

# ***The Kitáb-i-Aqdas: Bahá'í Law, Legitimacy, and World Order\****

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## **Abstract**

*This article is an initial attempt to understand the Kitáb-i-Aqdas from the perspective of contemporary secular national and international law. First, it analyzes and classifies the laws and institution-building provisions of the Kitáb-i-Aqdas, demonstrating its character as a constitution or "Charter" of future world civilization. The social laws are further analyzed to show how they, together with expressed principles, form the nucleus for a fully developed legal system. Second, the article investigates the relationship between law and principle, the "warp and woof" of the institutions of Bahá'u'lláh's World Order. How a particular code of laws actually functions in a society depends heavily on the background of shared principles. Characteristic legal and social principles are identified, principles which together distinguish the Bahá'í system of law and government from others. The final section describes current thinking about the concept of legitimacy and the transformation of international law through human rights standards from a system that serves only states into one which serves humanity on the basis of emerging World Order principles.*

## **Résumé**

*Cet exposé constitue une tentative préliminaire visant à analyser le Kitáb-i-Aqdas du point de vue du droit séculier national et international. D'abord il analyse et classe les lois et les dispositions du Kitáb-i-Aqdas se rapportant à l'établissement d'institutions, démontrant le caractère constitutif ou de "charte" que revêt le Kitáb-i-Aqdas pour la civilisation mondiale du futur. Par une analyse approfondie des lois sociales, l'exposé démontre comment ces lois et les principes énoncés forment le noyau d'un système juridique pleinement développé. L'exposé examine ensuite le rapport existant entre la loi, d'une part, et le principe, d'autre part, ces deux éléments constituant en quelque sorte les fils de chaîne et de trame qui composent l'étoffe des institutions de l'Ordre mondial de Bahá'u'lláh. La façon dont une société choisit d'appliquer un code de lois dépend beaucoup des principes que ses membres partagent en commun. L'exposé cerne des principes juridiques et sociaux qui, pris ensemble, distinguent le système bahá'í de droit et de gouvernement de tout autre système existant. Enfin, l'exposé décrit les concepts ayant cours concernant la notion de légitimité, de même que l'impact de l'adoption de normes relatives aux droits de la personne et la transformation que ces normes opèrent sur le droit international, qui passe d'un système desservant uniquement les États à un système desservant l'humanité en fonction des principes émergents liés à l'Ordre mondial.*

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### Resumen

*Este escrito es un ensayo inicial que busca comprender el Kitáb-i-Aqdas desde la perspectiva de la ley seglar contemporánea, nacional e internacional. De primer plano analiza y clasifica las leyes y medidas edificadoras de instituciones, provenientes del Aqdas, demostrando su carácter de constitución o Carta de una civilización mundial futura. Se profundiza el análisis de sus estatutos sociales para indicar cómo, en unión de sus principios declarados, se forma el núcleo de un sistema legal enteramente desarrollado. De seguido, la disertación sondea la relación entre lo que es ley y lo que es principio, o sea, lo que viene a ser el fundamento de las instituciones de la Orden Mundial de Bahá'u'lláh. La forma en que cierto código de jurisprudencia funciona de hecho en una sociedad depende fuertemente del trasfondo de principios compartidos dentro de esa sociedad. Se indentifican principios legales y sociales característicos, que reunidos distinguen al sistema bahá'í de ley y gobierno de cualquier otro sistema. La última parte se dirige al pensamiento de actualidad referente al concepto de la legitimidad, y la transformación del derecho internacional en aplicación de normas de derechos humanos, de un sistema sirviente al estado a aquel que sirve a la humanidad basándose en los principios de una Orden Mundial emergente.*

In Japan, when one is honored with a formal gift, one receives it with arms outstretched in front at shoulder height, standing at a respectful distance, head bowed. This is the image that came to mind upon receiving the recently published English translation of *The Kitáb-i-Aqdas* (The Most Holy Book). Bahá'ís regard *The Kitáb-i-Aqdas*, written by Bahá'u'lláh in Arabic in about 1873, as the gift of an all-loving yet unknowable Creator. This book reveals the nucleus of a system of law and government for humanity's collective maturity and is intended to organize an evolving global human society on principles of justice and equity. Bahá'u'lláh has written of *The Kitáb-i-Aqdas*, "So vast is its range that it hath encompassed all men ere their recognition of it" (quoted in Shoghi Effendi, *God Passes By* 216). Our understanding of *The Kitáb-i-Aqdas* can be expected to evolve over the generations; we are now at the stage of commencing in its study.

I have been asked to speak about *The Kitáb-i-Aqdas* as a legal system. In the interests of full disclosure (about which lawyers are always especially sensitive), it should be explained that my own particular perspective is of one trained in the common law system, that is, the system evolved from English law of centuries ago, and more specifically, of one trained in U.S. law. My adopted home is Japan, a country which follows the civil law tradition, originating with Roman law and the legal codes of Western and Southern Europe. My academic passion is international public law.

Thus, my approach is to view *The Kitáb-i-Aqdas* not in the context of religious legal systems but from the perspective of contemporary secular law, national and international. I will address three areas: (1) the classification and nature of the laws and institutional provisions of *The Kitáb-i-Aqdas*, (2) the distinction and relationship between principle and law, and the fundamental

principles on which the system of governance envisioned in *The Kitáb-i-Aqdas* depends, and (3) concepts of obedience and legitimacy indicating an emerging universal sense of moral value. This last part explains how certain notions of legitimacy in law and government seem to be taking hold in the minds of diverse peoples and states, and to be slowly generating a still tentative global consensus. It is an attempt to show how this consensus is not only compatible with the system of *The Kitáb-i-Aqdas* but also would appear to be part of the spiritual process of the maturation of humankind and of building the World Order envisioned and ordained by Bahá'u'lláh.

To set the proper context, a brief preliminary note is necessary about the application of the laws of *The Kitáb-i-Aqdas*. A considerable number of these laws have been binding on the Bahá'í community for many years now, particularly the laws regarding prayer and fasting, abstinence from habit-forming drugs and alcohol, and those relating to marriage and divorce. The law of *Huqúqu'lláh* just came into effect worldwide in 1992 (Universal House of Justice, *Riḍván 1992 Message to Bahá'ís of the World*). Many other laws of *The Kitáb-i-Aqdas*, including most of the social laws described later, are not yet in effect. The 1992 publication of the English translation of *The Kitáb-i-Aqdas* does not increase the number of laws currently applied.<sup>1</sup>

Many of the laws of *The Kitáb-i-Aqdas* are intended for, in the words of Shoghi Effendi, a future “state of society destined to emerge from the chaotic conditions that prevail today . . .” (*Kitáb-i-Aqdas* 6, quoting a letter written on behalf of Shoghi Effendi to a National Spiritual Assembly in 1935). The Bahá'í writings anticipate a time in the future when the process of human civilization—having evolved through the successive stages of tribe, city, and nation-state—matures into a worldwide system of governance, upholding the unity of humankind while preserving its diversity. Shoghi Effendi has written that “the Spirit breathed by Bahá'u'lláh upon the world . . . can never permeate and exercise an abiding influence upon mankind unless and until it incarnates itself in a visible Order, which would bear His name, wholly identify itself with His principles, and function in conformity with His laws” (*The World Order* 19).

