

tie them to the family: "This principle of the husband's responsibility to provide for and protect the family can be seen applied also in the law of intestacy which provides that the family's dwelling place passes, on the father's death, not to his widow, but to his eldest son; the son at the same time has the responsibility to care for his mother."(3)

What is the relationship between Bahá'í inheritance laws and those in Islam? The Qur'án prescribes the distribution of an estate amongst certain relatives and the proportion of the estate willed to each (4:11-13). Since not all possibilities are expressly legislated in the Qur'án, a complex science of inheritance has arisen as a special branch of Islamic law. There are a number of fundamental Islamic rules that are relevant in the light of the Bahá'í laws.

The amount of a willed legacy is limited to no more than a third of the estate after all debts are paid. The Qur'án allots shares to eight relatives, namely the son, daughter, mother, father, husband, wife, brothers, and sisters. Another rule is that the male relatives, in general, receive twice as much as female relatives of the category. Non-Muslims are excluded unless a bequest is specifically made.(4)

On first viewing, there appear to be a number of similarities with Bahá'í intestate laws: the inheritance of non-believers, the categories of the recipients, and the greater share of male heirs. However, there are important and subtle departures. It is interesting that the Aqdas adds the category of teacher to those entitled to inheritance. And the intestate laws increase the share of women heirs: children, whether male or female, receive the same share, as do husband and wives. Mothers receive 82% of what fathers do; sisters 71% of brothers.

The most important difference compared to Islamic laws is that the Bahá'í Writings specifically state that every Bahá'í is obliged to leave a will, disposing of one's wealth in any way one wishes. Nowhere does Bahá'u'lláh suggest or advise that the intestacy pattern should be used as a model for wills. Rather, it has been argued that the intestate inheritance laws should be viewed in their historical context.(5)

This is suggested by considering the intestate provisions for non-Bahá'í inheritors. The Aqdas states that non-Bahá'ís do not inherit when a Bahá'í dies intestate and the entire estate reverts to the House of Justice. A non-Bahá'í wife, son, daughter, grandchild, teacher or any other non-Bahá'í who would normally be a beneficiary from the will receives nothing. Shoghi Effendi, in a letter written on his behalf, has stated that, "it is always possible for a Bahá'í to provide for his non-Bahá'í wife, children or relatives by leaving a will. And it is only fair that he should do so."(6)

Therefore, by stating that "it is only fair" for Bahá'ís to provide for non-Bahá'í relatives in their wills, the Guardian highlights the principle of justice, and indicates that the intestate provisions in the Aqdas are not normative. This questions Esslemont's suggestion that

"Bahá'ís will naturally be influenced, in making their wills, by the model Bahá'u'lláh has laid down for the case of intestate estates."(7) Rather the laws apply to a specific situation – what happens when a Bahá'í dies without a will.

This specific provision may also have been intended for a limited period of time. All Bahá'ís are required by the Aqdas to write a will (K109). We can assume that all Bahá'ís would fully observe these laws in the future through universal literacy and education. An increasing awareness of Bahá'í law in conjunction with the maturation of those institutions that would assist Bahá'ís in observing them, would increase the likelihood that Bahá'ís of the future will write wills. These and other factors would seem to indicate that the laws of intestacy may become irrelevant in the future. Why then do they exist at all?

The Aqdas was revealed around 1873 by Bahá'u'lláh in response to the repeated requests of Iranian Bahá'ís as to how they should arrange their affairs.(8) These early believers found themselves in the position of no longer being Bábís or Muslims – and, in many cases, being cast out of their families as a result – but still being forced to live by Islamic laws for lack of an alternative. Under these conditions, when a believer died intestate, which was invariably the case, the surviving Bahá'í family would have had to apply Islamic laws of inheritance or rarely Bábí law; no secular civil laws existed. The need for a Bahá'í law to address this temporary situation was both extreme and immediate. The laws of inheritance in the Aqdas may have been revealed to fill this demand.(9) The fact that Bahá'u'lláh was pressed to reveal some temporary laws about inheritance in Adrianople is an indication of how urgent this particular question was among the early Bahá'í community (Q100). It also sets a precedent for the revelation of temporary inheritance laws, a precedent continued in the Aqdas. The law as revealed in the Aqdas itself makes no provision for a personal will. It is only with Questions and Answers that Bahá'u'lláh makes the statement that "A person hath full jurisdiction over his property" (Q69).

There are other parts of the Aqdas that can also be seen to be relative to specific contexts. For example, Mírzá Yahyá is addressed at one point (K184); there are prophecies about Khurásán and Kirmán (K94, K164); the prohibition of the use of public pools of Persian baths (K106); the annulment of the obligation to perform the Muslim Prayer of the Signs (K11); the Bábí laws on the destruction of books, the prohibition of marriage to non-believers, the restriction

on travel, and the prohibition of questioning the Founder of the Faith are all abrogated in the Aqdas (K77, K139, K131, K126). Significantly, Bahá'u'lláh enjoins the believers to recite an obligatory prayer in the Aqdas which he later changed (n9).(10) The latter is an example of the specifics of an Aqdas law that was temporary; however, the injunction to obligatory prayer remains.

