

Commentary

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Imagining Baha'i Law

Commentary on Udo Schaefer, 'An Introduction to Baha'i Law: Doctrinal Foundations, Principles and Structures', *Journal of Law and Religion*, vol. 18, no. 2 (2002–3) 307–72

(available at <http://www.udoschaefer.com/pdffiles/introduction%20bahai-law.pdf>).

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Very little has been written about Baha'i law, and even less about how it may be understood, expanded and applied in the future. In the Baha'i Faith, discussion of principles of legal interpretation and methodology has yet to begin. What we do know is that individuals are encouraged to interpret scripture for themselves.¹ Also, it is absolutely clear that such individual interpretations are not authoritative or binding² and without question that there exists a legislative body for the expansion of Baha'i law – the Universal House of Justice. But the principles that will govern the legislative enterprise have not been explicated or analysed. Further, beyond what appears to be a rejection of the strict principles of *stare decisis*,³ and as such a privileging of a contextual approach, it is almost wholly unknown how a future Baha'i judiciary might function or interpret the law.

While scholarship concerning Baha'i law is in its infancy, it will likely begin to develop further in the near future. Increased interaction between religion and state has historically spurred the development of religious law and legal systems. This is true, for example, in the evolution of both Islamic law and canon law. In Islam, the emergence of Muslim rulers in historically non-Muslim territories contributed to the emergence of a body of Islamic law to be applied to the population. In the Middle Ages, the development of canon law was in support of papal claims to temporal power, as can most clearly be seen in the 11th and 12th centuries.

For very different reasons, Baha'i communities around the globe are increasingly interacting with the state – and becoming involved in public life. Historically, the main rationale for state–Baha'i interaction outside of Iran was to secure legal status for local communities or support for persecuted Baha'i communities elsewhere, but this is beginning to change. Baha'i communities are now sometimes asked to take on a more explicitly public role. Such public roles are largely a by-product of community growth and the recognition of the Baha'i Faith as an independent religion. However, the comfortable existence of Baha'i communities within liberal-democratic states in Europe and North America may face challenges in the near future, and in particular concerning how Baha'i law and the law of the state will interact. One example of this is

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1. In relation to laws and ordinances Baha'u'llah articulates different principles of interpretation than those that apply, for example, to allegorical passages. In relation to laws and ordinances Baha'u'llah emphasizes the importance of the 'evident' or 'obvious' meanings of the words.
2. As opposed to the authoritative interpretations of 'Abdu'l-Baha and Shoghi Effendi, which are binding on both individual Baha'is and Baha'i institutions.
3. A Latin term meaning to stand by what has been previously decided. In general terms, the principle of

precedent – that earlier court decisions are binding on later courts faced with the same issue.

4. In Canada, for example, the legal definition of marriage was changed in 2005 to include two individuals of the same sex. It remains to be seen how this and consequent changes in the law will interact with the role of state-mandated Baha'i marriage officers, charitable status for Baha'i institutions and other related issues. This interaction will vary from jurisdiction to jurisdiction.

seen in the increasing number of governments legalizing, or considering legalizing, same-sex marriage. A Baha'i marriage, under Baha'i law, is limited to two individuals of the opposite sex. It is unclear how these changes in marriage law (which can reflect changing constitutional norms) will impact on the legal organization of Baha'i communities and, for example, the role of Baha'i marriage officers, who may also be agents of the state.⁴

Of course, historical examples of how religion–state interaction instigates a period of development of religious law are often much more stark than the forms of increased interaction that are currently seen in state–Baha'i relations. In the Baha'i context there is no current claim or issue of temporal power. Rather, the current questions are preoccupied with how the Baha'i community might assist the state in particular policy areas, or in the legal organization and status of the Baha'i community within the state. But these narrower questions are sufficient to require significant discussion and debate concerning Baha'i law. Thus, one may expect that individuals and institutions will intensify the study and development of Baha'i law in the near future.