When Bahá'u'lláh enunciated his principles of world order over a century ago, it was much harder than it is now to imagine a process of international integration. By now we can see how the current anarchic system of sovereign states is being overtaken by universal needs of humanity; how states and

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1. Universal House of Justice, *Introduction to Bahá'u'lláh, The Kitáb-i-Aqdas* 7. Members of the Bahá'í community who cannot read Arabic have not been unaware of the contents of *The Kitáb-i-Aqdas*. A *Synopsis and Codification of the Laws and Ordinances of The Kitáb-i-Aqdas* was published in English by the Universal House of Justice in 1973, and numerous passages that had previously been translated by Shoghi Effendi have been published in various compilations of Bahá'u'lláh's writings and in collections of Shoghi Effendi's letters. These are listed in *The Kitáb-i-Aqdas* 255–57.

peoples are willingly or unwillingly being drawn into ever-increasing global contact, conflict, and cooperation by the forces of technological progress, economic systems, and environmental interdependence. We see regional organizations like the European Community taking three steps forward and two steps back. We see transnational non-governmental organizations creating bonds of unity where governments have not. And, from outside the Bahá'í community, we can see the Bahá'í system as one alternate model for the future organization of global society. This system is already proving itself at the grassroots level.<sup>2</sup>

Shoghi Effendi has written that the Law of Bahá'u'lláh "repudiates excessive centralization . . . and disclaims all attempts at uniformity," but "insists upon the subordination of national impulses and interests to the imperative claims of a unified world" (Shoghi Effendi, *The World Order* 42). Bahá'ís are confident that a world order wholly identified with Bahá'u'lláh's principles will eventually emerge, through some combination of the visible and painful failure of the current world system and the active efforts of Bahá'ís and others of like mind to build a new order.

### **Classification and Nature of the Laws of *The Kitáb-i-Aqdas***

As anyone who has read *The Kitáb-i-Aqdas* will know, it is, as Bahá'u'lláh states, not "a mere code of laws." It is not a mere code of laws in form, in content, nor in purpose or spirit. In Bahá'u'lláh's words it is the "source of true felicity" (quoted in Shoghi Effendi, *God Passes By* 215), the "choice Wine," "unsealed . . . with the fingers of might and power . . ." (*Kitáb-i-Aqdas*, para. 5). He writes that its commandments are the "lamps of My loving providence among My servants, and the keys of My mercy for My creatures" (*Kitáb-i-Aqdas*, para. 3). Its purposes are to establish order and security among peoples (*Kitáb-i-Aqdas*, para. 2), to train humanity in justice (Bahá'u'lláh, "Tablet of *Ishráqát*," in *Kitáb-i-Aqdas* 91), and to elevate the station of individual souls (*Kitáb-i-Aqdas*, para. 45) through divine education, that we may understand and develop our true spiritual natures.

The form in which *The Kitáb-i-Aqdas* is written is nothing like the deductive logic of the typical civil law code or the inductive case-by-case style of the common law. The legal system to develop over time from the nucleus found in *The Kitáb-i-Aqdas* will no doubt require systematization of some kind, but *The Kitáb-i-Aqdas* itself is written in an entrancing poetic style. Specific laws and

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2. A recent very dramatic example concerns a large number of refugees who fled from the civil war in Liberia to the Ivory Coast. The group included some 200 Bahá'ís. They reestablished their community activities, worked together with the villages in the Ivory Coast, and organized some twenty-five local Spiritual Assemblies. As a result, through consultation and collective effort, they have established successful small-scale development projects and are on their way to becoming self-sufficient (Bahá'í International Community, *One Country* [Oct.–Dec., 1992]: 1, 12–13).

ordinances are embedded in text glorifying insight and detachment. References to the “Lamp of the Eternal” and the “Dayspring of Divine knowledge” are juxtaposed with instructions not to burden an animal with more than it can bear (*Kitáb-i-Aqdas*, paras. 186–87). Why is this? Pierre-Yves Mocquais has described this style as a pattern of ascending circles or a spiral (Mocquais, “*The Kitáb-i-Aqdas*,” Second Annual Conference of the Association for Bahá'í Studies–Japan, Feb. 20–21, 1993, Tokyo). Perhaps, by so intertwining laws and details about conduct with what we might think of as more “spiritual” passages, Bahá'u'lláh is visibly demonstrating to us what he says in the first paragraph of *The Kitáb-i-Aqdas*: that recognition of him and observance of his ordinances are inseparable. Perhaps he is reminding us again that his laws are spirit in action, joining the physical and spiritual realities, to be cherished with the love borne for him.

From the standpoint of the contents of *The Kitáb-i-Aqdas* as well as its laws and institutional provisions, it is not a “mere code of laws.” In legal terminology it resembles much more closely a constitution. Indeed, Shoghi Effendi, who never used a word except precisely, refers to it as the “Charter” of the future world civilization (*God Passes By* 213). A constitution, of course, holds a unique position within a legal system, as the “higher law” to which all other laws and the organs of government themselves must yield. A constitution generally has several basic functions: it identifies the source of the government’s right to exercise authority (thereby establishing one form of “legitimacy”); it structures governmental authority; it distributes and describes the various powers of government; it imposes certain limits on governmental power; and it ordains methods for adapting to change. Each of these elements is easily visible in Bahá'u'lláh’s Charter.

In pointing out these elements, we should also recall that *The Kitáb-i-Aqdas* is one of several important sources of Bahá'í law; the *Will and Testament of 'Abdu'l-Bahá* is another essential source. These two documents are, to quote Shoghi Effendi, “inseparable parts of one complete unit,” such that they must both be read in order to understand the institutional aspects of either.<sup>3</sup> Reading these sources together we can see, for example, how authority is structured and powers allocated to local and national Houses of Justice and to the Universal House of Justice, and how authority to interpret the Word of Bahá'u'lláh is conferred successively upon 'Abdu'l-Bahá and Shoghi Effendi. We can see further how change is accommodated, through the authority of the Universal House of Justice to enact supplementary legislation, and the authority of that same body to amend and repeal its own enactments. Such supplementary legislation must be wholly consistent with the laws and principles of Bahá'u'lláh; herein lies the constitutional limitation on governmental power. It is

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3. Shoghi Effendi, *The World Order* 4. Among other essential sources of Bahá'í law are the *Tablets of Bahá'u'lláh Revealed after The Kitáb-i-Aqdas*. Shoghi Effendi describes these tablets as elucidating and supplementing laws already laid down (*Tablets* v).

beyond the scope of the present effort to go into detail on these well-known institutional provisions that find their roots in *The Kitáb-i-Aqdas*, but perhaps these examples will suffice.<sup>4</sup> In its institutional aspects *The Kitáb-i-Aqdas* can readily be understood as a constitution intended to lay the foundation for a world commonwealth.

If we wish to analyze further the contents of *The Kitáb-i-Aqdas*, we need a framework for classifying its laws. The Bahá'í scholar Mírzá Abu'l-Faḍl divides the laws into three categories (Tahezadeh, *Revelation 3*: 293–94):

- (1) Devotional laws and ordinances, concerning worship of God (such as prayer and fasting). These might also include pilgrimage, Feasts and Holy Days, burial laws, and the prohibition on establishing a priesthood or using pulpits;
- (2) Laws that benefit primarily the individual, aimed at elevating the personal and spiritual condition of the individual (such as standards of cleanliness). Perhaps this would also include laws of personal sexual morality and all of the exhortations to virtue and good character;
- (3) Laws concerning society, to which we will return shortly.

A word is necessary here about the distinction between enforced and unenforced laws. For many of the laws in *The Kitáb-i-Aqdas*, individuals are accountable to God only; that is, society has no authority to impose sanctions for violating the law. An obvious example is obligatory prayer. This would be true of most of the laws in Mírzá Abu'l-Faḍl's first two categories, that is, devotional laws and laws which benefit primarily the individual. However, for most of the third category, laws concerning society, individuals are also held accountable to the society in which they live, by virtue of social institutions having the authority and responsibility to impose sanctions for proven violations.

