practice;

c) *natural law*.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”¹¹⁴ He shall not be asked of his doings,”¹¹⁵ express the Bahā'ī Faith's voluntarist view of God:¹¹⁶

107. Divine law of scripture.

108. Supplementary divine law.

109. The same applies to the Qur'ān, and in principle also to the scripture of the Hebrew Bible and the Christian New Testament.

110. *Seyyèd Ali Mohammed dit le Bāb, Le Bēyān Persan*, traduit par A.-L.-M. Nicolas, 4 vols. (Librairie Paul Geuthner 1911-1914). On the content of this work and its bibliography, see Muhammad Afnan, key word “Le Bāb”, *Explications en arabe/en persan*, in *Encyclopédie Philosophique Universelle* 1917-1919, Vol. III,1. Cf. the explanations in *Kitāb-i Aqdas* 108, 109.

111. The Roman dictum “*Lex posterior derogat legi priori*” (Dig. 1, 4, 4) also applies in the history of salvation (*heilsgeschichte*).

112. Cf. Schaefer, *Grundlagen* 66-70; Gollmer, in Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 683.

113. A thorough study of this subject will be provided by the forthcoming thesis: Tajan Tober, *Der Naturrechtsgedanke im Urteil der Bahā'ī-Lehre*.

114. *Qur'ān* 2: 254.

115. *Id.* 21: 34. This idea, which is a recurring leitmotif throughout the scripture, especially in the *Kitāb-i Aqdas* (cf. verses 7, 47, 157), has been raised by Bahā'u'llāh to the status of a touchstone of faith: *id.* verses 161-163. *Qur'ān* 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.).

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 “*Omne aliud ad Deo est bonum, quia a Deo volitum, et non converso . . . quia est bonum, ideo acceptatum*” (Oxonienae III, 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 *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 ipsa est regula omnium*” (WA 712, vol. 18). And elsewhere: “His Will is His spirit-level, measure and weight” (*id.*, vol. 16, *Sermons on the Book of Leviticus* 148). Calvin formulated no less categorically: “*A Deo enim summa est iustitiae regula Dei voluntas, ut quidquid eo ipso quod vult iustum habendum est*” (*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 Bahā’ī 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-Bahā 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 Bahā’ism the divine law is exclusively a *ius divinum positivum*. The Bahā’īs consider all law¹²² that has been revealed by the prophets of the past and by Bahā’u’llāh (in the Pentateuch, the Qur’ān and the Kitāb-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 (*Shāfi’i*, Ibn Ḥanbal, Al-Ash’arī), 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 (*‘ibādāt*).

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” (*Kitāb-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-Bahā,

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*),¹²⁴ and are aware of the necessary relations arising from the nature of things,¹²⁵ 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 ENACTMENT OF LEGAL NORMS AND THEIR DEVELOPMENT

A peculiar feature of Bahā’ism is that most norms of the revealed law (including the ordinances of ritual)¹²⁶ 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*).¹²⁷ This gradual process of bringing laws into force¹²⁸ derives from the founder of the religion himself,¹²⁹ 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.¹³⁰ 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.

124. ‘Abdu’l-Bahā, *Some Answered Questions* 40.

125. *Id.* 40: 7.

126. Forms of worship (*‘ibādāt*), cf. *Tablets* 3: 25. A further development of ritual norms has been excluded by Bahā’u’llāh 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, Bahā’u’llāh was a prisoner and exile. The Bahā’ī communities are a diaspora in a completely different world.

129. Cf. *Kitāb-i Aqdas*, Introduction 5-6, Notes 126.

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-Bahā 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. Bahā’u’llāh 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 Bahā’ī 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 ‘ulamā’ 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 Bahā’īs) considered binding from the start,¹⁴⁰ others were declared universally valid by ‘Abdu’l-Bahā, 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-Bahā.¹⁴² It is self-evident that revealed legal norms are effective in the community as ethical guidelines

131. Shoghi Effendi, cited in *Kitāb-i Aqdas*, Introduction 6ff.

132. See §V.

133. *Kitāb-i Aqdas*, Introduction, p. 6.

134. ‘Abdu’l-Bahā, quoted from *Kitāb-i Aqdas*, Introduction, p. 4.

135. *Al-‘ulamā’ fi’l Bahā’* (see *Kitāb-i Aqdas* 173). Their opinions have no authority, “unless they are endorsed by the House of Justice” (‘Abdu’l-Bahā, quoted from *Kitāb-i Aqdas*, Introduction 5).

136. ‘Abdu’l-Bahā, *Will and Testament* 1: 25.

137. *Id.* 2: 8.

138. These laws have “the same effect as the Text itself” (‘Abdu’l-Bahā, *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).

139. ‘Abdu’l-Bahā, *Will and Testament* 2: 9; *cf.* Schaefer, *Infallible Institutions?* 18.

140. See *e.g.* such prohibitions as the confession of sins (*Kitāb-i Aqdas* 34; *Tablets* 3: 14), the clergy, pulpits in the Houses of Worship (*Kitāb-i Aqdas* 154), the consumption of alcoholic drinks and intoxicating drugs (*Kitāb-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*¹⁴³

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.¹⁴⁴ According to Bahā'u'llāh's new paradigm of salvation,¹⁴⁵ i.e., that of "progressive revelation,"¹⁴⁶ in which all claims to finality are rejected and future divine revelations are promised,¹⁴⁷ 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.¹⁴⁸ Since Bahā'u'llāh has excluded the possibility that such a revelation will take place before the passing of a thousand years,¹⁴⁹ the *ius divinum* of the Bahā'īs is valid for at least one millennium.¹⁵⁰

VI. SPECIFIC SPHERES OF LAW

Compared with the other world religions, the Bahā'ī 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 Bahā'u'llāh (like all revealed law) is not a consistent legal system, let alone a systematic code. It is rudimentary,

143. Cf. Schaefer, *Grundlagen* 57ff.

144. The law is "not in heaven" (*Bab. Talmud*, Baba Mezia 59b (353)). The eternal validity of the laws given on Sinai was formulated by Maimonides in the ninth of the thirteen Jewish articles of faith (see Friedländer, *The Jewish Religion* 139ff, 168ff). Belief in the finality of the revelation of Muḥammad is deduced from Qur'ān 33: 40, 3: 20, 3: 85, 5: 3. According to orthodox Islamic doctrine, the Qur'ān is the eternal Word of God, Islam is the eternally valid religion and the Shari'a the eternally valid Law (Mawdūdī, *Towards Understanding Islam* 116).

145. On this subject, see Schaefer, *Bahā'u'llāh's Unity Paradigm* 24ff; 26ff; Schaefer, *Beyond the Clash* 45ff, 149ff.

146. *Gleanings* 31; see Shoghi Effendi, *World Order* 57ff, 115-119.

