The Spiritual Assembly as Arbitrator

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`Abdu'l-Bahá said in Some Answered Questions, "When a difficulty occurs between two individuals with reference to private rights, it is necessary for a third to settle the question...." (P. 276) When in the U.S., He said, "It is necessary that the nations and governments organize an international tribunal to which all their disputes and differences shall be referred. The decision of that tribunal shall be final. Individual controversy will be adjudged by a local tribunal." (PUP, p. 301)

More than sixty years ago, Shoghi Effendi explained that for Bahá'ís, this local tribunal is the local spiritual assembly. In May, 1936, his secretary wrote, "The Guardian wishes to emphasize the importance of avoiding reference to civil courts of cases of dispute between believers, even in non-Bahá'í issues. It is the Assembly's function to endeavor to settle amicably such disputes, both in order to safeguard the fair name and prestige of the Cause, and to acquire the necessary experience for the extension of its functions in the future." (DG, p. 13)

How do you settle disputes amicably? In His Will & Testament, the Master said of nations, "Should differences arise they shall be amicably and conclusively settled by the Supreme Tribunal, that shall include members from all the governments and peoples of the world." (W&T, p. 13)

Dispute resolution is not amicable if it is ruinously expensive, if adversarial procedures increase hostility, and if long delay drags on the controversy. We hear that in our public court system a poor man cannot afford justice. The adversarial system is based on trial by combat in which each party tries to ridicule, intimidate and defame or at least discredit the other party. Shakespeare described the law's delay as among the sorrows of life.

Arbitration is known as an amicable way to settle disputes because of great savings in cost, because of emphasis on a search for truth rather than on hurting each other, with private hearings that avoid publicity, with informality of procedure that allows the parties "to unburden themselves in a way impossible in courts," and "speedy disposition of the dispute, which our courts, with their congested calendars, cannot even remotely match." (Separation Agreements & Ante-Nuptial Contracts, Chapter 29, Arbitration) Hearings may be held at the convenience of the parties and of the arbitrators, so that there is no disruption of business or of employment with loss of income. Hearings may be held at any place they wish, such as in a living-room, in an office or in a private room in a restaurant.

"Arbitration is the adjudication of a controversy by an impartial person, or by a board of impartial persons, whose decision is called an award and is final and binding. Unlike a dispute taken to court, arbitration is entered into voluntarily; the parties themselves define the issue, select the arbitrator or arbitrators, and prescribe the rules to be followed. Almost any dispute that can be litigated can be settled by arbitration if the two sides so desire.

"Since arbitration involves dispute determination, it is in the nature of the judicial process. It differs from mediation or conciliation through which the parties reach an agreement with the aid of a third person. In arbitration, the dispute is referred for adjudication, not for settlement by compromise." (Ibid.)

The main difference between arbitration and civil court is that one is private

and
the other is public. In education, we have private schools and public schools. Many
prefer private schools because they are free to experiment, free to be different, free to be
progressive, and not at the mercy of politics as public schools are. In private courts of
arbitration, there is freedom to select judges and to decide what rules to follow.
Bahá'ís
are free to choose the spiritual assembly to serve as a board of arbitrators, and we can
stipulate that proceedings shall follow the laws, principles and teachings of the
Bahá'í
Faith.

What is the attitude of government toward arbitration? That all depends on who makes the laws. Before 1920, with no legislation about arbitration, courts were free to
decide what position to take. Some judges were hostile. Probably they felt insulted and
jealous when merchants preferred others to judge their disputes. Also, they said
arbitration was redundant because after arbitration, if one party did not like the award he
could litigate in public courts. Advocates of arbitration talked to legislators and in 1920,
the State of New York enacted a law requiring courts to recognize an agreement to
arbitrate as binding on the parties. Did this violate anyone's rights? "This statute was
deemed not violative of a party's constitutional prerogatives to a jury trial, because such
constitutional rights are waivable, and the agreement to arbitrate implies such a waiver.

"Therefore, if arbitration is clearly and expressly provided for in the parties'
agreement, the arbitration will be considered the sole available remedy. Basically, the
rationale is that a party can relinquish the right to have future controversies litigated in
the civil courts.

