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*** BAHAI LAW AND PRINCIPLE: CREATING LEGAL AND INSTITUTIONAL STRUCTURES FOR GENDER EQUALITY

by Martha L. Schweitz

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"So it will come to pass that when women participate fully and equally in the affairs of the world, when they enter confidently and capably the great arena of laws and politics, war will cease."

`Abdu'l-Baha

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The intent of this brief essay is to demonstrate, from a Baha'i perspective and drawing on the insights of recent feminist legal critique, the depth and breadth of legal and institutional change demanded by the principle of equality, and to indicate, in most summary fashion, the nature of such change as prescribed in the Baha'i writings. Religion has always operated as a source of guidance at the level of individual morality. The Baha'i writings extend as well to the collective life of humankind, ordaining laws, principles and institutional processes on which to build social and economic structures for gender equality, structures which can only undermine and eventually replace current patterns of subordination.

Reforming laws and legal systems is one vital avenue in achieving equality. In the Platform for Action, strategies for each of the critical areas of concern depend at least in part on enacting and enforcing laws at the national level and on reorienting institutions of government. As has been said repeatedly, however, such changes can only be effective if they occur in tandem with the evolution of personal and social values and attitudes.

Legal and institutional change can be both cause and effect. Laws and institutions change as the result of new attitudes influential enough to muster the necessary legislative vote. In reverse, such change is also strongly conducive to further evolution in attitudes, both through actually enforcing new standards of behavior and through a gradual process of altering social expectations. Laws and institutions which remain unchanged in the face of new social realities have a similar effect, but working instead in the negative direction of supporting an outdated status quo and those who wish to retard change.

Many of the legal reforms necessary to achieve equality are technically simple. For example, laws protecting the civil and political rights of women and prescribing remedies for their infringement are not particularly difficult to

draft or apply, given the political will to do so. In some countries, the process of legal reform along these lines has proceeded a great distance in recent times. Women and men are guaranteed equal civil and political rights as well as equality of opportunity in education and employment, under laws which, by and large, are enforceable and enforced. While not yet completely effective, this reform nevertheless has produced societies in which women enjoy a degree of choice and control over their lives unimaginable elsewhere. Despite such advances, it is apparent that equal opportunity is not sufficient. As most women (and an increasing number of men) in such "advanced" societies will attest, women remain, in so many aspects of family and social life, a subordinate class. Recent feminist legal scholars have begun to explain why this is so. They are identifying the need for more complex legal and institutional change, reforms which alter the fundamental assumptions and preferences which underlie our laws and governing institutions. We will return to this theme shortly.

One of the essential principles of the Baha'i Faith is equality of the sexes. As explained in this volume's introduction, the Baha'i system of values categorically upholds the principle of the equality of women and men in all areas of human endeavor. The Baha'i writings envision future societies in which women are participating "fully and equally in the affairs of the world," [1] as the "peers of men." [2] Moreover, when this occurs, "when they [women] enter confidently and capably the great arena of laws and politics, war will cease." [3]

At the same time, it is evident in the Baha'i writings that equality does not imply sameness, that "equality of status does not mean identity of function." [4] Most notably, great honor and nobility are conferred on the role of motherhood. Mothers have the unique privilege of being the "first educators, the first mentors" [5] of their children. "O ye loving mothers, know ye that in God's sight, the best of all ways to worship Him is to educate the children and train them in all the perfections of humankind; and no nobler deed than this can be imagined." [6] If and when a woman is fully occupied with raising children, the husband has corresponding responsibilities for financial support of the family. [7] However, the father also shares the responsibility for educating his children, a responsibility so weighty that one who fails to exercise it forfeits his rights of fatherhood. [8] Roles and the allocation of responsibilities are not fixed in the Baha'i writings; all such decisions in a Baha'i family are to be made through family consultation, [9] a process based on explicit principles of frankness and mutual respect. Neither husband nor wife is permitted to "unjustly dominate" the other. [10]

The exaltation of motherhood gives rise to two problems in relation to equality, one highly subjective and the other a matter of implementation.

The subjective problem is that reverence and protection for motherhood has often be used as justification for keeping women socially and economically disadvantaged. Deference to woman's "natural and proper timidity and delicacy" and to her "paramount destiny and mission . . . to fulfil the noble and benign

offices of wife and mother" [11] has led not to placing women on a pedestal but rather in a cage. Moreover, history and experience have convinced many that any distinction in treatment between men and women is a badge of female inferiority -- as indeed it has been. On the other hand, there are societies in which women have faced the opposite problem. In Czechoslovakia two generations of women were required by the state to work long hours each day and to put their children in state-run group homes, a practice which many there now conclude has had serious detrimental psychological effects on those children. [12] As a result, women there now prize most dearly the right not to work and the opportunity to raise their own children. Finding the path to equality would seem to require that we learn from the vast experience of women worldwide and refuse to be constrained or prejudiced by one perspective alone.

The second problem presented by the exaltation of motherhood in the context of equality is how it is to be implemented. Although there is no inherent logical inconsistency in women both being mothers and participating "fully and equally in the affairs of the world," and an average life span should allow ample time for both, it is more often than not a practical impossibility. The incompatibility of motherhood (or parenthood generally, for that matter) and participating fully in the affairs of the world arises rather from the nature of economic and social systems, laws and business practices, radically different as they are in various societies, but nearly all seemingly tailor made to enforce a permanent division of labor between those who care for children and tend to homes and those who produce income in the formal economy and have a voice in public affairs. Much of the recent advancement of women in the work world has been achieved in spite of such obstacles, but often at great personal cost to the women themselves. How can these "two lives" of women be reconciled? The unwavering insistence in the Baha'i writings on both indicates that it must be possible.