147. Cf. *Kitāb-i Iqān* 147; 236; *Gleanings* 34:7; *Kitāb-i Aqdas* 37.

148. On this subject as a whole cf. Schaefer, *Grundlagen* 71-73.

149. Cf. *Kitāb-i Aqdas* 37.

150. That the Universal House of Justice (cf. §VII,3a), which can repeal or amend its own laws, is bound by the divine Law, is self-evident: "This body can supplement what Bahā'u'llāh has already formulated, but it cannot declare it invalid or modify it in any way." (Shoghi Effendi, Letter of 11 August 1935, in Helen Hornby, *Lights of Guidance* No. 1145). This also follows from the justification given in the testament of 'Abdu'l-Bahā for the competence of the Universal House of Justice to repeal its own laws: "This it can do because that law formeth no part of the Divine Explicit Text. The House of Justice is both the Initiator and the Abrogator of its own laws." (2: 8).

calculated for further development. The Kitāb-i Aqdas (like the Qur'ān) 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 Kitāb-i Aqdas and the Testament of 'Abdu'l-Bahā 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 Kitāb-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 Bahā'u'llāh. Referring to the death penalty¹⁵³ in cases of murder, homicide and arson, the Universal House of Justice elucidated in a note to the Kitāb-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 Kitāb-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

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'ānic law (cf. Exod 25: 36-37; Deut 23: 20ff; *Qur'ān* 3: 130; 2: 275ff; 30: 39).

152. This is discussed in my forthcoming *Introduction to Bahā'ī Ethics* (forthcoming George Ronald Publisher 2005).

153. In these cases "life-imprisonment [. . .] would be permissible" (*Kitāb-i-Aqdas* 62).

154. Note 85.

of its own¹⁵⁵—“God doth not tread in their ways”¹⁵⁶—which “is not limited by the standards of the people”¹⁵⁷ and constitutes, as the Bahā'īs 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 God¹⁵⁸ Cast away the things current amongst men and take fast hold on that whereunto ye are bidden by virtue of the Will of the Ordainer, the Ancient of Days¹⁵⁹

Hence Bahā'u'llāh'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.¹⁶⁰

The book contains the divine law for the *whole* of humanity. In some respects, it therefore conflicts with the moral values currently dominant in Europe: it is less individualistic¹⁶¹ 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 Bahā'u'llāh'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,¹⁶² pre-marital and extra-marital sex is (as in Islam) *zinā'*;¹⁶³ it is stigmatized as immoral and legally penalized. Homosexual practices (*liwāṭ*, *siḥāq*) are condemned by Bahā'u'llāh as

155. Cf. *Tablets* 5: 5; 6: 56.

156. *Id.* 8: 19.

157. *Tablets* 8: 19

158. *Id.* 5: 5.

159. *Id.* 6: 56.

160. *Kitāb-i Aqdas* 99.

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.” (*Kitāb-i Aqdas* 123). Even Art. 2 of the German Constitution (*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.), *Grundgesetz. Kommentar*, art. 2 I, marg. no. 44). On this subject as a whole, see Schaefer, *Die Freiheit* 25ff.

162. *Tablets* 9: 5; *Gleanings* 59: 5; 60: 3.

163. *Kitāb-i Aqdas* 19, 49, Note 77.

immoral, even “satanic.”¹⁶⁴ Pederasty is regarded as particularly contemptible.¹⁶⁵ 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 arson¹⁶⁶ 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.¹⁶⁷

164. Quoted in a letter from the Universal House of Justice to the National Spiritual Assembly of the Bahā'īs in the United States, dated 11th Sept. 1995.

165. *Kitāb-i Aqdas* 107.

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

167. This raises the question of the Bahā'ī's attitude to the European Enlightenment, which can be answered as follows: Bahā'u'llāh'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 pettifogry” and legitimatised 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 Bahā'u'llāh 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-Bahā, *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 Bahā'ī 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 Bahā'u'llāh's world order is built. In his hierarchy of virtues justice (*al-'adlu wa'l-inṣāf*) 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 Bahā'u'llāh's commandment to seek the truth independently. He admonishes people “to see with their own eyes and to hear with their own ears” (*Kitāb-Īqān* 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 *Taqīd* (*SEI* 562ff.; 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. *Kitāb-i Aqdas* 189; *Gleanings* 33: 2; *Lawḥ-i Salmān*; ‘Abdu'l-Bahā, *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).

168. Cf. ‘Abdu'l-Bahā, *Paris Talks* 47: 5.

169. *Tablets* 7: 32.

170. Cf. ‘Abdu'l-Bahā, *The Secret of Divine Civilization* 2, 3, 20, 32, 97, 103; ‘Abdu'l-Bahā, *Paris Talks* 47: 5.

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: “*Iustitia 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).

175. *Kitāb-i Aqdas* 14.

176. *Qur'an* 7: 155.

177. ‘Abdu'l-Bahā, *Paris Talks* 34: 7.

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.”¹⁸⁰ ‘Abdu’l-Bahā discussed the two spheres (justice and love) at length,¹⁸¹ 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=iustitia legis et distributiva*) belongs to the realm of the social order. ‘Abdu’l-Bahā 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.”¹⁸²

He leaves no doubt that society has the inalienable right “of self-defence and of self-protection,”¹⁸³ whereas the individual is morally obliged to forgive the one who has committed an injustice against him and to “return good for evil.”¹⁸⁴ 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.”¹⁸⁵ 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.¹⁸⁶ The commandments of the Sermon on the Mount are not directives for political action¹⁸⁷ 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,”¹⁸⁸ leading eventually to the breakdown of order. St Augustine put it that way: “*Remota itaque iustitia quid sunt regna nisi magna latrocinia?*”¹⁸⁹

Bahā’u’llāh warns against all tendencies to supersede justice by mercy in the Kitāb-i Aqdas when he states in the context of capital

180. Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 399.

181. *Cf. Some Answered Questions*, ch. 77.

182. *Some Answered Questions* 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-Bahā, *Some Answered Questions*, ch. 77; Schaefer, *Crime and Punishment* 52ff; Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 398ff.; *id.* *Justice ou miséricorde? Une théologie du pardon selon la foi Bahā’i*.

187. ‘Abdu’l-Bahā, *Some Answered Questions* 77: 7.

188. *Catena aurea in Mattheum* 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."¹⁹⁰

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."¹⁹¹

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."¹⁹²

The primary purposes of punishment are expiation and retaliation,¹⁹³ general deterrence and the protection of society; additional aims are utilitarian purposes such as the reformation of the offender.¹⁹⁴ 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),¹⁹⁵ pre-marital and extramarital intercourse (*zinā'*),¹⁹⁶ theft (*sariqa*),¹⁹⁷ arson,¹⁹⁸ slave trading,¹⁹⁹ backbiting (*al-ghayba*), and calumny (*al-iftirā*),²⁰⁰ causing bodily harm,²⁰¹ unlawful entry,²⁰² the carrying of weapons,²⁰³

190. *Kitāb-i Aqdas* 62. The "ignorant" (*jāhilūn*) are those who live in the *jāhiliyya*, the "time of ignorance," those who are ignorant of God's revelation. *Jāhiliyya* is the name given to the state of things in Arabia before the promulgation of Islam (see SEI, "Djāhiliyya" 82). As to the "time of ignorance" see Acts 17: 30.

191. *Kitāb-i Aqdas* 45. A similar admonition appears in the Qur'ān (24:2) in connection with the punishment of the adulterers: "And let not compassion keep you from carrying out the sentence of God."

192. *Tablets* 3: 15.

193. Cf. 'Abdu'l-Bahā, *Selections* 152; 'Abdu'l-Bahā, *Some Answered Questions* 77: 2-3, 6-10. The talionic character of criminal law in the Kitāb-i Aqdas is simply evident in the fact that the law prescribes the death penalty for murder and arson.