Udo Schaefer's paper 'An Introduction to Baha'i Law: Doctrinal Foundations, Principles and Structures' is a logical starting point for exploring directions in which discussions of legal interpretation and methodology might develop within the Baha'i community, in particular as a result of Baha'i–state interaction. As the first overview of Baha'i law to be published in a major legal journal, Schaefer's paper represents one of the most likely entryways into Baha'i law for individuals, scholars and institutions, both within and outside of the Baha'i community. It is instructive, therefore, to review the approach Schaefer takes to Baha'i law, some of the choices and assumptions he makes, and the image a reader may be left with concerning the fundamentals of Baha'i law.

Schaefer's text-centric construction of Baha'i law

Schaefer explains the purpose of his paper in the following terms:

The present study aims to provide an overview of the revealed law of the Bahā'ī Faith, which is of interest for students of both legal history and religious studies. We are entering virgin territory here, as no attempt has yet been made at a systematic jurisprudence, nor has a tradition of Bahā'ī jurisprudence been established that might compare with the Islamic *Usūlu'l-fiqh*. Since the foundations and principles of this law can be understood only within their theological context, and knowledge of this context is rare outside the Bahā'ī community, some basic background information about the faith will be provided first. (308)

Within this purpose, one finds a text-centric approach towards Baha'i law. Namely, the task of providing an overview of Baha'i law primarily involves identifying and organizing the rules stated in Baha'i scripture. As Schaefer writes:

The Bahā'ī community is in the possession of a revealed Law, a *ius divinum*, whose source is the entire body of sacred texts emanating from the pen of Bahā'u'llāh, which together constitute the 'Book' (*al-kitāb*). (317)

Specifically, in Schaefer's text-centric approach, an understanding of Baha'i law comes from placing it within its theological framework and thus within the Baha'i religious system as a whole. As a result the paper is basically constructed in three broad topics. It opens with a discussion of the historical, religious and theological context of Baha'i law – including Baha'i concepts of religion, the state and justice (312–16). This is followed by a discussion of the core constructs of a religious law: sources, how the law is brought into force and temporal validity (317–23). Finally, the bulk of the paper outlines some of the rules that Schaefer suggests from the corpus of the Baha'i *ius divinum*, organized in categories of penal, family, marriage, inheritance and community constitutional law (324–62).

Schaefer's approach results in a particular form of presentation of Baha'i law – a presentation that is familiar to legal academics and scholars of religious law. This is a rule-oriented, formal and positivistic body of law. Use of the term *ius divinum* connotes a set of clearly prescribed rules, which can be organized and categorized according to the general categories of either common or civil legal systems. Further, Baha'i law is also considered to be embedded within the logic of theology – the law is understood to exist within and to reflect fundamental norms and principles concerning the nature of God, and the relationship between God and human beings. Thus, as Schaefer describes, the expansion of the body of law must reflect these theological norms, and in the Baha'i context this means that all Baha'i law is elevated to the category of divine law. He discusses the legitimate sources of Baha'i law as follows:

Finally, the Bahā'ī community has a supplementary divine law that is also in the category of *ius divinum positivum*, namely the legislation made by the Universal House of Justice, the supreme administrative body, which is democratically elected by the world community. The published laws established by this body are therefore also sources of law. Thus, the Bahā'ī divine law is a *ius divinum positivum* with the subcategories of *ius divinum scripturae* and *ius divinum supplementum*, which together constitute the Bahā'ī sacred law. (319)

While other justifications for the law might be offered, the ultimate one is positivistic in nature – legitimacy is innate because the law is mandated by God, either through the intermediary of His Manifestation, or through the institutions that He created and inspires as the lawgiver.