How, one may want to know, can there be a law which is obligatory but not enforced? (International lawyers are asked this question every day, since so few international norms are enforceable by traditional legal mechanisms like courts and sheriffs.) The “unenforced” devotional and personal laws binding on individuals have a purpose that is wholly distinct from enforced social laws. Their purpose is to purify hearts, to transform spirits. These benefits can only be realized if individuals follow the laws of their own volition. As Zafar Moghbel commented recently in Tokyo in discussing the non-coercive nature of Ḥuqúqu'lláh, it does not mean much to get to the top of Mt. Fuji if someone pulls you up there. If such laws were subject to enforcement, their transforming effect would be annihilated (Moghbel, “On Ḥuqúqu'lláh,” Second Annual Conference of the Association for Bahá'í Studies–Japan, Feb. 20–21, 1993, Tokyo).

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4. The Bahá'í Administrative Order is explained in depth by Shoghi Effendi in *The World Order of Bahá'u'lláh*, and is described generally in introductory books on the Bahá'í Faith. See, for example, Hatcher and Martin, *The Bahá'í Faith: The Emerging Global Religion*; Huddleston, *The Earth is but One Country*.

Continuing in the effort to classify the laws of *The Kitáb-i-Aqdas*, those in the third category mentioned above (laws concerning society) can be further classified into the various legal categories known in national systems today. A brief survey of how this can be done will show that the laws of *The Kitáb-i-Aqdas* can be viewed as the seeds for development of various fields of law, or as constitutional minimum requirements in those fields.

The first category into which the largest portion of the laws would fall is family law, encompassing engagement, marriage, and divorce. Next might be criminal law, including all of the references in *The Kitáb-i-Aqdas* to the following: arson, murder, theft, assault, involuntary manslaughter, non-medical use of habit-forming substances, gambling, carrying arms, and the prohibition of slave trading. In the field of wills and estate law, *The Kitáb-i-Aqdas* sets forth the obligation to write a will, confirms each person's unfettered jurisdiction over disposal of his or her estate (after the payment of debts), and specifies a detailed system of intestate succession (that is, the rules by which an estate is distributed in the absence of a valid and enforceable will). In the area of tax law, *The Kitáb-i-Aqdas* establishes two very different regimes. One is *Ḥuqúqu'lláh*, which resembles in form a net assets tax, but which is in the nature of a spiritual obligation and explicitly must not be enforced by society in any way, nor even individually solicited. The other is *Zakát*, a future tax on certain categories of income, details of which have not yet been specified. With respect to the law of trusts, *The Kitáb-i-Aqdas* asserts the obligation of the trustee to preserve the value of the entrusted property, which may be regarded as the fundamental principle in this field. Regarding property law, the only explicit references seem to be to the disposition of lost property and treasure trove, but other provisions relating to inheritance, *Ḥuqúqu'lláh*, and *Zakát* are laden with implications for the development of a system of private ownership. In the area of procedural law, we find the criterion for a just witness, that is, that he or she have a good reputation among the people regardless of faith or creed.<sup>5</sup>

The purpose of this brief review is to show, with respect to the specific laws in *The Kitáb-i-Aqdas*, the scope of what topics are and are not expressly included in comparison to a fully developed contemporary legal system. From this point of view there are enormous gaps in subject matter. For example, there are no laws explicitly regarding contract law. We are reminded again that *The Kitáb-i-Aqdas* is not a code of laws but a constitution—establishing the unchangeable foundations of a legal order, and guiding the process and content of its further development. Any subject that is not addressed in a constitution is left to the law-making institutions to create and to change as circumstances require. This process of law making will be largely an effort to extrapolate rules

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5. Since various aspects of the laws referred to above are found in multiple scattered paragraphs of *The Kitáb-i-Aqdas*, citations have not been given. They can be located easily through the detailed index.

and procedures from the general principles built into the constitution and legal system (addressed in the following section). In this example, the most general level of principles in *The Kitáb-i-Aqdas* that would be relevant to contract law might be its exhortations to exhibit virtues such as truthfulness, trustworthiness, fairness, and courtesy. Surely various systems of contract law could be built in an attempt to incorporate these multifaceted values. Fairness, variously interpreted, informs all contemporary contract law systems of "civilized nations," which systems are in fact surprisingly similar even though they come from many different cultures and traditions. But courtesy? Truthfulness? The standards for implied warranties in sales agreements, or for what constitutes "good faith" in performing contractual obligations, might well be considerably higher than they are in most current systems.

Thus, in its fundamental legal character *The Kitáb-i-Aqdas* would appear to be constitutional, establishing the institutions, the controlling principles, and the legal parameters for a universal system of governance. Woven inextricably with these are the devotional and personal laws essential to individual spiritual transformation.

## Principle and Law

The relationship between principle and law defies any precise explanation, but it must be addressed in order to show how a legal system differs from a simple set of rules, such as applies to a game of chess or Monopoly. To view law as a list of rules is to miss something essential to the nature of law. To view *The Kitáb-i-Aqdas* this way would be equally misleading.

Interpreting and applying law is not a science amenable to objective measurement and mathematical precision. It depends not only on reason and logic but also on the uniquely human faculties of judgment and intuition. How a system of laws actually works in a given society is a function of the human values and social context in which it is embedded. Two nations with very similar constitutional provisions can have very different legal practices. A well-known example is criminal procedure in Japan and the United States. The provisions in the constitutions of the two nations governing the rights of a criminal defendant are basically the same (compare *Kenpo* [Constitution] arts. XXXI–XL [Japan] with *U.S. Constitution* amend. IV, V, VI, VIII), due to the fact that the United States essentially wrote Japan's new constitution following the Second World War. Nevertheless, the practices that have evolved under each, and what the two respective court systems have determined to be constitutional, are not at all the same. In its actual criminal procedure Japan has not fully abandoned its former inquisitorial system in favor of the adversary system (Tanaka and Smith, *The Japanese Legal System* 812). These differences are generally attributed in turn to the stereotypical individualism and rights orientation in the United States, and to the stereotypical hierarchy and group



orientation in Japan. The lesson here is that it is impossible to read a code of laws, much less a constitution, and have a clear vision of how it will work in society without having considerable information about the context of widely shared fundamental premises and values.

For another example, in 1896 the U.S. Supreme Court concluded that the constitutional mandate of “equal protection of the laws”<sup>6</sup> permitted racially segregated schools and public facilities, relying on the pernicious doctrine of “separate but equal” (*Plessy v. Ferguson*, 163 U.S. 537 [1896]). As long as segregated facilities like trains and schools were equal (which in fact they were not), separating the races did not deprive any person of the equal protection of the laws. About sixty years later, in 1954, that same Court (still composed of nine white men) declared unanimously that separate educational facilities for children of different races are inherently unequal and do permanent damage to the self-esteem of children of the minority race (*Brown v. Board of Education*, 347 U.S. 483 [1954]). The Court held that to segregate schools racially is unconstitutional, thereby initiating the long legal and social struggle to integrate American public schools. In the two cases the Supreme Court was interpreting the same phrase in the Constitution, trying to be faithful to the intent of its framers, but in radically different eras of U.S. history, informed by different human values and principles.