194. The doctrine current in western societies, that the only acceptable legitimation for punishment consists in the resocialization of the criminal, is not in accordance with the scripture. For a detailed consideration, see Schaefer, *Crime and Punishment* 52f.

195. Verse 19.

196. *Id.* The translation of *zinā'* by the word "adultery" in the official English edition is reductionist, see *Kitāb-i Aqdas*, Note 77.

197. Verse 45.

198. Verse 62.

199. Verse 72.

200. Verse 19.

201. Verse 148.

mendicancy,²⁰⁴ cruelty to animals,²⁰⁵ consumption of intoxicating drinks,²⁰⁶ opium and all its derivatives and all other narcotic drugs²⁰⁷ 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

202. Verse 145.

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.

210. *Kitāb-i Aqdas* 73.

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 Tirmīdhī, *Nawādir'ul Uṣūl* 138 (Constantinople n.d., reprinted by Dar Ṣadir publishers, Beirut n.d.)).

should be repeated.²¹³ The determination of the penalty for adultery which is part of *zinā'* rests with the House of Justice.²¹⁴ 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."²¹⁵ 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.²¹⁶

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)²¹⁷ to the family of the victim. Bahā'u'llāh has forbidden his people to engage in quarreling, rebellion and all forms of violence.²¹⁸ He abolished "the rule of the sword" (*jihād* for the community's own defense) on the first day of his prophetic ministry,²¹⁹ for "it is better to be killed than kill."²²⁰ The use of force is also expressly forbidden in the proclamation of the Faith.²²¹

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,²²² where such offenses are matters of private prosecution. Parallels to this legal and ethical judgment, which appears again elsewhere in the scripture,²²³ can be found in Mosaic legal thought.²²⁴ Unlike in canon law²²⁵ and the legal provisions of the *Shari'a*,²²⁶

213. Verse 49.

214. *Kitāb-i Aqdas*, Questions and Answers 49.

215. *Kitāb-i Aqdas* 45.

216. Cf. *Kitāb-i Aqdas* Note 71.

217. Verse 188.

218. *Kitāb-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. *Kitāb-i Aqdas* 73; *Gleanings* 128: 10.

222. Cf. §374.

223. *Kitāb-i Īqān* 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 law²²⁸ 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'ān,²³⁰ but in the historic religions *equal rights* for women as well as men were promulgated for the first time in the Bahā'ī 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'ān (2: 109; 217; 3: 86-90, 100-101; 149: 47; 25), but punishment is left entirely to the judgment of God. However, the *Shari'a* of all legal schools commands the death penalty (*cf.* the key word “Murtadd” in *ED*).

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

228. *Paris Talks* 47: 2.

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).

230. *Cf.* 3: 125; 4: 31; 4: 124; 9: 67, 70-71; 33: 35-36; 40: 40; 49: 13; 57: 12-13. On this subject as a whole *cf.* Schaefer, *Glaubenswelt Islam* 105ff.

231. On the subject of “Women and Bahā'ī Law,” see Walbridge, *Sacred Acts* 255ff.

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 (*Kitāb-i Aqdas* 107) just as it is forbidden for a woman to marry her stepfather.

233. *Cf.* *Kitāb-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 (*rijāl*) of God's House of Justice” (*Tablets* 3: 24; 6: 34; *Kitāb-i Aqdas* 52). In the execution of their teaching office, 'Abdu'l-Bahā and Shoghi Effendi have interpreted the term *rijāl* 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,²³⁵ 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.”²³⁶ This is a principle that has far-reaching implications and is nothing short of revolutionary.

2.) Marriage

Monogamous marriage²³⁷ (*nikāh*) is a “divine creation”²³⁸ for men and women. Matrimony—“a fortress for well-being and salvation”²³⁹—has been “prescribed.”²⁴⁰ “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.”²⁴¹

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.”²⁴² 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.²⁴³ The law prescribing marriage is, however, not binding,²⁴⁴ 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 Bahā’īs 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. *Kitāb-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-Bahā, *Tablets* 474.

239. Bahā’u’llāh, *Bahā’ī Prayers* 105.

240. *Kitāb-i Aqdas* 63.

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).

242. *Gleanings* 109: 2.

243. On the issue of homosexuality, see above 325.

244. *Kitāb-i Aqdas*, Questions 46.

force of law nor a moral obligation. It is the sovereign choice of each individual whether to marry or not.²⁴⁵ 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,²⁴⁶ a unambiguous clarification of the fact that marriage is not a concession to the sinfulness of the flesh,²⁴⁷ nor a place of refuge from “fornication,”²⁴⁸ and is therefore not a “hospital for the infirm,”²⁴⁹ and no “*remedium peccati*.” Voluntary celibacy and virginity do not have a superior moral status in Bahā’ī ethics.²⁵⁰

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.”²⁵¹ 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.²⁵² The choice of partner is thus exclusively a matter for the couple themselves, but consent must be given by all living parents,²⁵³ regardless of whether they are still married or whether they are Bahā’īs. Whereas most of the laws of Bahā’u’llāh 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.”²⁵⁴ There are, however, limits to the parental right of consent, such as in cases of parental incapacity.²⁵⁵

245. *Id.* Note 91.

246. For detailed discussion of these, see Georg Denzler, *Zweitausend Jahre christliche Sexualmoral* 33ff, 43ff, 51ff; see Walter Schubart, *Religion und Eros* (München 1941).

247. *Cf.* I Cor 7: 9.

248. *Cf. id.* 7 :2.

249. Martin Luther, *Traubüchlein*, WA, vol. 42.

250. Monasticism and asceticism (*al-riyaḍātu ‘sh-shāqqa*)—“Practices as are sprung from the loins of idle fancy or are begotten of the womb of superstition”—have been forbidden by Bahā’u’llāh (*Tablets* 6: 37; *Kitāb-i Aqdas* 36; Note 61). The “pious deeds of the monks and priests” will be remembered in the presence of God, but they should give up their life of seclusion and “enter into wedlock, that they may bring forth one who will make mention of God.” (*Tablets* 3: 13; *Epistle to the Son of the Wolf* 84). For further detail, see Schaefer, *The Imperishable Dominion* 176ff.).

251. *Kitāb-i Aqdas* 65.

252. *Id.*, Questions 92.

253. *Kitāb-i Aqdas* 65.

254. *Id.* Mention is also made of “yet other purposes” (*id.*), but these are not stated.

255. These limits to the consent rule have not yet been regulated in law. However, the Universal House of Justice has formulated a number of legal principles that are to be applied for the present: consent is not required in cases of legal incapacity on the part of a parent, in cases of excommunication as a Covenant breaker (see n. 416), or in cases where this right to grant consent has been forfeited owing to incest or other sexual abuse (*cf.* letter from the Universal House of Justice to a National Spiritual Assembly dated 26 Sept. 2000). The immanent limits of norms are dealt with in a forthcoming publication by Gilan Tober, *Ein ‘eindeutiger’ Wortlaut als*

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 stepmother²⁵⁶ or stepfather. Other prohibitions against marrying relatives or impediments to marriage are left to be dealt with in supplementary legislation.²⁵⁷ In Bahā'ī law there is no *impedimentum mixtae religionis*, so that difference of religion is not an impediment to marriage.²⁵⁸

The marriage cannot take place until the dowry (*mahr*)²⁵⁹ 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.²⁶⁰ 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 concerned²⁶¹ in the presence of two witnesses.²⁶² These individuals provide only "passive assistance"²⁶³ in the conduct of the marriage ceremony. The marriage is valid for life, subject to the right to divorce. There is no provision in Bahā'ī law for the institution of temporary marriage (*mut'a*)²⁶⁴ permitted in *Shī'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 Bahā'ī-Texte.