This line of thinking would suggest that the intestate laws of inheritance were given to address a specific and temporary need of believers living in Muslim countries at the end of the nineteenth century. It would therefore be unusual if the laws did not take into account the patrilineal patterns of those societies. But Bahá'u'lláh seems deliberately and specifically to have added provisions to this law that would lead to its abandonment. To an extent, it is analogous to the marriage law in the Aqdas which appears to permit bigamy. However, as bigamy is conditional on justice, it is not permissible: "The fact that bigamy has been made dependent upon an impossible condition is clear proof of its absolute prohibition."(11) Similarly, in the case of the inheritance laws, outside of their immediate historical context, they depend on an unlikely condition – that a Bahá'í would not write a will in his or her lifetime. Shoghi Effendi writes that every "Bahá'í is permitted in his will to dispose of his wealth in the way he wishes" taking into account moral and spiritual principles.(12)

As for marriage, the principle of justice is pre-eminent among these.

The historical context may also aid in understanding the laws exempting women from obligatory prayer and fasting during menstruation, and the exemption from pilgrimage. Armstrong-Ingram argues that for Middle Eastern Bahá'ís of Muslim background, carrying out the central religious practices of their faith during menstruation "would have been repulsive, including to the women themselves."(13) He argues that by not making it obligatory, it provided a bridge for those attempting to move from an Islamic cultural heritage into Bahá'í patterns of religious observance. Similarly, the exemption from pilgrimage may be related to the dangers facing women at the time. Travel anywhere would have been risky in the nineteenth century, "but pilgrim routes were especially preyed on by brigands. Women who were not able to travel with the substantial protection provided by wealthy families were particularly vulnerable to robbery, murder, and rape."(14)

Laws encapsulate principles. The marriage law encapsulates an inviolable spiritual principle. Bahá'í inheritance laws should also reflect the principles of fairness and justice. In order to do so, the laws for intestacy in the Aqdas must be seen in their appropriate historical context.

End Notes

From a letter on behalf of the Universal House of Justice to an individual

believer dated 24 July 1975.

Linda and John Walbridge, "Bahá'í Laws on the Status of Men," *World Order* 19.1/2 (Fall 1984/Winter 1984-85): 25-36.

From a letter on behalf of the Universal House of Justice to an institution dated 28 December 1980.

The Encyclopedia of Religion. Vol. 7. S.v. "Islamic Law: Personal Law," by M.H. Kamali. Ed. Mircea Eliade et al. New York: MacMillan, 1987: 446-53; The Concise Encyclopaedia of Islam. S.v. "Inheritance." Ed. C. Glasse. London: Stacey International, 1989: 188-9.

This concept of the historical relativity of the inheritance laws of the Aqdas is adapted and developed from Anthony Lee's response to the Walbridges paper which was published in "A Question of Gender," *Dialogue* (Summer/Fall 1987): 32-34. I am grateful to him for constructive comments on earlier drafts of this essay.

Shoghi Effendi, *Dawn of a New Day* (New Delhi: Bahá'í Publishing Trust, 1970) 77.

John Esslemont, *Bahá'u'lláh and the New Era*, rev. ed., (Wilmette: Bahá'í Publishing Trust, 1980) 146.

Bahá'u'lláh, in *Synopsis and Codification of the Laws and Ordinances of the Kitáb-i-Aqdas* (Haifa: Bahá'í World Centre, 1973) 3.

It is possible that, in the context of early believers, the intestate provisions for non-Bahá'í relatives applied to the situation where a newly converted Bahá'í was thrown out of his or her family for leaving their family's traditional religion of Islam. Then it would not necessarily be unfair if these relatives were not included in the estate.

I am grateful to Juan Ricardo Cole for bringing this to my attention.

'Abdu'l-Bahá, qtd. in *The Kitáb-i-Aqdas* (Haifa: Bahá'í World Centre, 1993) 206.

Shoghi Effendi, qtd. in *Aqdas* 182.

R. Jackson Armstrong-Ingram's response in "A Question of Gender," *Dialogue* (Summer/Fall 1987): 19-25.

Armstrong-Ingram, "A Question" 21. This would be one response to Bahiyyih Nakhjavani's essay on "Exemption" in which she points out, "Women in the twentieth century, in the West, with access to air travel, medical services, a normal body and a modest independence, may wonder about being singled out and chosen for this dubious distinction" (*The Bahá'í Studies Review* 3.1 [1993]: 75-8).

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