By providing an explication of the rules of the religion, the norms and principles that inspire them, and the affirmation of their status as being of God, Schaefer provides what one would expect from an early work on a religious law. Indeed, Schaefer's paper is somewhat similar to projects of scholars of Islamic law in Europe and North America in the 1960s and 1970s to provide broad overviews of Islamic law and organize and systematize vast bodies of material. For example, Joseph Schacht, in his seminal work *An Introduction to Islamic Law*,⁵ focuses on the historical context of Islamic law, its status as a sacred law and the statement of legal rules, for which he used (like Schaefer) categories heavily drawn from western legal traditions.

Ultimately, Schaefer leaves the reader with the image of Baha'i law as a new *shari'a* – as Baha'i scripture providing a clearly delineated set of rules, which in various ways and to various degrees challenge, reform or overturn

5. Oxford: Clarendon Press, 1964.

6. For a review of the historical treatment of Baha'i law see Roshan Danesh, 'The Politics of Delay – Social Meanings and the Historical Treatment of Baha'i Law', *World Order*, vol. 35, no. 3 (2004) 33–45.

scriptural rules of the past. Indeed, the Qur'an is the main point of reference for Schaefer as he seeks to present Baha'i laws. Further, Schaefer places these new scriptural rules into some rational–legal structure, laying the foundation for future codifications of the law:

The Law revealed by Bahā'u'llāh (like all revealed law) is not a consistent legal system, let alone a systematic code. It is rudimentary, calculated for further development. The Kitāb-i Aqdas (like the Qur'ān) only regulates certain aspects of law, such as matters concerning personal status (e.g. family law and inheritance law) and penal law. The latter includes only a few norms which, in combination with statements on the theology of law and on the purpose of punishment, are intended to form the basis of a future criminal code. The Kitāb-i Aqdas and the Testament of 'Abdu'l-Baha comprise the constitutional law of the community. (324)

Questioning a text-centric approach

While Schaefer's text-centric approach meets general expectations concerning the treatment of religious law, it is precisely in setting out to meet these expectations – to privilege a text-centric approach – that certain issues arise.

The treatment of Baha'i law and in particular core legal-scriptural texts such as the Kitāb-i-Aqdas, has been a point of controversy in Baha'i history.⁶ Baha'i law was consciously backgrounded by Baha'u'llah, a pattern which was largely maintained through the ministries of 'Abdu'l-Baha and Shoghi Effendi, and continues to be maintained by the Universal House of Justice. This backgrounding was partially a function of the realities of a religious system in its early stages of development, especially for a community as small and dispersed as the Baha'i community. But more significantly, from the days of Baha'u'llah the backgrounding was positioned as one expression of the nature of Baha'i law itself. While the laws 'must be faithfully obeyed by all', in 'observing them one must exercise tact and wisdom' 'so that nothing might happen that could cause disturbance or dissension or raise clamour among the heedless'. In these statements, and the backgrounding of his law, Baha'u'llah is both affirming the normative validity – indeed the essentiality – of his law for the well-being of humanity while at the same time distinguishing the fact of normative validity from the political dimension of law, and specifically how the coercive force of law is used as a force for both individual and social change.

This recognition of the political dimensions of law innately frees the law from some of the implications of the positivist assumptions that often accompany assertions of divine law. While the fact of God's Voice may legitimate the law, God's Voice alone does not *de facto* legitimate the application of that law. In terms of placing Baha'i law within its own history, this means that the story is not one of revelation, interpretation and application. Rather, the story of Baha'i law is of gradualism, a privileging of individual conscience and choice over coercion, the acceptance of a diversity of practices in certain contexts, and a focus on the construction of social conditions in which the wider applications of a religious law may be a positive force for change. This is distinct from many traditions of religious law where the unquestionable validity of a divine legal sanction encourages a drive to apply the laws, and to starkly sanction their violation. It is also

foreign to aspects of modern traditions of positive law, in which law cannot be said to exist apart from the power of the state.