256. *Kitāb-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'ān* 4: 4). Bahā'u'llāh 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 *Mithqāl* (=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 *Mithqāl*, and the recommended minimum sum is 19 *Mithqāl* of silver (*Kitāb-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 *Mithqāl*, see *Kitāb-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 legitime manifestatus, 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 "Nikāḥ" 449.

that religion as well, but both weddings must take place on the same day.²⁶⁵ Such a wedding must not involve a vow to bring up any children resulting from the marriage in the other religion.²⁶⁶

3.) Divorce

Marriage is intended as an eternal bond, a relationship of “everlasting unity throughout all the worlds of God;”²⁶⁷ nevertheless, divorce (*aṭ-ṭalāq*) is permissible, although it is strongly disapproved of.²⁶⁸ The grounds for divorce must be “resentment or antipathy” (*kuṛh wa kuḍūra*)²⁶⁹ between the marriage partners. Both partners²⁷⁰ can seek divorce, but not until a “year of patience” (*sanatu’l iṣṭibār*)²⁷¹ has been completed, that is, a year of separation during which husband and wife live apart and sexual intercourse is not permitted.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.”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.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.”²⁷⁵ In this case, the dowry need not be paid back.²⁷⁶ If the

265. Shoghi Effendi in a letter of 20 June 1954, in Hornby, *Lights of Guidance*, no. 744.

266. “There is no objection to a Bahā’ī participating in a religious ceremony of the non-Bahā’ī partner provided that the Bahā’ī does not undertake a vow contrary to Bahā’ī law, as, for example, a vow to raise the children of the marriage in the Catholic faith. Furthermore, there must be a Bahā’ī 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, *Lights of Guidance*, no. 758).

267. ‘Abdu’l-Bahā, *Selections* 86: 1-2; 87: 1.

268. “Truly, the Lord loveth union and harmony and abhorreth separation and divorce.” (*Kitāb-i Aqdas* 70). This fully conforms with the Ḥadīth 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, *A Manual of Ḥadīth* 284, no. 1).

269. *Kitāb-i Aqdas* 68.

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 *Kitāb-i Aqdas*, Note 100; on this subject, see Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 373ff).

271. *Kitāb-i Aqdas* 68, Questions 12, 40 (also “*ayyām-i iṣṭibār*” 11, 19); see Note 100.

272. *Id.*, Questions 11.

273. *Kitāb-i Aqdas*, Note 100.

274. *Id.*, Questions 40.

275. *Id.*, Questions 12.

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.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.”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.²⁷⁹

The divorce is deemed valid *eo ipso* upon completion of the year of patience: “When the period is ended divorce is effective.”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,²⁸¹ are the responsibility of the Spiritual Assemblies.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.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.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.²⁸⁵

C. Inheritance Law

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

277. *Id.*, Questions 47.

278. *Id.*

279. Letter of the Universal House of Justice dated 28 Apr. 1974.

280. *Kitāb-i Aqdas* Questions 73, 98.

281. *Id.* Questions 98.

282. *Id.*, Note 100.

283. *Id.*

284. *Kitāb-i Aqdas* Questions 4.

285. *Id.* Questions 43.

texts²⁸⁶ and is confirmed in the recognition of the right to inherit property. In contrast to Islamic law,²⁸⁷ the inheritance law set out in the *Kitāb-i Aqdas* is based on the principle of unlimited freedom for the testator.²⁸⁸ 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."²⁸⁹ 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*],²⁹⁰ bear witness therein unto the oneness of God in the Dayspring 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.²⁹¹

The testator can dispose of his possessions "as he may wish;"²⁹² he has "full jurisdiction over his property."²⁹³ The decedent's estate must be used first to cover the funeral costs,²⁹⁴ then to settle any debts and finally to pay *Huqūqu'llāh*,²⁹⁵ provided the decedent has clearly expressed in his will that he wants to pay them.²⁹⁶

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-Bahā, *Selections* 227: 19), but the extremes of wealth and poverty should be overcome through socially just legislation. ('Abdu'l-Bahā, *Promulgation* 107, 181ff, 216ff, 238ff).

287. Cf. Bergsträsser, *Grundzüge* 90, 94.

288. *Kitāb-i Aqdas* 109, Note 136.

289. *Id.* 109.

290. The greatest of all the names of God is *Bahā'* ("Glory"). On this term see Steven Lambden, *The Word Bahā': Quintessence of the Greatest Name* 19-43.

291. *Kitāb-i Aqdas* 109.

292. *Id.*

293. *Id.* Questions 69.

294. *Id.* 28, Note 47. The order is prescribed in Questions 9.

295. This is the plural of *Haququ'llāh* ("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 *Huqūqu'llāh* 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-Bahā, *Will and Testament* 1:27). Texts by Bahā'u'llāh on this institution are to be found in *Huqūqu'llāh: 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 *Huqūqu'llāh Newsletter* no. 35. The payment of the *Huqūqu'llāh* is absolutely voluntary and, like prayer and fasting, a purely

The very detailed legal line of succession²⁹⁷ 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.²⁹⁸ It can perhaps be regarded as a model for the division of property in a will, insofar as

a Bahā'ī is morally and conscientiously bound to always bear in mind, while writing his will, the necessity of upholding the principle of Bahā'u'llāh 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.²⁹⁹

This is also indicated in the right of inheritance by the “Houses of Justice”³⁰⁰ if there are no legal heirs.³⁰¹

Legal succession is based on quotas or shares (as is also the case in the estate laws of Islam).³⁰² The decedent's estate (*al-mawārith*) 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 *Huqūqu'llāh*: “One believer cannot discharge the obligation of another to pay the *Huqūqu'llāh*” (*Compilation*, Supplement 10.1). For that reason, the *Kitāb-i Aqdas* presupposes *Huqūqu'llāh* to be due only if the deceased has expressed his wish—either in his testament or in a private oral statement—that *Huqūqu'llāh* should be paid. This result cannot be escaped by recourse to verse 28 of the *Kitāb-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, *Huqūqu'llāh*) have been settled before the estate is divided. Verse 38 is not the cause in law of the *Huqūqu'llāh*, 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 *Huqūqu'llāh* exist, they need not to be paid. If a Bahā'ī has made provisions regarding the *Huqūqu'llāh* in his will by virtue of his testamentary disposition, a legal claim arises upon his death. If, however, a Bahā'ī has not made any provisions regarding the *Huqūqu'llāh*, or explicitly stated that he does not want to pay them, this has to be respected. Juristically, it is unimaginable that at the moment of death a believer's spiritual obligation (part of *'ibādāt*) *quasi ex nihilo* transubstantiates into a legal claim that can be demanded, as it has been suggested.

297. *Kitāb-i Aqdas* 20-29.

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 *Sharī'a* (*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 *Bayān* of the Bāb easily permit it to be interpreted as a coded, numerical reference to Bahā'u'llāh as the bringer of salvation foretold by the Bāb (*Logos and Civilization* 271-274, 384-385). A passage in the texts in which 'Abdu'l-Bahā 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 *Kitāb-i Aqdas* Note 38.