Here we may return to the insights of feminist legal critique into the meaning of equality and the depth of the legal and institutional change necessary in order to achieve it. Consistent with traditional liberal feminism, advances in equal opportunity over the past 30 years have proceeded on the assumption that equality means freedom to be treated without regard to gender. Although this may be an effective implementing principle in a majority of cases, it falls short of exhaustively defining equality and can be positively damaging to the interests of women in issues related to motherhood. (For example, why is it that a pregnant woman must claim to have a "disability" in order receive certain insurance benefits?) Feminist scholars have revealed convincingly the gender bias in facially neutral systems of rules. They have shown that sexism is a pervasive structural problem in the law, and that inequality is perpetuated by a host of unspoken assumptions which permeate our laws, our courts and legislatures, our legal procedures, and even our inherited forms of legal reasoning. They have effectively debunked the notion that law should regulate the world of public affairs (read: the world of men) but must not invade the privacy of the home, e.g., to protect women from violence. They have shown that although formal legal equality, emphasizing equal rights and equal

treatment, may have been appropriate in earlier stages, we must now move beyond the rhetoric of rights. Equality, more fundamentally, is freedom from systematic subordination because of sex. [13]

The implications of this definition of equality are vast, challenging, as it does, the underpinnings of long-standing traditions and institutions. This definition is consistent with the Baha'i vision of equality. Nothing less will enable a practical reconciliation between the public and private lives of women, or do justice to the full range of Baha'i teachings bearing on equality.

The systematic subordination of women is starkly evident in each of the following areas: (1) education; (2) violence and abuse at home and in society; (3) discrimination in income-producing opportunities; (4) family decision-making; (5) inequality in, or exclusion from, economic and political power structures; (6) male control of (and unaccountable use of) family income; and (7) sole, socially unsupported female responsibility for child-rearing. The subordination of women in each of these arenas is the result of an almost inextricable combination of laws, attitudes, institutional arrangements and procedures, economic structures, and legal silences. In each of these areas, the oppressive system and structures are undermined by explicit Baha'i laws and social principles which address the pervasive inequality which is stubbornly surviving even formidable legal reforms. Baha'i laws and principles go beyond the notion of equal opportunity to create societies which systematically and institutionally value both motherhood and the participation of women in public affairs, societies which embody and express both the feminine "ethic of care" and the masculine "ethic of rights," [14] which strive both to preserve relationships and to promote justice. Some of the specifics of the Baha'i teachings may be found elsewhere in this volume in connection with the various critical areas of concern.

A world in which women and men are free to "achieve the greatness which might be theirs" is almost impossible to imagine today, but Baha'is are among those who are convinced that each step toward that goal is a critical advance, not only in permitting individual women and men to realize their God-given gifts, but in bringing humankind a step closer to peace.

Endnotes

- `Abdu'l-Baha, *The Promulgation of Universal Peace* (Wilmette, IL: Baha'i Publishing Trust 1982) 135 (reprinted in *Women: Extracts from the Writings of Baha'u'llah, `Abdu'l-Baha, Shoghi Effendi and the Universal House of Justice* (Ontario, Canada: Baha'i Canada Pub., 1986) [hereinafter *Compilation on Women*] no. 91).

- *Ibid.*, at 375 (reprinted in *Compilation on Women*, no. 85).

- *Ibid.*, at 135 (reprinted in *Compilation on Women*, no. 91).

- Universal House of Justice, letter dated 23 June 1974 (reprinted in *Compilation on Women*, no. 68).

- `Abdu'l-Baha, Selections from the Writings of `Abdu'l-Baha, 1978 World Centre edition, 126 (reprinted in Compilation on Women, no. 56).
 - `Abdu'l-Baha, Selections from the Writings of `Abdu'l-Baha, 1978 World Centre edition, 139 (reprinted in Compilation on Women, no. 58).
 - Universal House of Justice, letter dated 23 December 1980 (reprinted in Compilation on Women, no. 71).
 - Ibid.
 - Universal House of Justice, letter dated 9 August 1984 (reprinted in Compilation on Women, no. 74).
 - Shoghi Effendi, letter written on his behalf dated 22 July 1943 (reprinted in Compilation on Women, no. 64).
 - Bradwell v. Illinois, 83 U.S. 130, 139 (1873), the US Supreme Court case holding that a woman could constitutionally be barred from practicing law, by interpreting "all persons" in the Fourteenth Amendment to mean "all men."
 - Helena Klimova, Czech dissident and director, "Tolerance," a Prague-based civic group, speaking on "Women in East Central Europe: After the Collapse of Communism" at the Woodrow Wilson School, Princeton University, October 14, 1994.
 - Ann C. Scales, "The Emergence of Feminist Jurisprudence: An Essay," Yale Law Journal 95:7, 1373 -- 1403, at 1395, using a phrase often cited to the work of Catharine A. MacKinnon.
 - Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (Cambridge, MA: Harvard University Press, 1982). Gilligan's work has been relied upon extensively in legal critiques of the social/psychoanalytic feminist variety. The terms "ethic of care" and "ethic of rights" are used by Gilligan to distinguish the processes of moral development in females and males, respectively. Stated as simply as possible, the "ethic of rights" describes a process which highly values individuation, and in which maturity is achieved when moral decisions are made on the basis of abstract, universal principles of right and wrong. In contrast, the "ethic of care" is based on understanding moral maturity to be the capacity to demonstrate caring for others; moral decisions are based on the value of preserving relationships and carrying out mutual responsibilities.
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