Schaefer notes this particular feature of Baha'i law when he writes:

A peculiar feature of Baha'ism is that most norms of the revealed law (including the ordinances of ritual) do not come into force *ipso iure* upon their promulgation, but have to be formally enacted by introductory acts of the supreme legislative body with global responsibility, the 'Universal House of Justice' (*Baytu'l 'adl al-a'zam*). This gradual process of bringing laws into force derives from the founder of the religion himself, who did not want the break with the customary order of life to be too abrupt; instead, it should be fitted to the capacity of people to accept it. Moreover, the socially relevant legal norms, especially the regulations concerning criminal justice, presume the existence of a society already shaped by the revelation, a 'society destined to emerge from the chaotic conditions that prevail today'. A further reason for the need for formal enactment of the revealed laws is that they are valid for a period of at least one thousand years. As social conditions on earth are subject to constant change, legal norms that regulate specific details once and for all are in danger of leading to rigid legal casuistry and to the petrification of the law. Bahā'u'llāh has eliminated this danger by providing the legal system 'with an essential element of flexibility'. The divine law regulates only 'matters of major importance'. Moreover, the legal norms have been revealed at a high level of abstraction. They are so general and leave so much unregulated that they need to be specified and adapted to the conditions of the time. They are in need of detailed sub-regulations. In the Bahā'ī community these sub-regulations – the development of the legal system – do not result from authoritative *interpretation* by the religious scholars, 'the learned ones' (as the Rabbis in Judaism and the '*ulamā*' in Islam), but from supplementary *legislation*. The institution of a supreme legislature that has been 'freed from all error' allows for constant adaptation of the law to changing social conditions, since this legislature can amend its own laws, though *ius divinum*, and thus take account of altered circumstances.

Certain legal norms were (at least for the eastern Bahā'īs) considered binding from the start, others were declared universally valid by 'Abdu'l-Bahā, and later by Shoghi Effendi and eventually by the Universal House of Justice. As far as the institutions and structures of community order are concerned, implementation of law began during the office of 'Abdu'l-Bahā. It is self-evident that revealed legal norms are effective in the community as ethical guidelines even before they come into force. (321–3)

This excellent description of how Baha'i law operates points to the very tension found in Schaefer's text-centric approach. The fact that the laws revealed by Baha'u'llah are not automatically binding, are subject to another legislative act to be brought into force and are contingent on the construction of certain social conditions, would suggest that a text-centric approach is only appropriate for limited and certain ends.⁷ An approach which focuses on delineating rules within their theological context to demonstrate their internal logic within the Baha'i system, and as such their normative validity within the Baha'i belief system, is perfectly appropriate to illustrate Baha'i theology, or Baha'i visions of a future state of society.

7. To be clear, the contingency of Baha'i law on the construction of certain social conditions – and more generally claims about the relative nature of divine law – should not be construed as absolute. The Universal House of Justice's supplementary legislation cannot be in conflict with a law explicitly stated in the writings of Baha'u'llah (noting, however, that the definition of what constitutes a conflict remains unexamined). In other words, the laws of Baha'u'llah form a general framework or outline of the religious law, and are laws that are intended to be activated. Those rules are expressions of divine will and give shape to the supplementary legislation that is expected to emerge in the future.

8. This is made explicit by 'Abdu'l-Baha:

Those matters of major importance which constitute the foundation of the Law of God are explicitly recorded in the Text, but subsidiary laws are left to the House of Justice. The wisdom of this is that the times never remain the same, for change is a necessary quality and an essential attribute of this world, and of time and place. Therefore the House of Justice will take action accordingly . . .