300. The elected organs of the community and the world community, *see* below §VII, 3a.

301. *See* n. 305 *infra*.

302. *Cf.* Bergsträsser, *Grundzüge* 91ff.

divided into two thousand five hundred and twenty³⁰³ parts and shared among seven categories of heirs,³⁰⁴ namely the children, spouse, father, mother, brothers, sisters and teachers of the deceased.³⁰⁵ Persons who are not Bahā'īs are excluded from the *legal* line of succession.³⁰⁶ If the decedent's estate contains a residence,³⁰⁷ this passes exclusively to male offspring, not female,³⁰⁸ namely to the eldest son.³⁰⁹ If there is no male offspring, one third of the residence passes to the House of Justice.³¹⁰

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)³¹¹ 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

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 *Bahā'*.

304. *Kitāb-i Aqdas* 20.

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.” (*Kitāb-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 *Kitāb-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 (*Kitāb-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 Bahā'ī 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. *Kitāb-i Aqdas* Questions 34. For the probable reasons, see Saiedi, *Logos and Civilization* 273. In their will, Bahā'īs can name heirs irrespective of their religion (*Kitāb-i Aqdas* Note 38, no. 9).

307. *Kitāb-i Aqdas* 25.

308. *Id.*

309. On the subject of primogeniture, see 'Abdu'l-Bahā, *Kitāb-i Aqdas* Note 25.

310. As will be explained below, Bahā'u'llāh has ordained two “Houses of Justice” in the *Kitāb-i Aqdas*, the local (*Kitāb-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-Bahā, the passages in the *Kitāb-i Aqdas* concerning heritage law refer to the local institution. (*Kitāb-i Aqdas*, Questions 42).

311. I.e., if there are no male offspring (see *Kitāb-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 COMMUNITY³¹⁵

A. Spirit and Law

The Bahā'ī 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 Bahā'u'llāh has given his community its unchangeable legal form which is valid *per se*,³¹⁷ while 'Abdu'l-Bahā 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 Bahā'u'llāh has concluded with the believers, which is therefore an integral component of the religion.³¹⁸ This covenant revolves around 'Abdu'l-Bahā, 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-Bahā 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 Kitāb-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 Kitāb-i Aqdas and 'Abdu'l-Bahā'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-Bahā, *Will and Testament* 1: 17), a “fortified fortress of the Cause of God and the firm pillar of the religion of God.” ('Abdu'l-Bahā, *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. Kitāb-i Aqdas* 121, 174; *Tablets* 15: 9; Shoghi Effendi, *World Order* 132.

“not an innovation imposed arbitrarily upon the Bahā’īs of the world,”³²⁰ nor a “surrogate replacing the Holy Spirit,”³²¹ but the expression of the divine will to create order.³²²

The purpose of the order of the community is the protection of the community from schism and sectarianism,³²³ the preservation of the identity and integrity of the faith³²⁴ and the continued provision of divine guidance.³²⁵ At the same time, the institutions are intended as “channels”³²⁶ for this divine guidance.³²⁷ The founder’s binding of the divine spirit to objective institutions³²⁸ excludes the possibility of any kind of charismatic trends³²⁹ 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-Bahā (1921). A small group of German dissidents, who regarded ‘Abdu’l-Bahā’s testament as a forgery, rejected the legal incorporation of the community and broke away from it (cf. Peter Smith, *The Babi and Bahā’i 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, Grübler, Enthusiasten* 305ff; Rainer Flasche, key word “Bahā’i-Religion”, in *Lexikon für Theologie und Kirche* 1993) and by a renegade (F. Ficicchia, *Der Bahā’ismus—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.

324. Cf. Shoghi Effendi, *World Order* 9, 57, 145, 148, 152.

325. *Id.*, 212; Schaefer, *Grundlagen* 91ff.

326. Shoghi Effendi, *World Order* 9.

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 Bahā’i law, it is irrelevant (see Schaefer, *Grundlagen* 59f; Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 142-149.)

329. Cf. Schaefer, *Grundlagen* 92ff.

basis for any claim to general validity because “we cannot clearly distinguish between personal desire and [divine] guidance.”³³⁰ The community is not a “pneumatic anarchy”³³¹ or “pneumocracy.”³³² These principles find practical application in Bahā'ī law regarding community structures, membership exclusion, and governing bodies.

B. The “People of Bahā'”

The world community regards itself as the new people of God, “the people of Bahā'.” 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.³³³

However, it is important to understand that the legally structured form of the Bahā'ī community does not embrace the traditional concept of a priesthood.

1.) Governing Structures

The “people of Bahā'” is a *societas aequalis*³³⁴ 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 clergy³³⁵ correlates with the prohibition of pulpits³³⁶ and

330. Shoghi Effendi, *Principles* 11.

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, “For 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 Bahā'īs in Germany, preamble.

334. That is a “society of equals.”

335. In the *Lawh-i Ittihād*; on this subject, see Taherzadeh, *The Revelation of Bahā'u'llāh* 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 Bahā'ī Faith, and thus no objectification of grace, the community of the faithful have no need of a special rank of believers with authority³³⁸ to confer divine grace *ex opere operato*. Bahā'u'llāh has expressly forbidden the confession of sins before human beings.³³⁹ Therefore, there is also no *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, Bahā'u'llāh 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 (*tablīgh*) 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 Bahā'u'llāh.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

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 Bahā'u'llāh's *Kitāb-i Īqān* (paras 15, 90, 114, 177, 199, 238, 246, 255, 265).

336. *Kitāb-i Aqdas* 154, Note 168.

337. *Kitāb-i Aqdas* 34, Note 57.

338. As in the Catholic church the *potestas ordinis*.

339. *Kitāb-i Aqdas* 34, Note 58; *Tablets* 3: 14.

340. 'Abdu'l-Bahā, *A Traveller's Narrative* 165; Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 160ff.

341. On this subject, see Schaefer, Towfigh, Gollmer, *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, *Grundlagen* 114-120; *id.*; *The Bahā'ī Faith: Sect or Religion?* 10ff. Moreover, I regard it as terminologically incorrect to speak of a "Bahā'ī church" or to call the legal incorporation of the community as prescribed by the founder "churchification." (see Schaefer, *Grundlagen* 84ff).

343. *Id.*, Note 60.

344. *Kitāb-i Aqdas* 36. See *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 *Gleanings* 128: 10; 154: 2; 157: 1-2; 158: 161: 2; *Tablets* 2: 12; 3: 26; 6: 3; 5: 17; 6: 3; 7: 5; 13: 5.

346. On this subject see Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 194-209.

monopoly on *authoritative* interpretation was invested in the teaching office ('Abdu'l-Bahā 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.³⁴⁷ It is true that the "learned in Bahā'" (*al-'ulamā' fi'l-Bahā'*) are praised in the Kitāb-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 Bahā'ī jurisprudence,³⁴⁸ 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.³⁴⁹ The same applies to the members of the Continental Boards of Counsellors,³⁵⁰ 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 Bahā'ī through accepting the message of Bahā'u'llāh, whether this occurs as a consequence of a personally motivated search or of parental education. Bahā'īs 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 Bahā'u'llāh 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*)³⁵¹ of his or her morality. The Bahā'ī community does not see itself as an elitist group. It is expected that every believer will live according to the teachings and commandments

347. An example are the *Mujtahidūn* in Shī'a Islam. The *Uṣūlī* school divides the community into the *Mujtahidūn* and the *Muqallidūn*. The *Mujtahidūn* are the small circle of scholars who are appointed to determine what is legal (*ijtihād*), whereas the rest of the community is obliged to exercise *taqlīd*, 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-Bahā says that "the focal centre . . . of the legislative is the learned [*'ālim*]" (*Secret of Divine Civilization* 37). The "learned" means those skilled in Bahā'ī jurisprudence.