"The conclusiveness of awards is based upon the principle that the parties having
chosen judges of their own and agreed to abide by their decision, they are

bound by their
agreement and compelled to perform the award." (Ibid.)

Since 1920, other states gradually adopted arbitration laws until now all 50 states
and the District of Columbia "have statutory schemes sanctioning arbitration and
providing procedures for converting the arbitration award into a judicially enforceable
judgment."

"The jurisdiction of arbitrators derives from and is restricted by the submission
agreement." "Arbitration is a creature of contract and a party cannot be compelled to
arbitrate unless he or she is a signatory of a contract calling for arbitration." (Ibid.)

What do Bahá'í writings say about the role of
Bahá'í institutions in dispute
resolution? In 1929, Shoghi Effendi wrote that a Bahá'í teacher in
Isfáhán "was . . .
highly elated to learn that the prestige, the integrity and ability of the local
Bahá'í
Assemblies in that province had of late stood so high that non-Bahá'ís, exasperated by
the corruption and incompetence of their own judges, had more than once freely
submitted cases of dispute to the judgment of the elected representatives of the
Bahá'í
community in their locality." (BA, p. 172) Fifteen days later, he wrote that "the
Bahá'ís
of Egypt . . . . have asserted their readiness and their qualifications to exercise the
functions of an independent Bahá'í court, . . ." (WOB, p. 11) Seven years later,
his
secretary wrote to an American, "The Guardian wishes to emphasize the importance of
avoiding reference to civil courts of cases of dispute between believers, even in non-
Bahá'í issues. It is the Assembly's function to endeavor to settle amicably such
disputes,
both in order to safeguard the fair name and prestige of the Cause, and to acquire the

necessary experience for the extension of its functions in the future." (DG, p. 13)

Eight years later, in God Passes By, he wrote of "Bahá'í elective Assemblies, now assuming the duties and functions of religious courts" in Iran. (P. 371) That same year (1944,) his secretary wrote, "All over the world the Guardian is constantly encouraging and enjoining the believers to learn to function according to Bahá'í laws and principles; members of Spiritual Assemblies must learn to face their responsibilities; individuals must learn to turn to them and abide by their decisions. When we realize that all marriages, divorces, disposal of inheritance, etc., are now handled in Egypt and Persia solely through the Assemblies and that the believers abide by their decisions, we see that in Western countries the friends still have a long way to go — the sooner they start the better for themselves and for the Faith." (LOG, p. 43)

In a letter to me, he emphasized the same theme two years later. His secretary wrote on his behalf, "The Guardian is constantly encouraging the friends and the Assemblies to fulfill their respective duties; the friends should learn to refer to, and lean on, their Assemblies, and the Assemblies should assume the responsibility of making decisions and carrying them out." (Light of the Pacific, #76, p. 4)

Pilgrims' notes are even clearer. Although not binding on us, we are welcome to read them and to think about them. May and Mary Maxwell (now Ruhíyyih Khánum) reported in their Haifa Notes of 1937 that the Guardian said, "The spiritual assembly's function is to help the community . . . . If appealed to they must settle disputes between individuals and non-Bahá'ís, between families. . . . The spiritual assembly has not only the right but the obligation to settle disputes if referred to them.

"If the individual, of his own accord, refers the matter to the S.A., they must handle it, not shirk it. In Persia the friends go with any problem to the S.A. In America they do not do it enough, particularly if the dispute affects the Cause. The

duty of the
S.A. is . . . to safeguard the Cause, the interests of the Cause have
precedence over the
interests of the individual and in such a conflict the individual must abide by
the decision
of the S.A., besides the S.A. must acquire enough experience to become a
Bahá'í
Court,
...in the future. . . . The first thing is to face, not shirk responsibilities;
second is to base
all their verdicts on justice, be animated by justice. Justice and not tempered
by mercy."
(Haifa Notes, Vol. II, pp. 4-5)

Agnes Alexander's 1937 pilgrim notes quote the Guardian as saying, "Divorce
although permissible is highly discouraged. The Assembly should solve such
cases, and
then they should obey and if not they must cease to be voting Bahá'ís." (P.
3)

Whenever people are able to agree, they don't need outside help. It is only
when
agreement is not possible that we need help. I made the mistake of marrying a
seriously
mentally ill woman. When a child was born, I decided I had to divorce for the
child's
sake, so I could raise him in a conflict-free environment.