Briefly, this is the wisdom of referring the laws of society to the House of Justice. In the religion of Islām, similarly, not every ordinance was explicitly revealed; nay not a tenth part of a tenth part was included in the Text; although all matters of major importance were specifically referred to, there were undoubtedly thousands of laws which were unspecified. These were devised by the divines of a later age according to the laws of Islamic jurisprudence, and individual divines made conflicting deductions from the original revealed ordinances. All these were enforced. Today this process of deduction is the right of the body of the House of Justice, and the deductions and conclusions of individual learned men have no authority, unless they are endorsed by the House of Justice. The difference is precisely this, that from the conclusions and

However, it is limited as a method to illustrate the nature of Baha'i law, or to provide the foundations for a systematic jurisprudence – which is Schaefer's stated goal. Unlike *usul al-fiqh*, the Baha'i system is specifically designed to not create an elaborate apparatus of laws and doctrines that exist apart from (and often in tension with) the acts of legislative authority and formal institutions.⁸ As such, it would make sense to emphasize how Baha'i law may operate and be applied early on in the process of developing approaches to Baha'i jurisprudence. Focusing primarily on text-based rules found in scripture is not as useful. Baha'u'llah, as well as Baha'i legal authorities, have emphasized the method of Baha'i law, as well as its substance.⁹ Scholars should be attentive to this fact when outlining the nature of Baha'i law.

A text-centric approach also runs the risk of misconstruing issues of authority, enforceability and coercion in respect to Baha'i law. One illustration of this is in the very choice to use familiar legal categories born out of the western legal tradition to organize and delineate the rules found in Baha'u'llah's writings. These categories are not neutral – but rather carry with them assumptions and connotations that may, or may not, be appropriate for understanding the nature and function of Baha'i law.

For example, Schaefer's use and discussion of Baha'i 'penal law' raises many issues concerning how Baha'i law is being presented. Schaefer is not explicit about the way in which he uses the term 'penal'. His discussion appears to suggest that he is using the term in the sense of 'criminal' as opposed to the more general meaning of 'involving a penalty, or punishment'. The significance of this is that there are qualitative differences between different forms of offences. What a society agrees constitutes a criminal offence carries with it the full weight of social stigma and opprobrium, as well as the full coercive power of the state to do violence to offenders. On the other hand, there are vast ranges of penalties that are understood socially, and legally treated, as being distinctly different from pure criminal offences in nature. One example are offences that might be deemed 'regulatory' or 'statutory'.¹⁰

Schaefer begins his discussion of penal law by noting that:

The Kitāb-i Aqdas contains some provisions of penal law, but these are expressed in a very general and abstract way, allowing for the later specification of offenses. There is no legal definition of elements of an offense. The details of penal laws were not specified by Bahā'u'llāh. (324)

This raises a red flag. Baha'u'llah undoubtedly identifies many offences in the Kitāb-i Aqdas. But what constitutes a criminal offence, as opposed to an offence that we should understand in other terms, is not clearly identified in scripture – and cannot be identified at this point in the development of Baha'i law.¹¹ This is a matter to be clarified by the Universal House of Justice, in the context of the social norms and realities of the societies in which they are required to legislate and bring law into force. By lumping such a wide range of 'offences' into the category of penal law – including murder, arson, theft, homosexuality, adultery and backbiting – Schaefer has imposed a current legal category, which carries with it significant weight and connotations, onto a mixed bag of offences that may not all belong in

the same categories as Baha'i law develops. What constitutes a 'crime' in a Baha'i legal order, and how legal authorities might enforce the law and punish offenders remains wholly unknown. In other words, it is too soon, and too unclear, to speak of a Baha'i penal law, especially in the criminal law sense, and particularly a penal law which lumps together everything that has the appearance of being an 'offence' in the *Kitab-i-Aqdas*.

Further, 'penal' law is a public law – supported by the coercive power of the state. There does not exist a 'penal' law in the absence of such authority, except in the hypothetical or theoretical sense. Moreover, penal laws, especially as they connote a criminal offence by their very nature, are representative of and embedded within the social meanings and norms of the society in which they emerge. In this respect, Baha'i penal law is the quintessential example of how divine law is subject to processes of social construction. Baha'u'llah's assertion of the validity of his laws for all of humanity must be read in the context of his assertion of the dynamic, gradual and contingent nature of his law. One example of the effect of this may be found with the issue of adultery. While it is possible that sexual relations outside of marriage (or *zinā*) will in any future Baha'i order constitute a penal (criminal) offence (though this is not clear from the texts), at the same time it can be legitimately asserted that within contemporary Baha'i communities adultery is not understood or treated as a penal (criminal) offence, nor do Baha'is tend to view adultery outside the Baha'i community through the lens of criminality.¹² Indeed, the Baha'i community is not generally encouraged to view it in these terms, but rather individuals are encouraged to strive to be examples in their sexual conduct, to be tolerant and loving, and to accept that they will be subject to failures and tests. Consider the following statements from the Baha'i writings, all of which relate to how some of the offences that fall under the term *zinā* are to be treated:

The world today is submerged, amongst other things, in an over-exaggeration of the importance of physical love, and a dearth of spiritual values. In as far as possible the believers should try to realize this and rise above the level of their fellow-men who are, typical of all decadent periods in history, placing so much over-emphasis on the purely physical side of mating. Outside of their normal, legitimate married life they should seek to establish bonds of comradeship and love which are eternal and founded on the spiritual life of man, not on his physical life. This is one of the many fields in which it is incumbent on the Bahā'īs to set the example and lead the way to a true human standard of life, when the soul of man is exalted and his body but the tool for his enlightened spirit. Needless to say this does not preclude the living of a perfectly normal sex life in its legitimate channel of marriage.¹³

We must struggle against the evils in society by spiritual means, and by medical and social ones as well. We must be tolerant but uncompromising, understanding but immovable in our point of view.¹⁴

It is the challenging task of the Bahā'īs to obey the law of God in their own lives, and gradually to win the rest of mankind to its acceptance.

In considering the effect of obedience to the laws on individual lives, one must remember that the purpose of this life is to prepare the soul for the next. Here one must learn to control and direct one's animal impulses, not to be a

endorsements of the body of the House of Justice whose members are elected by and known to the worldwide Bahā'ī community, no differences will arise; whereas the conclusions of individual divines and scholars would definitely lead to differences, and result in schism, division, and dispersion. The oneness of the Word would be destroyed, the unity of the Faith would disappear, and the edifice of the Faith of God would be shaken. (Quoted in Baha'u'llah, *The Kitab-i-Aqdas*, Haifa: Baha'i World Centre, 1992, 4–5)

9. The Universal House of Justice, in its 'Introduction' to *The Kitab-i-Aqdas* emphasizes the principle of the 'progressive application' of Bahai law and that the 'number of laws binding on Bahā'ī is not increased by the publication of this translation' [the publication in English in 1992]. In this emphasis on aspects of the application of Baha'i law, and that the 'society for which certain of the laws of the Aqdas are designed will come only gradually into being', the Universal House of Justice reflects the emphasis on method of use of the law of Baha'u'llah, 'Abdu'l-Baha and Shoghi Effendi. For a fuller discussion, see Roshan Danesh, *supra* note 6.
10. For example, in Canada, a federation, only the federal government has the

constitutional authority to pass criminal laws. The provinces, however, pass numerous laws on subject matters within their constitutional jurisdiction, and include punishments in those laws (within limits), in order to ensure that they are taken seriously. Examples include punishments for a wide range of activities, such as certain traffic offences, environmental offences, hunting activity, forestry and resource extraction, etc. These provincial laws are not purely criminal, but regulatory or statutory in character.

11. None of the words for 'law' or 'rule' in the *Kitab-i Aqdas* specifically imports a meaning of a criminal law or offence.
12. To be clear, Baha'is are expected to live up to very high moral standards, including in relation to their sexual behaviour. The Baha'i writings exhort adherents to live a chaste life, and there are many Baha'i laws that relate to ensuring the maintenance of standards of chastity.
13. From a letter dated 28 September 1941 written on behalf of Shoghi Effendi to an individual believer, published in *A Chaste and Holy Life*, compiled by the Research Department of the Universal House of Justice, Baha'i World Centre, London: Bahá'í Publishing Trust, 1988, also at http://bahai-library.com/?file=com_pilation_chaste_holy_life (accessed 27 November 2005).