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

350. Cf. below §VII, 3.

351. This practice is known in some Christian denominations.

of Bahā'u'llāh, 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 Bahā'ī is based on volition and not as church membership on a sacramental act,³⁵² 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.³⁵³ 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"³⁵⁴—a concept that runs as a *leitmotif* throughout Bahā'u'llāh's work.³⁵⁵ Thus, anyone who renounces "falls into the same category as any nonbeliever and incurs no blame."³⁵⁶

3.) The Law of Excommunication³⁵⁷

Even though involved choice is key to the Bahā'ī 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,³⁵⁸ the order of the community is an integral part of the Covenant of God established between Bahā'u'llāh and the believers. Acknowledgement of this order is an indispensable element of Bahā'ī doctrine. The Covenant serves to preserve the unity of the community,³⁵⁹ and is therefore "the mightiest stronghold,"³⁶⁰ the "firm

352. I refer to note 372.

353. 'Abdu'l-Bahā, quoted from Esslemont, *Bahā'u'llāh and the New Era* 125.

354. *Lawḥ-i-Aḥmad*, in *Bahā'ī Prayers* 211.

355. Cf. *Kitāb-i Aqdas* 182; *Gleanings* 66: 13 etc.

356. Walbridge, *Sacred Acts* 265.

357. For a more detailed discussion of this subject, see Schaefer, *Grundlagen* 30ff.; *id.*; Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 224-238.

358. Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 225ff.; 44ff.

359. In the holy scriptures of Christianity and Islam the believers are admonished as well to preserve the unity of the community. Jesus prayed in the "Pontifical prayer" for his disciples "that they may be one" (John 17: 1, 21). In the Qur'an, where preservation of the unity of the community and the danger posed by the "hypocrites" (*al-munāfiqūn*) to the existence of the *umma* is a frequently recurring motif (cf. 2: 9; 3: 25; 33: 60; Sūra 63 etc.), the believers are exhorted to "Observe this faith, and be not divided into sects!" (42: 11; 3: 100). According to the Buddhist canon the Buddha said, "a disturber of the Order burneth for an aeon in punishment and perdition." (*Iti-Vuttaka* §18).

360. 'Abdu'l-Bahā, *Will and Testament* 1: 17.

pillar of the religion of God.”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 Bahā'u'llāh warns his followers: “Let not the means of order³⁶² be made the cause of confusion and the instrument of union an occasion for discord.”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 Bahā'ī community is the expulsion of a community member who threatens the Covenant by attacking the divinely ordained order and its institutions. Excommunication under Bahā'ī 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'l-mithāq*):³⁶⁴ they who “sow the seeds of doubt in the hearts of men”³⁶⁵ and promote “discord” and bring about “division.”³⁶⁶ ‘Abdu'l-Bahā calls them “mischief-makers” who are “seeking leadership.”³⁶⁷ Because they do not declare their evil intentions openly but instead “they secretly sow the seeds of suspicion”³⁶⁸—“sweet in words, . . . but at heart a deadly poison”³⁶⁹—they are also referred to as “hypocrites” (*al-munāfiqūn*).³⁷⁰ As the covenant-breaker has struck with his axe at “the root of the Blessed Tree”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 Bahā'. The believer who has been excommunicated is no longer a member of the Bahā'ī community.³⁷²

361. ‘Abdu'l-Bahā, *Tablets of the Divine Plan* 49.

362. I.e., the religion.

363. *Tablets* 15: 12; 4.

364. A term of qur'ānic origin (2: 27; 4: 155; 5: 13, etc.).

365. ‘Abdu'l-Bahā, *Will and Testament* 1: 17; 1: 2, 4, 5; 2: 10; *id.*, *Selections* 185: 4.

366. *Id.* 1: 10, 17; 2: 12.

367. *Selections* 186: 6.

368. *Id.* 185: 4.

369. *Id.* 233: 18.

370. In the Qur'ān Sūra 63 is entitled “Al-Munāfiqūn.” 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” (*id.*). On this subject see Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 45f.

371. ‘Abdu'l-Bahā, *Will and Testament* 1: 5; 3: 9.

372. According to Catholic theology baptism imparts a *character indelebilis*, an indestructible spiritual quality by virtue of which a Christian is incorporated irrevocably into the organisation of the church (which is the *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 Institutions³⁷⁶

As with rules regarding membership and exclusion, Bahā’ī values can be seen in the way in which the governance structures of the Bahā’ī community were developed. The transfer of institutional legitimacy in Bahā’ism 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 (*Buyūtu’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 Kitāb-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 Bahā’ī 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-Bahā, *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.

377. Shoghi Effendi, *World Order*, 10, 21, 57, 147, 157.

established wherein shall gather counsellors to the number of Bahā',³⁷⁸ 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 Bahā'u'llāh and can only be deduced by reference to the functions ascribed to it.³⁷⁹ The name "Universal House of Justice" derives from 'Abdu'l-Bahā'.³⁸⁰

The intermediate body, the "subordinate" or "national" House of Justice (*Baytu'l 'adl-i khuṣūṣī* or *Baytu'l 'adl-i millī*)³⁸¹ was ordained by 'Abdu'l-Bahā'.³⁸² In order to express the embryonic character of the local and national "Houses," they are at present called "Spiritual Assemblies."³⁸³ This is, as Shoghi Effendi indicated, a "temporary appellation," which "as the positions and aims of the Bahā'ī Faith are better understood and more fully recognized, will gradually be superseded by the permanent and appropriate designation of 'House of Justice.'"³⁸⁴

A Bahā'ī community can be established in any locality where at least nine adult Bahā'īs reside. On the first day of the festival of Riḍvān³⁸⁵ 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.³⁸⁶ The Universal House of Justice, which has its seat at the

378. According to the ancient Arabic Abjad system, the "number of Bahā'" (i.e., the numerical value of the letters B and H) is nine.

379. See *Kitāb-i Aqdas* 42; *Qur'ān* 49, 50; cf. *Tablets* 7: 19; 7: 30; 8: 52; 8: 61; 8: 78.

380. 'Abdu'l-Bahā, *Will and Testament* 1: 17; 1: 25; 3: 12; *Some Answered Questions* 45: 4; *Promulgation* 455; *Selections* 33: 6; 38: 4; 187: 2.

381. Later also *Baytu'l 'adl-i millī* (National House of Justice).

382. 'Abdu'l-Bahā, *Will and Testament* 1: 25.

383. Cf. Shoghi Effendi, *World Order* 6; *God passes by* 331; *Bahā'ī Administration* 20, 37, 39.

384. Quoted from *Kūṭāb-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”³⁸⁷ every five years, i.e., by the assemblage of all the National Spiritual Assemblies,³⁸⁸ which represents the entire world community, the electors being not the corporate bodies but the individual members of the assemblies.³⁸⁹ The relationship between the leadership bodies at these three levels is hierarchical, with the spheres of responsibility of each laid down in the statutes.³⁹⁰

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 Bahā’ī 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.³⁹¹

2.) Hereditary and Appointed Bodies

The second pillar is also established in the Kitāb-i Aqdas as a result of the designation of ‘Abdu’l-Bahā as Bahā’u’llāh’s successor and as head of the community.³⁹² The office held by ‘Abdu’l-Bahā³⁹³ 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

387. ‘Abdu’l-Bahā, *Will and Testament* 1: 17.