The principles that find their way into legislation or court decisions are generally those which happen to be associated with powerful social groups, whose interests are in fact represented in government. This often does not bode well for the rest of humanity. The beauty of the embryonic system of *The Kitáb-i-Aqdas* is that the principles which set the context for its further development, interpretation, and application are explicit, and often elaborated in considerable detail in *The Kitáb-i-Aqdas* and in other Bahá'í writings. The underpinnings of the system are not left to chance. These principles are universal, comprehensive, and immutable. Shoghi Effendi makes a point of distinguishing laws from principles and states that both together “constitute the warp and woof of the institutions upon which the structure of [Bahá'u'lláh's] World Order must ultimately rest” (*The World Order* 199). *The Kitáb-i-Aqdas* and other Bahá'í writings are replete with principles relevant to the evolution of a system of law and governance, from the highly specific to the broad and all-encompassing. A few examples follow.

At the most specific level, *The Kitáb-i-Aqdas* appears to incorporate some of the most basic of the “general principles of law recognized by civilized nations,” the term used in the Statute of the International Court of Justice (59 Stat. 1055, T.S. No. 993, 3 Bevans 1179, art. 38[1][c]). For example, the principle of proportionality, that penalties of any sort depend on the degree of

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6. “No State shall . . . deny to any person . . . the equal protection of the laws” (*U.S. Constitution* amend. XIV).

the misconduct, appears in the reference in *The Kitáb-i-Aqdas* to the penalties for assault.<sup>7</sup> Another example concerns the closely related doctrines of excuse and justification, i.e., “I did the prohibited act (or failed to perform an obligation) but for a certain good reason, so I should not be found guilty or held liable.” Accordingly, *The Kitáb-i-Aqdas* generally forbids carrying arms (para. 159), yet self-defense is justified (note 173). The doctrine of excuse is also incorporated in the provisions stating that someone who falls short of certain standards of cleanliness “with good reason shall incur no blame” (para. 74), and in allowing that people with insufficient means to renew the furnishings of their homes at regular intervals “hath been excused” (para. 151). A final example of a specific legal principle is the *mens rea* concept in criminal law, which requires that for most crimes the defendant must have had a certain level of intent to commit the criminal act. *The Kitáb-i-Aqdas* incorporates this requirement when it distinguishes between “deliberately” and “unintentionally” taking another’s life, i.e., between murder and involuntary manslaughter (paras. 62, 188), and in prescribing criminal penalties for the “intentional” destruction of a house by fire (para. 62).

Moving to a more general level of principles, there is the pervasive notion of the unity of science and religion. The legal system envisioned in *The Kitáb-i-Aqdas* cannot be expected to evolve in some kind of ethereal vacuum removed and apart from the rich variety of existing legal traditions and experience from around the world. *The Kitáb-i-Aqdas* states that the Creator has “assigned to every end a means for its accomplishment” (para. 160), has enjoined the people to resort to competent physicians when ill (para. 113), has confirmed the use of “material means” (para. 113), and has counselled his followers to study sciences which further the progress and advancement of society (note 110). As the legal system of *The Kitáb-i-Aqdas* is further developed, the responsible Bahá'í institutions will be able to draw upon the collective legal experience of many generations in a wide variety of cultures.

A panoply of other principles of Bahá'u'lláh, many of them enumerated in *The Kitáb-i-Aqdas* itself, will have a direct bearing on the process of building world order and on what can be considered “constitutional” in the Bahá'í legal system. To mention just a few: Authority is to be exercised by elected institutions free of the corruption of campaigning, institutions whose individual members have no separate authority whatsoever. Decisions are made by a specified process of group consultation, striving for unanimity but accepting a majority vote (para. 30 & note 52). Violence, force, and constraint are condemned (note 170), the Islamic law of holy war is abrogated, and fellowship with the followers of all religions is enjoined (note 173). Governments are besought to expend resources for the good of the people instead of for armaments, and a system of international collective security is envisioned in

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7. “The penalties for wounding or striking a person depend upon the severity of the injury . . .” (Bahá'u'lláh, *Kitáb-i-Aqdas*, para. 56).

which “force is made the servant of Justice” (note 173). Oppressive, tyrannical, and unjust rulers are condemned and the reins of power are to fall into the hands of the people (paras. 88, 89, 93).

Both transcending and permeating the system as a whole is the principle of the unity of humankind. We are “all the leaves of one tree and the drops of one ocean” (Bahá'u'lláh, Tablet of *Ishráqát*, in *Tablets of Bahá'u'lláh* 129). “It is not for him to pride himself who loveth his own country, but rather for him who loveth the whole world” (Bahá'u'lláh, *Lawḥ-i-Maqṣúd*, in *Tablets* 167). The implications of this principle of unity in creating a legal system go far beyond, and may prove to have a fundamentally different character from, the meager standards of “equal protection of the laws” known in present-day constitutions. The latter are designed simply to prohibit governments (not people) from discriminating on the basis of race or certain other inborn human characteristics. The possibility of designing a legal system intended to promote unity and value diversity excites and challenges the legal imagination.

Throughout Bahá'u'lláh's writings are references to the preeminence of the principle of justice. He has even named the primary institutions of his World Order “Houses of Justice.” Bahá'í scholars are now only beginning to study seriously these many passages and to relate them to secular legal philosophy, and no attempt will be made to do so here, but one meaning must be mentioned briefly. Bahá'u'lláh writes in *The Hidden Words*:

The best beloved of all things in My sight is Justice; . . . By its aid thou shalt see with thine own eyes and not through the eyes of others, and shalt know of thine own knowledge and not through the knowledge of thy neighbor. . . . Verily justice is My gift to thee and the sign of My loving-kindness. (3–4)

He writes further, in the Words of Wisdom, “The essence of all that We have revealed for thee is Justice, is for man to free himself from idle fancy and imitation, discern with the eye of oneness His glorious handiwork, and look into all things with a searching eye” (Bahá'u'lláh, *Aṣḥ-i-Kullu'l-Khayr* [Words of Wisdom], in *Tablets* 157). It seems from these two passages that one aspect of justice is seeing with pure vision: judging and evaluating claims with an eye free of preconceived notions, prejudice, and prejudice, free from all of the conditioning we are subject to simply by virtue of the place and time in which we happen to be born.<sup>8</sup> One cannot read *The Kitáb-i-Aqdas* without sensing the need to move beyond such limitations.

One example of how our conditioning affects our reading of *The Kitáb-i-Aqdas* relates to the law of “dowry,” as it appears in the English translation. A

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8. Living in Japan I have become acutely aware of how profound and pervasive such conditioning is, as I try to understand the thoughts and behavior of people who have grown up with very different mental maps about almost everything.

typical Western response to the notion of dowry is likely to be anything but openminded. This practice is closely associated in some minds with bride burnings and all sorts of abuse of women. But those who can release themselves from such Pavlovian responses can perhaps begin to "see with their own eyes." The dowry, of course, is a practice in many diverse cultures and takes many forms. Bahá'u'lláh has redefined the dowry as a gift from the groom to the bride. It is not a gift from the bride's family to the groom, the sort of dowry which in some places has been associated with the atrocity of bride burnings. Nor is it a gift from the groom to the bride's parents, the sort of dowry referred to as a "bride price," which carries disturbing implications of the wife's becoming the husband's property. The dowry ordained in *The Kitáb-i-Aqdas* is a gift from the groom to the bride herself, the amount of which is measured by the value of stated quantities of gold or silver, and payment of which can be deferred if financially necessary (*Kitáb-i-Aqdas*, para. 66 & notes 93–94). This dowry can range from a little over two troy ounces of silver to about eleven troy ounces of gold. It seems not entirely unlike the Western custom of engagement and wedding rings. Often the amount of a dowry, or the size of the diamond in an engagement ring, have been converted into status symbols, flaunting the wealth of the groom. The dowry as stipulated in *The Kitáb-i-Aqdas* is protected from this abuse, however, by the fact that a maximum amount is specified (approximately eleven troy ounces of gold) and by Bahá'u'lláh's words that it is better for a man to content himself with payment of the minimum amount (para. 66 & note 95). He then adds (lest we again succumb to the tendency to become preoccupied with rules and forget the spirit?) that God "enricheth whomsoever He willeth through both heavenly and earthly means, and He, in truth, hath power over all things" (para. 66).