Having read all of the above about how spiritual assemblies should solve
divorces,
I asked the N.S.A. for permission to have arbitration by the nearest local
Assembly.
Horace Holley wrote, "Divorce actions, after believers have completed a year of
patience,
can only be taken to the courts because no other agency can grant divorce. What
the
Guardian meant were matters like unpaid loans and other disputes which
Assemblies can
handle." Thinking otherwise, I asked the Guardian. He was far behind in his
correspondence, so months went by with no answer. I cabled him and received his
cabled reply, "APPROVE ARBITRATION." It was sent to me via Wilmette so a copy
would be in the Wilmette telegraph office. I telephoned the N.S.A. and
Charlotte Linfoot
answered the phone. I read the cablegram to her and she asked, "All right, what
would
you like the National Assembly to do?" I said, "I would like the N.S.A. to
appoint the
Spiritual Assembly of Albuquerque to be arbitrator of the terms of divorce

prior to going to civil court." She said, "All right, the National Assembly is in session right now, so I'll give them your message." In a couple of weeks, we received letters announcing that the N.S.A. had appointed the Spiritual Assembly of Albuquerque to be arbitrator of our terms of divorce.

At this point, we realized we were pioneering in a new field of Bahá'í Administration. Until then, the N.S.A. position had been that divorce arbitration by Bahá'í institutions in the U.S. was not possible. Suddenly this was reversed by the cablegram from the Guardian. There was no body of instruction on how a spiritual assembly should handle divorce. The local Assembly did not know what teachings to follow. I telephoned Horace Holley, who said that he did not know and invited me to make up a list of questions to ask the Guardian. He told me to submit my letter through the N.S.A., since the Guardian was many months behind in personal correspondence but answered N.S.A. correspondence promptly. I sent Mr. Holley my list of questions and in a few weeks he mailed me the Guardian's reply, dated November 5th, 1955.

His secretary wrote on his behalf: "Your letter of Oct. 3 has been forwarded to the beloved Guardian by the American N.S.A. as well as copy of document you enclosed.

"The Guardian has, at various times, given the N.S.A. certain brief instructions as to Bahá'í divorce; he does not consider that these should be amplified at the present time or elaborated, as it is premature.

"Bahá'ís should turn to their Assembly (first local and then National if necessary) in all questions of divorce. This is the advice he not only has given you and Mrs. Cornell, but all other Bahá'ís.

"He feels, as he has already stated, that you and Mrs. Cornell should seek the

advice of the Assembly in your particular case and, as believers, abide by it. It is not possible for him, obviously, to go into such details himself and arbitrate the cases of the Bahá'ís."

He did not answer any of my questions. However, his letter written just two years before his tragic death confirmed that divorce arbitration is correct. We were no longer an exception to the rule. He explained which Bahá'ís should turn to which Assemblies and in which questions of divorce: All Bahá'ís, first to local and then National if necessary, in all questions of divorce.

My wife's father asked the Guardian for permission to fight me in court if the Assembly decision were not favorable to her. The Guardian cabled him, "URGE ABIDE ASSEMBLY DECISION."

The Assembly mailed us the terms it decided for us. Our attorneys composed our divorce decree in legal language according to terms decided by the Spiritual Assembly, and the judge signed it on December 20, 1955.

Horace Holley wrote us on January 6, 1966: "The National Spiritual Assembly approves the terms of settlement set forth by the Spiritual Assembly of Albuquerque acting as a Bahá'í Court of arbitration at the request of you both and also acting under the authority conferred upon it by the National Assembly. . . .