388. *Id.* 1: 25; 2: 7.

389. Currently (2002), there are 182 national assemblies. Thus, the electorate consists of 1638 persons.

390. *The Constitution of the Universal House of Justice* of 26 Nov., 1972; the Statutes of the National Spiritual Assembly of the Bahā’īs in Germany of 1 July, 1997 and the Statutes of Spiritual Assemblies, published in Schaefer (ed.), *Die Verfassung der Bahā’ī-Gemeinde*. The Statutes of the Austrian Bahā’ī community with an introduction by Anja Dustdar have been published in *Österreichisches Archiv für Recht and Religion* 468-518, Issue 3 (1999).

391. In its decision of 4 Feb., 1991 (BVerfGN 83, 341 ff=NJW 1991, 2623) this court held that in so far as the legal structures of the Bahā’ī 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 super ordinate 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* Bahā’u’llāh’s Testament (*Lawḥ-i Aqdas*) in *Tablets* 15: 9.

393. *See* n. 95, *supra*.

“stainless Mirror of His light,” as “the incarnation of every Bahā'ī 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 [*Walīu Amri'llāh*], . . . the expounder of the word of God [*Mubayyin-i Kitāb*].”³⁹⁶ The function of “perfect exemplar”, as Shoghi Effendi emphasizes,³⁹⁷ was not transferred to the Guardianship, and the Guardian is not regarded sinless.

The office of Guardian³⁹⁸ was conceived in 'Abdu'l-Bahā'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.”³⁹⁹

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.⁴⁰⁰ 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” (*Ayādī i-amru'llāh*)⁴⁰¹—who, according to the testament of 'Abdu'l-Bahā 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

394. Shoghi Effendi, *World Order* 134.

395. For details, see *Grundlagen* 124ff.; Gollmer, in Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 687ff.

396. 'Abdu'l-Bahā, *Will and Testament* 1:16. Shoghi Effendi was 'Abdu'l-Bahā's grandson. For his biography, see Rūhīyyih Rabbani, *The Priceless Pearl*, London: Bahā'ī (Publg. Trust 1969); Ugo Giacheri, *Shoghi Effendi. Recollections* (Oxford 1973); Rias Khadem, *Shoghi Effendi in Oxford and Earlier* (Oxford 1999).

397. *World Order* 151.

398. Comparisons with the papacy, the caliphate and the imamate can be found in Schaefer, *Grundlagen* 151ff.

399. 'Abdu'l-Bahā, *Will and Testament* 1: 16; 1: 18. The principle of “the Book and the successors of the Prophet” (*Ahl al-Bayt*=“the people of the House”) is familiar from *Shī'a* Islam (for details, see Momen, *Shī'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).

400. Message dated Oct. 6, 1963 (*Wellspring* 11).

401. Cf. 'Abdu'l-Bahā, *Will and Testament* 1: 2; 2: 13, 16-17, 21-22.

International Teaching Centre in Haifa and the Continental Boards of Counsellors.⁴⁰²

D. Separation of Powers, Authority and Pneumatic⁴⁰³ 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.⁴⁰⁴ In this field, there is a distinction of powers, but not a complete functional separation of the individual powers.⁴⁰⁵ Teaching authority,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.⁴⁰⁷ This principle of the separation of powers (which in no wise implies the concept of “checks and balances”)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 Bahā'u'llāh 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.⁴⁰⁹

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

403. I refer to footnote 331.

404. For further detail see Gollmer, in Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 692f.

405. Cf. Schaefer, *Grundlagen* 105; Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 154ff, 247ff.

406. Cf. Schaefer, *Grundlagen* 107ff.

407. In canon law, the *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 *The Guardianship and the Universal House of Justice* <<http://www.bahai-library/unpubl.articles/guardianship.html>>.

408. In the sense of Montesquieu (*De l'esprit des lois*, 1748, book XI, ch. 4 or John Locke, *Two Treatises on Government*, 1690).

409. Shoghi Effendi, *World Order* 150; see Schaefer, *Grundlagen* 110ff. Since the office of Guardian did not possess power of jurisdiction, the assertion that the testament provided him with “dictatorial power” (Hutten, *Seher, Grübler, Enthusiasten* 318f (12th ed.)), or that he practiced a “one-man dictatorship” (Flasche, *Die Bahā'ī-Religion* 95) is false. On this subject as a whole, see Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 154ff.

This principle is not altered by the fact that the office of Guardian is vacant.⁴¹⁰ Only the function of the Guardian as head of the world community has been transferred to the Universal House of Justice.⁴¹¹

The two supreme institutions of the Bahā'ī 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 deviateth, separateth himself and turneth aside from him hath in truth deviated, separated himself and turned aside from God.⁴¹²

Emphatic warnings are issued against rebellion and schism.⁴¹³ 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.”⁴¹⁴ The unity of the community is ensured by means of the law on excommunication previously described.⁴¹⁵ Excommunication of a believer is highly exceptional, applicable as previously noted only in cases of “covenant-breaking.”⁴¹⁶ 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 (*'iṣma*).⁴¹⁷ Divine

410. Meinhold's (*Religionen* 35) and Ficicchia's (*Bahā'ism* 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.

411. Cf. *Constitution of the Universal House of Justice. Declaration of Trust* 21.

412. 'Abdu'l-Bahā, *Will and Testament* 1: 17; 2: 13.

413. *Id.* 1: 17; 1: 20.

414. *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'ān (see Sūra 63, *Al-munāfiqūn*, and also 2: 9; 27; 13: 25; 33: 60, etc.) and in the Buddhist canon (*Iti-Vuttaka* §18 (31)) are much stronger (cf. Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 44ff, 229, n. 442).

415. Cf. above 346.

416. *Naqḍ al-mithāq* ('Abdu'l-Bahā, *Will and Testament* 1: 5; 1: 10; 2: 3).

417. For details on this term, see Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 166-194; Schaefer, *Infallible Institutions?*. 'Abdu'l-Bahā distinguishes between essential infallibility (*al-'iṣmatu'l-dhātīya*), which is an essential characteristic of the station of

guidance (*hudā*) 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-Bahā 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 they⁴¹⁸ decide is of God.”⁴¹⁹

Of the Universal House of Justice, scripture states that:

God will verily inspire them⁴²⁰ with whatsoever He willeth,⁴²¹ . . . for he has ordained it as the source of all good and freed from all error⁴²² That which this body, whether unanimously or by a majority doth carry, that is verily the Truth and the Purpose of God himself.⁴²³

By virtue of this charisma, the two supreme institutions are the conveyors of divine salvation,⁴²⁴ but the charisma has internal limitations. The Guardian⁴²⁵ 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.⁴²⁶ The charisma is invested in the office, not in the person holding it. The decisions⁴²⁷ on matters of doctrine and morals⁴²⁸ of the Guardian have binding authority and, together with the writings of ‘Abdu’l-Bahā, they are in a broad sense a depository of the Faith.