slave to them. Life in this world is a succession of tests and achievements, of falling short and of making new spiritual advances. Sometimes the course may seem very hard, but one can witness, again and again, that the soul who steadfastly obeys the law of Bahá'u'lláh, however hard it may seem, grows spiritually, while the one who compromises with the law for the sake of his own apparent happiness is seen to have been following a chimera: he does not attain the happiness he sought, he retards his spiritual advance and often brings new problems upon himself.¹⁵

In this example, one can see the implications of Schaefer's text-centric methodology for the image of Baha'i law it creates. The understanding of Baha'i law one gains from Schaefer is one that emphasizes rules over method, and the absolute validity of those laws as a *ius divinum*. In contrast, Baha'i law may be framed in terms of the ways in which it is applied, used and enforced. One then finds a de-emphasis of positive authority, an enlightened and diffuse perspective on methods of social change, and a practical illustration of how unity cannot be achieved through coercion, such as the coercive applications of legal norms in social situations that are not prepared for them.

Law as text/law in practice

Ultimately, the example above is intended to draw a distinction between 'Law as Text' as contrasted with 'Law in Practice', and illustrate that these two different discourses will create quite different perceptions and understandings of the same subject-matter. The key contrasts of these two approaches, in the context of a religious law, can be summarized as follows:

To be clear, the main emphasis of this brief comment is not necessarily to argue for the objective or normative superiority of one image of law over another. Rather, the main assertion is that different legal discourses will interpret and treat a legal subject in a different manner, and the conclusions reached concerning that legal subject may thus vary widely. Students of law will also recognize that the general categories outlined in the table could be

	Law as Text	Law in Practice
<i>Focuses on the</i>	Word	word in action
<i>In order to identify</i>	statements of rules	ways in which statements of rules are used or applied
<i>Which are part of</i>	the <i>ius divinum</i>	political and social institutions, and thus embedded within particular social meanings and norms
<i>And advances our understanding of</i>	the theology of law	the realities of how religious legal systems develop and change, and in particular how the Baha'i system might evolve
<i>And demonstrates</i>	the absolute validity of the rules.	the contingent/contextual validity of rules, and the political and social processes needed for the application of the rules.

situated within contemporary jurisprudential thought – and quite familiar debates between, for example, formalism and realism.

What has been put forward throughout this short comment, is that a ‘Law in Practice’ discourse is essential for meaningful discussion of Baha’i law, especially where the stated purpose is to contribute to the project of forming a systematic jurisprudence, or otherwise understanding Baha’i law in its legal character and dimensions. Schaefer’s more formal approach also has much to contribute, but at this stage in the development of Baha’i law, privileging an image of Baha’i law as a new (updated) *shari’a* – especially to the exclusion of a ‘Law in Practice’ image – is problematic. Schaefer’s portrayal of Baha’i law, while continuous with strong traditions within the study of religious law, and demonstrating continuity with scriptural legal traditions, is somewhat at odds with the history of Baha’i law. Indeed, the law as found in the texts is subsumed by a legal practice which – while maintaining the integrity and authority of the texts, and the rules stated therein – accepts that the application and expansion of Baha’i law is subject to a progressive and gradual process of social change. As valuable as Schaefer’s work is, it puts forward an image of Baha’i law that is incomplete. Without the balance of a ‘Law in Practice’ discourse, Baha’i law is distorted in favour of a positivistic and formalistic portrayal that betrays the contextual underpinnings of the system. A ‘Law in Practice’ image is needed as a guidepost for future scholars as they build on the pathways Schaefer has laid.

14. From a letter dated 21 May 1954 written on behalf of Shoghi Effendi to an individual believer, published in *A Chaste and Holy Life*.
15. From a letter dated 6 February 1973 written by the Universal House of Justice to all National Spiritual Assemblies, published in *A Chaste and Holy Life*.

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