"According to the strict principles of Bahá'í administration Bahá'ís are not to carry law suits against other Bahá'ís to the courts but settle their differences through Bahá'í institutions, recognizing that only a civil court can actually annul or dissolve marriage, but the terms of the court action should be those agreed upon by both parties in consultation with a Bahá'í administrative body.

"In this particular case the National Assembly recognizes that there is an even stronger element involved, namely, the letter written to Major Cornell by the Guardian under date of November 5, 1955, in which it is stated that the Guardian feels

that both
parties should abide by the decision of the Bahá'í institution.

". . . It should become a landmark in the development of such cases before Bahá'í
institutions."

The N.S.A. said in its next Annual Reports, "The local Assembly, as the Guardian
has stated, can act as a board of arbitration if the couple disagrees about the terms and
conditions of divorce, and when it so acts the couple are to abide by its decision."(p. 27)

If our case were a landmark, it was the best-kept secret in history. Ten years later,
I heard a Bahá'í worry about civil court divorce with his Bahá'í wife. I asked him why
didn't he have arbitration by a spiritual assembly? He had never heard of such a thing,
so I told him my story. Since he was on a spiritual assembly in the Salinas Valley and
his wife on a spiritual assembly in Oregon, I urged him to ask the N.S.A. to appoint a
neutral Assembly. The new N.S.A. Secretary, Dr. David Ruhe, replied that all questions
on divorce must be taken to civil court. I gave the Salinas Assembly words of the
Guardian and Horace Holley on assembly divorce arbitration. This was sent to Wilmette
and the N.S.A. consulted on it. The result was N.S.A. appointment in 1965 of the
Spiritual Assembly of San Francisco to be arbitrator of their terms of divorce.

In 1966, The Universal House of Justice wrote, "The local friends should understand the importance of the law of consultation and realize that it is to the local
Spiritual Assembly that they should turn, abide by its decisions, . . . and seek its advice
and guidance in the solution of personal problems and the adjudication of disputes,
should any arise amongst the members of the community." (Unpublished letter to N.S.A.
of U.S.)

Some ask if Bahá'í arbitration is a waste of time if parties don't want to carry out
Assembly decisions. Can disappointed parties go to civil court to litigate for a better

deal? Not when parties sign a submission agreement describing the dispute in writing
and promising to obey the decision of the Assembly. According to laws in all fifty states
and all provinces in Canada, such a signed agreement has the binding force of a contract
enforceable by courts like any other contract. When such an agreement is signed, neither
party can litigate disputes described in the agreement, because the parties have bound
themselves to accept terms decided by the arbitrator, in this case the Spiritual Assembly.
Rabbinical arbitration is recognized and enforced by courts, so there is no reason why
Bahá'í arbitration should not be recognized and enforced when parties have signed a
valid submission agreement

Another concern is whether an arbitration award by a local Assembly can be appealed to the National Assembly. Lawyers say that in arbitration the award is final and
binding and there is no right to appeal. What they mean is that civil courts will not
review decisions of arbitrators. There is nothing in any state law barring appellate
arbitration. This is common in Europe and is recognized in the U.S. An example is the
arbitration contract of the National Institute of Oilseed Products, which provides for
review by a Board of Appeal when requested by any party. The contract states that no
member of the Board of Review shall be one of the original arbitrators. "The Board of
Appeal shall review the case upon the award, evidence and statements of all parties
originally submitted to the arbitration committee. . . ." (Contract of National Institute of
Oilseed Products, Chapter 11 - Arbitration of Disputes)

Thus, when Bahá'ís submit a dispute to a spiritual assembly, they can state in their
submission agreement that either party has the right to appeal to the N.S.A. within thirty
days after the local award. This will give everyone all of his rights as a Bahá'í to
national review and will satisfy all legal requirements for civil court enforcement of
Assembly awards.

It is my belief that arbitration by spiritual assemblies has been mandated by Bahá'u'lláh, `Abdu'l-Bahá and Shoghi Effendi as well as by the Universal House of Justice, and that modern arbitration laws make it an ideal forum for Bahá'ís to resolve disputes with each other as well as with any non-Bahá'ís willing to accept a spiritual assembly as arbitrator.

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