It has not yet been finally established where the pneumatic

Prophet (Bahā’u’llāh calls it the “Most Great Infallibility” (*al-‘ismatu’l-kubrā*, cf. *Kitāb-i Aqdas* 47; *Tablets* 8: 17-19) and conferred, institutional infallibility (*al-‘ismatu’l-ṣifātiya*, *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.

419. ‘Abdu’l-Bahā, *Will and Testament* 1: 17.

420. This passage refers to the members of this body.

421. *Tablets* 6: 29.

422. ‘Abdu’l-Bahā, *Will and Testament* 1: 25.

423. *Id.* 2: 7. The parallel occasionally drawn with the Islamic principle of consensus (*ijma’=consensus doctorum*) in the development of the *Sharī‘a* (cf. Römer, *Die Bābī-Behā’ī* 118 and Ficicchia, *Bahā’ism* 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.

426. Cf. Shoghi Effendi, Letter dated Oct. 17, 1944; see Schaefer, *Infallible Institutions?* 28ff.

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 *tafāsīr*. 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.⁴²⁹ Important reasons point to a restrictive interpretation, suggesting that only legislative acts are covered by this charisma.⁴³⁰ The Universal House of Justice is intended as a legislative body responsible for supplementary legislation and thus for the further development of the Bahā'ī legal system, whereas the ordinances concerning rituals ('*ibādāt*)⁴³¹ are definitely regulated in the "Book,"⁴³² the House cannot issue any prescriptions concerning rituals or morals.⁴³³ The relevant passages in the scripture⁴³⁴ 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."⁴³⁵ 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 Bahā'u'llāh is to develop along a different path⁴³⁶ from that of the *Halacha* and *Shari'a*. The Law of God, the *ius divinum* conveyed by Bahā'u'llāh, is valid for a long period of time (until the next divine revelation) and requires supplementation and specification. As already discussed,⁴³⁷ 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 "Whatever they"⁴³⁸ decide has

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.

431. "Acts of worship," cf. *Tablets* 3: 25.

432. *Tablets* 8: 61; 3: 25.

433. The norms of morality are scattered throughout Bahā'u'llāh'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" (Bahā'u'llāh, *The Hidden Words*, Preamble) that "does not change nor alter" ('Abdu'l-Bahā, *Some Answered Questions* 11: 9). Bahā'u'llāh'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.

435. 'Abdu'l-Bahā, *Will and Testament* 1: 25; see 2: 8.

436. 'Abdu'l-Bahā has explained this difference (cf. *Kitāb-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,”⁴³⁹ 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,⁴⁴⁰ for which there is no model in the history of religion?⁴⁴¹ 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*,⁴⁴² 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-Bahā’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.”⁴⁴³ Since this process enables social change to be taken into account, the sacred law is protected from the danger of gradual petrification.⁴⁴⁴ So far, there have been only sporadic legislative acts by the Universal House of Justice, which was established in 1963.⁴⁴⁵ Time is not yet ripe for supplementary legislation.

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

439. ‘Abdu’l-Bahā, *Will and Testament* 2: 8, literally: “. . . as if it were the Text itself” (“. . . hamān mānand-i naṣṣ asf”).

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*.

442. Cf. Schaefer, *Grundlagen* 74ff.

443. ‘Abdu’l-Bahā, *Will and Testament* 2: 8.

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-ijtihād*) 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.⁴⁴⁶ They are promised divine guidance, but only under certain, legally unverifiable circumstances that have been defined by ‘Abdu’l-Bahā⁴⁴⁷ 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.”⁴⁴⁸ 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”⁴⁴⁹ 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 Bahā'ī legislation, the method for selection of legislators is of utmost concern in Bahā'ī law. The Kitāb-i Aqdas does not contain any provisions as to how the “Houses of Justice” are to be “established.” However, the testament of ‘Abdu’l-Bahā grants the believers “universal suffrage”⁴⁵⁰ and prescribes indirect elections to the Universal House of Justice. This body is elected by all the national “Houses of Justice.”⁴⁵¹ 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.”⁴⁵² Hence, the Bahā'ī 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 (*Bahā'ism* 28, 161, 290, 371, 372, 374, 393, 413, 429) is erroneous (cf. Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 166ff).

447. Cf. *Selections*, ch. 43-45.

448. *Id.* nos. 43-45.

449. *Id.* §43.

450. 1: 25.

451. 1: 25; 2: 7.

452. *Id.* 2: 7.

secret ballot. The system of electing the National Spiritual Assemblies (election by delegates) was instituted by Shoghi Effendi.⁴⁵³

The Bahā'ī 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,”⁴⁵⁴ he should choose only those “whom prayer and reflection have inspired him to uphold”⁴⁵⁵ and who have the qualities of “unquestioned loyalty, of selfless devotion, of a well-trained mind, of recognized ability and mature experience.”⁴⁵⁶ 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,⁴⁵⁷ should be avoided.⁴⁵⁸

Bahā'ī consultation (*mashwirat*),⁴⁵⁹ is of outstanding importance because Bahā'u'llāh has raised it to the status of a fundamental principle of human social interaction:

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 understanding⁴⁶⁰ Be united in counsel, be one in thought.⁴⁶¹

Bahā'ī 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

Bahā'ī consultation is selfless devotion to truth, to the universal interests of humanity, and to the will of God The centrality

453. Cf. Shoghi Effendi, *Bahā'ī Administration* 40.

454. *Id.*, 88.

455. *Id.*, 136.

456. *Id.*, 88; *Verfassung* 65.

457. A danger against which even Aristotle warned (*The Politics of Aristotle*, Book II, 1270b, 1271a 11).

458. On electoral law, see Schaefer, *The Imperishable Dominion* 245-247; Gollmer, in Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 472 ff.

459. The Persian term is related to the Qur'ānic term *shūrā* (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 (cf. *EI*, key word “*shūrā*”).

460. *Tablets* 11: 16; 7: 29.

461. *Id.* 9: 4.

of its spiritual dimension becomes clear when we observe that in one tablet Bahā'u'llāh has identified consultation as the means of the advent of reason [*khirad*] and defines reason as a heaven whose sun and moon are forbearance and fear of God.⁴⁶²

In the administrative bodies of the Bahā'ī 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 *Ḥadīth*⁴⁶⁷ attributed to the Prophet Muḥammad, 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-Bahā, *Selections*, no. 43.

465. *Id.*

466. *Cf. id.* no. 45.

467. *Cf.* Ignaz Goldziher, *Introduction to Islamic Theology and Law* 48.

468. 'Abdu'l-Bahā, *Selections*, no. 44.

469. For discussion *cf.* Schaefer, *The Imperishable Dominion* 247ff; Schaefer, Towfigh, Gollmer, *Making the Crooked Straight* 217, 473ff.

470. *See app.* of the Bylaws of the German national and local assemblies, published in Schaefer (ed.), *Verfassung* 65ff, 90ff.

471. *Cf. Bahā'ī Administration* 142.

472. *Kitāb-i Aqdas* 30.

F. The Community's Basic Structural Elements

Both Bahā'u'llāh and 'Abdu'l-Bahā 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. Bahā'īs 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 Bahā'ī 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 Bahā'ī elections and in Bahā'ī 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, Bahā'īs believe, is safeguarded against the danger of autocratic developments.

473. Cf. *Gleanings* 33: 2; *Kiṭāb-i Aqdas* 189.

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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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 Bahā'u'llāh, and 'Abdu'l-Bahā 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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