Those who aspire to be world citizens need to understand other peoples and to open their minds to others' experience. Studying *The Kitáb-i-Aqdas* gives one no choice but to engage in that process. Laws that seem perfectly understandable to one people may seem very strange to another. On the one hand, we read that confession to and seeking absolution of one's sins from another person is prohibited (para. 34 & note 58). In the West we are familiar with the Catholic practice of confession to priests. On the other hand, we read that Bahá'u'lláh has abolished the concept of ritual uncleanness of certain things and people (para. 75 & notes 20, 103, 106) and that sable fur and bones do not invalidate our prayers.<sup>9</sup> That we wonder about, except for the most educated among us, because we cannot imagine what fur and bones could have to do with prayer. Others might wonder why a person would ever feel compelled to seek forgiveness from someone they never harmed. Bahá'u'lláh is

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9. *Kitáb-i-Aqdas*, para. 9. As explained in *The Kitáb-i-Aqdas*, note 12, in some earlier religious beliefs, wearing the fur of sable or certain other animals, or having certain objects like bones on one's person, was held to invalidate one's prayer.

relentlessly challenging aspiring world citizens to rise above ourselves and our own particular variant of the human condition. Those who have seen this horizon find it impossible to go back to the narrow thinking of the past.

The final issue to be addressed concerning the relationship between law and principle is the subject of women in *The Kitáb-i-Aqdas*. It also relates directly to this requirement of justice that we purify our vision, or, in Bahá'u'lláh's words to a "true seeker": "He must so cleanse his heart that no remnant of either love or hate may linger therein, lest that love blindly incline him to error, or that hate repel him away from the truth" (Bahá'u'lláh, *Kitáb-i-Íqán* 192). For some it may be difficult to understand why there are a handful of distinctions in Bahá'u'lláh's laws between men and women, while it is also clear from the Writings that the spiritual and social equality of men and women is one of Bahá'u'lláh's most fundamental principles. In *The Kitáb-i-Aqdas* there are exemptions for women from certain obligations related to prayer, fasting, and pilgrimage (optional exemptions only, not prohibitions [note 20]), some differences between male and female relatives in inheritance if there is no valid will, eligibility for election to the Universal House of Justice, and a few distinctions related to marriage.

Many of us (including this writer) have been conditioned by our experience to see any distinction in treatment between men and women as a badge of female inferiority. We have ample reason to think this way, since in the societies in which we live it has almost always been true. These societies are permeated with the psychology and practice of paternalism and male domination. Both men and women are victims of this thinking, until we consciously strive to change it in ourselves. In struggling against these social patterns, we often find that we come to hate the ingrained attitudes that perpetuate sexual inequality. This feeling, along with the fear that this abhorrent system will continue, may be the sort of hatred which can "repel us away from the truth" and interfere with understanding the gender-based distinctions in *The Kitáb-i-Aqdas*. A brief digression may be useful to explain this.

Within the constitutional concept of "equal protection of the laws" mentioned earlier, groups of people may be classified based on some characteristic and may be treated differently under the law only if that classification is rationally related to a legitimate government interest. For example, it is constitutional to require, in the interests of safety, that people be of a certain age to get a driver's license; it would not be constitutional to require that they have blue eyes. In U.S. constitutional law, if the classification itself is "suspect"—that is, based on race or national origin—then the government has a heavier burden of proof and must show that such classification is not just rational but is "necessary" to a "compelling" government interest. Because it is virtually impossible to satisfy this burden, laws that make distinctions based on race or national origin have been repeatedly struck down by U.S. courts as unconstitutional. In current U.S. practice, the burden of proof that must be met

in order to uphold laws making distinctions based on gender is lighter than in race cases but heavier than the simple test of "rationally related."<sup>10</sup>

If one were to describe the gender-related provisions of *The Kitáb-i-Aqdas* in the language of constitutional law, it could be said, first, that Bahá'u'lláh has constitutionally guaranteed the equality of the sexes and, second, that Bahá'u'lláh has also determined that the limited distinctions between men and women in *The Kitáb-i-Aqdas* are necessary to an important spiritual and/or social purpose. Unlike the United States government, however, Bahá'u'lláh has no duty to prove to Bahá'ís the necessity for such distinctions, though individuals may discern reasons for themselves. In law, equality and distinction are not necessarily mutually exclusive. Equality is anything but a simple concept and has been the subject of extensive and fascinating philosophical thought. The result of efforts to understand these provisions in *The Kitáb-i-Aqdas* may hopefully be a deeper understanding of the meaning of gender equality in the Bahá'í writings.

Turning again to the social context in which laws are applied, it must be recalled that the future society envisioned is one in which women are participating "fully and equally in the affairs of the world" ('Abdu'l-Bahá, *Promulgation* 135), as the "peers of men" (*Promulgation* 375). 'Abdu'l-Bahá has written that when this occurs, "when women . . . enter confidently and capably the great arena of laws and politics, war will cease; . . ." (*Promulgation* 135). He refers to the gender distinctions in the Writings as "negligible" (Bahá'u'lláh, *Kitáb-i-Aqdas* 7). The Universal House of Justice has written:

The denial of such equality [between the sexes] perpetrates an injustice against one half of the world's population and promotes in men harmful attitudes and habits that are carried from the family to the workplace, to political life, and ultimately to international relations. There are no grounds, moral, practical, or biological, upon which such denial can be justified.<sup>11</sup>

Whatever the spiritual and/or social purposes of the few gender distinctions in Bahá'í law, they apparently are fully consistent with the evolution of a society in which women and men are equally accomplished in civic life; and with the wide spectrum of possible implications this condition holds for education and family life.

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10. For a comprehensive but succinct explanation of the concept and application of equal protection, with numerous case references, see Barron and Dienes, *Constitutional Law in a Nutshell* 157–219.

11. Universal House of Justice, letter dated Oct. 1985. This passage and the preceding excerpts from *The Promulgation of Universal Peace* are reprinted in *Women: Extracts from the Writings of Bahá'u'lláh, 'Abdu'l-Bahá, Shoghi Effendi and the Universal House of Justice* 39, 41–42.

Laws cannot be divorced from principles any more than a tree can be severed from its roots. A legal system resembles a living organism much more closely than it does a game of chess. Rational people will naturally have different views in specific cases on how a principle may be applied to draft or interpret a law. This is largely what comprises the legislative process and jurisprudence, respectively. For example, if a group undertakes to draft a law to protect clean water supplies, assuming further that the members first have reached substantial agreement on the principle that “the polluter pays,” what mechanisms should they include in the law for testing the water, investigating industrial plants, and assessing liability? How intrusive the investigation and how extensive the liability? Additional principles must be articulated to resolve these questions. Or, when a court is required to interpret the “free speech” provision of some constitution and endeavors to balance the principles of freedom of the press and individual privacy, how do the judges decide whether the press went too far in publishing details of Ms. Doe’s financial affairs? On any of these issues rational people, applying the same basic principles, will differ, usually coming up with a variety of plausible conclusions.

Such a variety of opinion also is essential to the process of Bahá'í consultation and institutional decision-making. But since Bahá'í consultation is built on the substantive principles expressed in the Bahá'í writings—principles which are explicit, comprehensive, and universal—this diversity of opinion will be focused and, indeed, “principled,” not the rancorous, self-serving sort that inevitably leads to fracturing and fragmentation. The hope and promise of Bahá'u'lláh’s law is that such principled diversity of opinion can be used constructively to build the most just system that divine guidance operating on human intelligence and spirit can produce.

## **Obedience and Legitimacy**

The third and last theme relates to current thinking in international law about concepts of obedience to law and legitimacy of legal systems. The developments that certain international law scholars are now describing and analyzing would appear, from a Bahá'í perspective, to be early steps in the maturation of humankind and in the building of the World Order envisioned and ordained in *The Kitáb-i-Aqdas*.

We begin with the question Why do people obey laws? This is a favorite question to ask students in international law classes. Usually the first response is Because I’ll be arrested if I don’t obey, in other words, because of the police power of the state and judicial enforcement of the laws. But then getting more specific, when asked why they don’t commit a robbery or attack someone, a student responds, “I would never do that, even if I were sure of not getting caught.” Why? “Because it’s wrong.” Ah, it’s wrong. So some laws we obey because they coincide with our values. What about red lights? Students

generally seem to agree that going on green and stopping on red is not a moral issue (except to the extent that they place a moral value on the principle of obedience to law in general). Rather, they see the practical utility of stoplights at intersections to prevent accidents, i.e., to create order.

It becomes apparent that the reasons we obey laws vary, depending on the law. What about pollution control regulations? Enforcement is probably essential there. What about income tax law? About this time a student usually says, Well, I don't agree with all of the tax law, but I know the government needs to tax people and this is the law that Congress passed, so I follow it. But I don't like it. The student is now beginning to understand the multifaceted concept of legitimacy: that laws are often obeyed not because of the likelihood of enforcement nor because they are wholly accepted as morally correct, but rather because they are viewed as "legitimate" by those to whom they are addressed.

What is "legitimacy"? As the term is used by Thomas Franck, it is the capacity of a law or rule to exert a pull to compliance, instilling in people the sense of a non-coerced obligation to obey.<sup>12</sup> The stronger this pull to compliance (i.e., the stronger the legitimacy of the rule), the greater any countervailing force will have to be to induce disobedience. Jürgen Habermas writes:

Legitimacy means that there are good arguments for a political order's claim to be recognized as right and just; a legitimate order deserves recognition. . . . [L]egitimacy is a contestable validity claim; . . . [H]istorically as well as analytically, the concept is used above all in situations in which the legitimacy of an order is disputed . . . . This is a *process*.<sup>13</sup>

The central question here is, What are these "good arguments" for a political order's claim to be recognized? Or, in Franck's terminology, What is it about a law or rule that gives it this capacity to exert a pull to compliance? In national legal systems, where enforcement is always lurking, it is often difficult to isolate the non-coercive factors that induce obedience. That is why it is particularly interesting and useful to study these factors in the context of international law, where enforcement mechanisms are generally lacking. Franck begins with the notion that we should not be surprised that states violate international law; we should rather be surprised that (in Louis Henkin's famous

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12. Franck, *Power of Legitimacy* 43. Prof. Franck is a most highly regarded U.S. international law scholar and has served as editor-in-chief of the *American Journal of International Law*.

13. Habermas, *Communication and the Evolution of Society* 178–79 (emphasis in original). Note that in the above passages Franck is addressing the legitimacy of a law or rule, Habermas the legitimacy of a political order as a whole. These two questions, though distinct, are tightly connected. For present limited purposes, little will be made of this distinction.



phrase) “most states follow most of the rules most of the time,” and we should try to find out why.

Two ideas are often intertwined. One is legitimacy of a law or rule based on its source; the other is legitimacy based on the content or nature of the law or rule itself, independent of its source.<sup>14</sup> Although in practical terms the two are mutually reinforcing, they are also analytically and functionally distinct. Separating the two clarifies matters considerably.

In the first case, which will be referred to here as “source legitimacy,” the qualities of legitimacy adhere to the authority issuing the law or rule, and to the characteristic process through which such authority issues laws. In the pure case, the legitimacy of the issuing authority is claimed to be sufficient alone to generate a sense of obligation to comply. Parents try to invoke this sort of legitimacy regularly, every time a child asks Why do I have to do that? and the parent responds Because I said so! In the legal context, this issue merges into the fundamental and recurring question in legal philosophy, which is, What is law, and where does it come from? On the one hand, theories of natural law, which have been around for centuries, posit that law is either of divine origin or can be discerned by powers of reason from the inescapable nature of the human condition. On the other hand, the theory of positivism, developed by John Austin in the 19th century and elaborated with more sophistication in this century by H. L. A. Hart, maintains essentially that law is what a sovereign says it is; law is a command of the sovereign backed up by force (Hart, *Concept of Law*). It is clear, then, why positivists say that international law is not law at all.<sup>15</sup> This approach also leads to the conclusion that there is no necessary connection whatsoever between law and morality.<sup>16</sup>

In explaining legitimacy, the point is that if the authority or sovereign (divine or temporal) which issues a rule is accepted as legitimate, i.e., if a rule comes

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14. Franck, “Legitimacy in the International System” 705, n. 10. See Franck, *Power of Legitimacy* 17–18, for an overview of three categories of legitimation theory: Max Weber’s specific process approach, Habermas’s procedural–substantive theory, and the neo-Marxist approach based principally on outcomes. To focus instead on the distinction between source (which would include many considerations of process) and content (which would include the nature of the outcome) cuts within and across these categories and may prove useful in explaining attitudes and behavior in response to law.

15. “[T]he law obtaining between nations is law (improperly so called) set by general opinion. The duties which it imposes are enforced by moral sanctions: . . . by fear on the part of sovereigns, of provoking general hostility . . .” (Austin, *Province of Jurisprudence Determined* 208).

16. At the Association for Bahá'í Studies Conference in 1982, Judges James and Dorothy Nelson presented a comprehensive and insightful paper entitled, “Natural Law Revisited,” which explains these theories in greater detail and suggests how the Bahá'í system of law has the potential to bring together various secular and theological schools of natural law theory. (Audiotape available from the Association for Bahá'í Studies, Ottawa.)

into being in compliance with secondary rules about how and by whom rules are to be made and interpreted (whether as “natural” or “positive” law), then the rule has a strong claim to be regarded as legitimate. In the international system, for example, in the absence of a rule-issuing sovereign, we can substitute the recognized sources of international law, that is, treaties and the customary practices of states. If an international norm comes into being through such recognized processes (so-called secondary rules of norm creation), it will have a strong claim to legitimacy. This is “source legitimacy” and is apparent in two of Franck’s factors of legitimation.<sup>17</sup>

The other very different type of argument is that legitimacy of a law or rule is based on its nature or content. Qualities of legitimacy inhere in the law or rule itself, analytically independent of its source. This will be referred to as “content legitimacy.” Franck’s two other legitimizing factors belong here. One is “coherence”: “Rules, to be perceived as legitimate, must emanate from principles of general application” (Franck, *Power of Legitimacy* 152). Exceptions to rules are of course possible, but they must be capable of principled justification. The other factor he calls “determinacy,” which relates to the degree of clarity of a rule or of mechanisms to interpret and apply it (Franck, *Power of Legitimacy* 50–66). Neither of these factors has much to do with the source of the rule or the process by which it has come into being.

At this point, one might wonder What happened to justice? People may disagree about notions of justice, but *if* a rule is widely perceived to be just, won’t this be a factor exerting a pull to compliance? Ronald Dworkin, the well-known contemporary legal philosopher, writes that habitual obedience (to national legal systems) can be secured only if the quality of governance exhibits characteristics he identifies as fairness, justice, and integrity (Dworkin, *Law’s Empire* 176–224). These would, again, be aspects of content legitimacy. Nevertheless, Franck goes to great lengths to distinguish legitimacy from justice in the international context and to show why Rawlsian notions of justice cannot apply to an international community composed of states (Franck, *Power of Legitimacy* 208–46). He acknowledges that both legitimacy and justice exert a pull to compliance but for very different reasons. He believes that the two concepts have no necessary relationship to each other and that the international community—a highly morally diverse community—is better served at this stage by keeping them separate. The beauty of the concept of international legitimacy, he argues, is that it suggests the emergence of an orderly international community functioning by consent and validated obligation rather than by coercion. Moreover, this order can be increased by deliberate steps to strengthen the legitimacy of international rules and institutions without the need for a

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17. Franck, with infinitely greater precision, identifies two aspects of source legitimacy, which he calls “symbolic validation, ritual and pedigree” and “adherence to a normative hierarchy” (Franck, *Power of Legitimacy* 91–110, 183–94).

universally agreed morality or standard of justice (Franck, *Power of Legitimacy* 710–11). He maintains that an international order cannot yet be based on a common moral foundation of justice:

The evolution of a system of global justice, therefore, must await, and go hand in hand with, the system's transformation from one based on states to one based on the primacy of world government and global citizenship. Universal *individual* rights may be an historic imperative whose day will come; but it is not yet fully upon us.<sup>18</sup>

Franck is anticipating here a possible future in which global justice is linked with universal human rights and global citizenship. This approaches the vision of world order in *The Kitáb-i-Aqdas* and is a hopeful but nevertheless imaginable outcome of the transformation that is now occurring in international law and society.

Modern international law has grown up out of the consistent practices of states in their relations with one another. What began as customs, primarily among the rulers of the states of Western Europe, gradually became widely accepted as standards of law and has grown into the extensive body of international customary and treaty law we have today.<sup>19</sup> From the beginning of this process, the most fundamental principle has been the sovereignty of each state, that is, that a state has complete freedom of action in international law to deal with its own territory, with its own nationals, to enter into legal relationships with other states, and even (until this century) to wage a war of aggression. Thus, it is traditionally stated that international law can only be created by the consent of states and that states are the only *subjects* of international law: that is, the legal entities for which international law creates rights and upon which it imposes duties. A corollary of this is that international law can only deal with topics of international concern, never with matters of domestic jurisdiction.

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18. Franck, *Power of Legitimacy* 233. Franck has been criticized in some quarters, however, for trying to divorce his factors of legitimacy so completely from notions of contextual justice. His factors often do, in fact, depend for their operation at least in part on some minimum satisfaction of the perceived demands of justice. See Koskenniemi, Book Review of Franck, *The Power of Legitimacy Among Nations* 175–78.

19. This is not to imply that the model of European state relations has been accepted worldwide without question or change. In particular, newer states, which did not exist in the earlier stages of the development of international law and therefore had no role in its formation, have challenged the validity of the system as a whole. (This can easily be understood as an issue of source legitimacy as discussed above.) Many points of international customary law are not settled because of the persistent lack of agreement among states with diverse political–economic systems and legal traditions. For an overview of issues and viewpoints, see Snyder and Sathirathai, eds., *Third World Attitudes toward International Law*.

The development that is profoundly altering some of these basic assumptions in the structure of international law is the emergence of international human rights law. Until the Second World War, there was very little human rights law that could be called "international." It concerned primarily the treatment of civilians and prisoners in time of war, and the treatment by a government of nationals of a foreign state.<sup>20</sup> But international law could not recognize, because of the doctrine of national sovereignty, the right of any individual against any state, one's own or another. The positivist theory was in ascendance, and how a state treated its own citizens was purely a matter of domestic jurisdiction, governed by a state's own laws (Sieghart, *International Law of Human Rights* 13–14).

Then the world witnessed the atrocities committed by Nazi Germany, many of which were completely legal under German law, enacted by a legislature lawfully installed under the constitution of a sovereign state. The strict application of legal positivism gave way before the conviction that what happened in Germany (and in some other parts of the world) was immoral and that the community of nations must never permit it to happen again. The United Nations Charter was written to include as one of its purposes the promotion of human rights and fundamental freedoms "without distinction as to race, sex, language, or religion"<sup>21</sup> and the Universal Declaration of Human Rights was adopted in 1948.<sup>22</sup> Since then a series of multilateral treaties have been concluded, committing states to protecting a wide range of rights.<sup>23</sup> Most of these treaties are long on listing rights and short on implementation methods. (The notable exception is the European Convention,<sup>24</sup> which creates an effective

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20. If a state failed to protect the life, liberty, or property of an alien within its territory, the alien's own state (but not the alien personally) had a claim against the infringing state.

21. Charter of the United Nations, art. 1(3), 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (*entered into force* Oct. 24, 1945).

22. G. A. Res. 217 (III), U.N. Doc. A/810, at 71 (1948), adopted by the U.N. General Assembly on Dec. 10, 1948. Forty-eight states voted in favor, none against, and eight abstained.

23. Two of the most comprehensive are the International Covenant on Civil and Political Rights (999 U.N.T.S. 171, *entered into force* Mar. 23, 1976) and the International Covenant on Economic, Social and Cultural Rights (993 U.N.T.S. 3, *entered into force* Jan. 3, 1976). Other examples include the International Convention on the Elimination of All Forms of Racial Discrimination (660 U.N.T.S. 195, *entered into force* Jan. 4, 1969) and the Convention on the Elimination of All Forms of Discrimination against Women (G. A. Res. 180 (XXXIV) 1979), *entered into force* Sept. 3, 1981, reprinted in *International Legal Materials* 19 (1980): 33–45.

24. European Convention for the Protection of Human Rights and Fundamental Freedoms, 312 U.N.T.S. 221, E.T.S. 5, *entered into force* Sept. 3, 1953 and subsequently amended by Protocols Nos. 3, 5, and 8.

European Court of Human Rights and in some cases gives individuals the right to sue.) But these treaties have nonetheless promoted substantial change in the practices of many states, through reporting procedures and other non-coercive means that mobilize international opinion. Moreover, even for states that have not signed these treaties, certain basic human rights have come to be widely regarded as a part of customary international law binding on all states.

Something profound has happened here. A state is now considered accountable to the international community, under international law, for how it treats its own nationals. It can no longer be maintained that a government's treatment of its own citizens is a matter of purely domestic jurisdiction. How can this be? It is true that egregious violations of human rights (like genocide in Cambodia) often become transnational problems, due to the flight of refugees or civil violence that spills into neighboring countries. But international human rights law is not limited to such cases. It is in fact reaching behind the legal fiction of the state to protect people from their own governments. This is a radical departure not only from the amoral doctrine of legal positivism but also from the original precept on which international law has been built: unfettered state sovereignty. States are no longer the only subjects of international law. International human rights law puts the fundamental interests of human beings above the prerogatives of state governments. And, as some noted international law scholars such as Fernando Tesón are beginning to argue, it is laying the foundation for a universal morality, for universally accepted principles of justice. Human rights, it is argued, and not the rights of states, are emerging as the ethical foundation of international law and as the basis of any defensible moral theory of international law and relations (Tesón, "Realism and Kantianism" 118).

This is not just the hopeful theorizing of academic writers. What they are describing is a process and way of thinking that seems to be taking hold in the minds and actions of diverse peoples and states, related in part to the so-called global democratic revolution. An expectation is emerging among the community of states that a government seeking the validation of its empowerment must govern with the consent of the governed.<sup>25</sup> In other words, returning here to our theme, governments and laws that do not respect fundamental human rights are not legitimate, based on an analysis of their content rather than their source. State governments and their laws are increasingly judged by the community of nations against a minimal standard of justice embodied in the most widely accepted portions of international human rights law.<sup>26</sup>

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25. See the examples cited in Franck, "Emerging Right" 46.

26. The term "international human rights law" encompasses all of the treaties and customary law on the subject, some of which have only been accepted by and apply to a limited number of states. What is referred to here as the basis of an emerging universal standard of justice is the still somewhat amorphous core of rights which have received

Where do these standards come from? It has been said that when the industrial and scientific revolutions killed God they left a God-sized hole. Secular philosophers have labored diligently to identify a moral basis for human dignity (and thus for identifying human rights) that does not depend on the unique attribute of possessing a soul, and they have largely succeeded to the satisfaction of the international secular community. The ethics of Immanuel Kant, for example, are often viewed as an attempt to pursue Christianity by secular means. He identified the human capacity for rational choice as the attribute that makes humans autonomous and thus entitled to special moral protection.<sup>27</sup> As long as the international community does not try to look too closely at its reasons for upholding certain human rights—which reasons are likely to be diverse and inconsistent—it seems for the moment to be able to sustain consensus on some basic rights and the commitment to protect them. The most apparent risk to this process stems from the fact that the international community is so unevenly developed, in this moral dimension as well as economically and politically. The potential for disaster is obvious daily. One must look more deeply than to the nightly news to find the more hopeful signs.

To conclude, we can discern a process now of order in global political-economic life gradually increasing, in fits and starts, evidenced by a growing array of rules binding on states. To the extent that these rules are accepted as binding by those states it is because they are perceived to be legitimate, by virtue of some combination of their source and content, but in

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the support of almost all states and are considered binding on all.

The extent of international consensus on human rights should not be exaggerated. It is neither complete nor secure, nor does it always result in action to protect people. Much of international human rights law, like the rest of international law, has developed in the context of modern Western thinking. Discussion and debate continue on questions of individual vs. group rights, civil-political rights as distinct from economic rights, and the degree to which (let alone methods by which) a state is accountable to the international community for allegedly violating human rights.

Despite all this, it is evident that the notion of fundamental human rights has entered the arena of international political life and has become an inescapable part of any discussion of the merits and legitimacy of any particular government or social system. It is becoming increasingly difficult and fundamentally impractical for state governments to ignore them blatantly. Indications are that this process will only continue to grow. Whether or how quickly this global discussion will produce a useful working consensus specific enough to protect a broad spectrum of rights effectively, remains to be seen. See generally Sieghart, *International Law*; Meron, ed., *Human Rights in International Law*; Lillich, *International Human Rights*. For a range of non-Western views and experience, see the articles collected in Snyder and Sathirathai, eds., *Third World Attitudes*, Part IV.

27. Murphy and Coleman, *Philosophy of Law* 78–79. Rational beings exist as ends in themselves, not merely as the means to an end. They cannot be replaced because they have no equivalent and therefore possess “dignity” (Kant, *Foundations of the Metaphysics of Morals*, reprinted in *The Essential Kant* 295–360).

many cases still making no necessary or strong claim to justice or morality. We may also be able to discern the early stages of a succeeding step, the first inklings of a universal set of principles of justice, as yet scantily defined but visible in notions of human rights to the extent that they are now generally accepted. It is the claim of Bahá'u'lláh that the laws, principles, and institutions ordained in *The Kitáb-i-Aqdas* and his other Writings show the way to the further development of such universal principles of justice. It is Bahá'u'lláh's claim that only through the unity engendered by implementation of such principles will the future well-being of humankind be ensured, can civilization advance, and individuals and communities develop their full potential. Those who have accepted Bahá'u'lláh's claim see in the present chaos both the death of an old outworn world order and the glimmerings of the birth of the new, the traumatic adolescence of humankind.

For Bahá'ís, the legitimacy of *The Kitáb-i-Aqdas*, the strength of its claim to be obeyed and implemented, rests first on its Source. Those who recognize Bahá'u'lláh as the Lord of the Age observe his commandments "for the love of [His] beauty" (*Kitáb-i-Aqdas*, para. 4). "Whatsoever He, the Well-Beloved, ordaineth, the same is, verily, beloved" (para. 7). Recognition of Bahá'u'lláh and observance of his every ordinance are inseparable twin duties (para. 1). For them, also, the principles and laws of *The Kitáb-i-Aqdas* become the standard against which to evaluate all other claims: "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. . . . [T]he measure of its weight should be tested according to its own standard. . . ." (para. 99). This is faith.<sup>28</sup>

To those who do not recognize authority in Bahá'u'lláh, these statements are simply irrelevant. For them the legitimacy of the laws of *The Kitáb-i-Aqdas* cannot rationally flow from legitimacy of their source. In fact, thanks to centuries of human abuse of revealed religion, the suggestion of newly revealed divine law is likely to strike many as inherently *illegitimate*.<sup>29</sup> Nevertheless,

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28. It is significant that even in *The Kitáb-i-Aqdas* Bahá'u'lláh writes: "[Y]e [are] free to ask what you need to ask, but not such idle questions as those on which the men of former times were wont to dwell. . . . Ask ye that which shall be of profit to you in the Cause of God and His dominion, for the portals of His tender compassion have been opened before all who dwell in heaven and on earth" (para. 126). This would seem to reconfirm the balance between faith and reason, religion and science. As 'Abdu'l-Bahá has written, "[Humanity] cannot fly with one wing alone. If it tries to fly with the wing of religion alone it will land in the slough of superstition, and if it tries to fly with the wing of science alone it will end in the dreary bog of materialism" (qtd. in Esslemont, *Bahá'u'lláh and the New Era* 210).

29. To the uninitiated it should be pointed out that the Bahá'í system does not share certain characteristics that have so often redounded to the illegitimacy of systems of government claimed to be based on revealed religion. No living individual is claimed to be infallible nor does any one have the authority to interpret Bahá'u'lláh's revealed

*The Kitáb-i-Aqdas* also has a claim to legitimacy based on its content: as a constitution for world order, ordaining institutions, principles, and social laws which can inspire the further development of presently emerging universal principles of justice. To Bahá'ís, of course, it is no coincidence that principles fundamental to Bahá'u'lláh's World Order should now be advocated regularly in international fora as standards without which there is little hope for the future of humankind. To others, Bahá'u'lláh's system must prove itself on its merits if it wishes to be recognized as the "highest means for the maintenance of order in the world and the security of its peoples" (*Kitáb-i-Aqdas*, para. 2). To the extent that it is perceived to be just, inclusive, and irrevocably wedded to universal principles, it can be recognized as a legitimate system of governance. The strength of its claim will depend not only on what is written in *The Kitáb-i-Aqdas* but also on the behavior of Bahá'ís in their efforts to put the system into practice. Bahá'í communities and institutions today are still in their earliest stages of development, but they invite the study of those who would discern the potentialities latent within them.

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writings conclusively. There is no clergy or priesthood. Governance is in the hands of elected institutions. Matters of worship are governed solely by one's conscience. The individual search for truth is revered and defended. This system does not preach tolerance, but rather embraces the whole of humankind, all religions, races, cultures, and strata of society.



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