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## **Crime and Punishment**

### **Bahā'ī Perspectives for a Future Criminal Law**

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Translated from the German by Dr. Geraldine Schuckelt

## Introduction

### *On the crisis of law*

The breakdown of the old order and the establishment of a new one, prophesied by Bahā'u'llāh more than one hundred years ago,<sup>1</sup> is an apocalyptic event humanity is facing now. The decay of moral values, which is taking place with breathtaking speed, has encompassed everything that once seemed solid. In the final analysis, this process is due to the »weakening of the pillars of religion«<sup>2</sup>, to the total banishment of the metaphysical from society. Bahā'u'llāh warned of »the corrosion of ungodliness«, which »is eating into the vitals of human society«<sup>3</sup>, of the darkening of »the lamps of religion«, the consequence of which is »that the lights of fairness and justice, of tranquillity and peace cease to shine«<sup>4</sup>: »Verily, I say, whatever hath lowered the lofty station of religion hath increased the waywardness of the wicked, and the result cannot be but anarchy.«<sup>5</sup>

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1 »Soon will the present-day order be rolled up, and a new one spread out in its stead«, »The day is approaching when We will have rolled up the world and all that is therein, and spread out a new order in its stead« (*Gleanings* 4:2; 143:3).

2 *Tablets* 6:19 (p. 64 f.).

3 *Gleanings* 99; see also *The Promised Day is Come*, p. 117.

4 *Tablets* 8:53 (p. 125).

5 *Idem*, cited in Shoghi Effendi, *The World Order of Bahā'u'llāh*, p. 186. Shoghi Effendi has summarized the results of the decline of religion: »No wonder, therefore, that when... the light of religions is quenched in men's hearts... a deplorable decline in the fortunes of humanity immediately sets in, bringing in its wake all the evils which a wayward soul is capable of revealing. The perversion of human nature, the degradation of human conduct, the corruption and dissolution of human institutions reveal themselves, under such circumstances, in their worst and most revolting aspects. Human character is debased, confidence is shaken, the nerves of discipline are relaxed, the voice of human conscience is stilled, the sense of decency and shame is obscured, conceptions of duty, of solidarity, of reciprocity and loyalty are distorted, and the very feeling of peacefulness, of joy and of hope is gradually extinguished« (*op. cit.*, p. 187).

Divine revelation was the ground on which civilisation grew. With its roots cut off from this ground, there is no hold, no support, nothing on which one can rely, nothing one can hold onto, no *Sure Handle*<sup>6</sup>.

This decay of the value system inevitably has implications for the law, which is part of the moral order. Thus, we are facing a crisis of law, especially of criminal law, which has lost its anchor in metaphysical presumptions and premises, and is now based on mere utilitarianism. This crisis manifests itself in legal positivism, which, based solely on positive, observable, scientific facts, has cleansed law of any moral concepts: in a purely utilitarian jurisprudence; in widespread scepticism and recalcitrance towards the law<sup>7</sup>; in the erosion of the legal consciousness of the people, and the corruption of the sense of justice and injustice; and, last but not least, in the epidemic rise of criminality in all strata of society and the powerlessness of the judiciary in many countries.

Bahā'u'llāh has announced, and described this crisis of law: »Equity is rarely to be found, and justice hath ceased to exist«<sup>8</sup>, ... »the light of Justice is dimmed, and the Sun of Equity veiled from sight. The robber occupieth the seat of the protector and guard, and the position of the faithful is seized by the traitor«<sup>9</sup> ... »Justice is, in this day, bewailing its plight, and Equity groaneth

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6 *‘urwatu’l-wuthqā*, see *Qur’ān* 2:57; 31:23.

7 Demonstrated by a strange attitude of many people who nowadays use the words »law and order« only pejoratively as a political slogan to pillory the political adversary and to denounce him as a protagonist of ultra-conservatism, although law and order are desirable themselves, whereas the contrary, anarchy and chaos, are not in the least to be desired.

8 *Epistle to the Son of the Wolf*, section 192 (p. 131).

9 *Tablets* 8:52 (p. 125).

beneath the joke of oppression«,<sup>10</sup>... »Whither are gone the equitable and the fair-minded?«.<sup>11</sup> Whenever Bahā'u'llāh focuses on »justice«, the law is implied, since justice and law are, as Aristotle pointed out,<sup>12</sup> correlated.

### *Crime and punishment in legal philosophy*<sup>13</sup>

From Antiquity, the purpose of punishment has been a subject for philosophers, theologians and jurists, and different views have been developed. There are two fundamental theories:<sup>14</sup> According to the one the purpose of punishment is *retaliation*, according to the, *prevention*. Both theories are characterized by Latin formulae:

- 1) *Punitur quia peccatum est*: »Punishment is to be inflicted, because a crime has been committed.« Here, the view is directed to the past. Punishment is retaliation; compensation for the evil that has been committed, for violation of the law.<sup>15</sup>

The classical definition of this principle, the *lex talionis*, is found in the Old Testament: »Life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, strife for strife.«<sup>16</sup> In Roman Law, too, punishment was retaliation,<sup>17</sup> and up to the European Enlight-

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10 *Tablets* 7:6 (p. 84 f.).

11 »*aina al-`ādil wa aina al-munşif*« (*Tablets* 7:24 [p. 90]).

12 *The Nicomachean Ethics*, Book E (p. 89 s. q.).

13 On the whole subject see Eberhard Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege*, 3rd revised and changed ed., Göttingen: Vandenhoeck & Ruprecht, 1965.

14 See the outline on the following page. oder (See diagram facing).

15 Hugo Grotius formulated »*malum passionis propter malum actionis*« (»An evil is to be inflicted because an evil has been committed«, *De iure belli*, lib. II, cap. XXII § 1,1).

16 Ex. 21:24-25.

17 »*Poena est noxae vindicta*«: »Punishment is the retaliation of a wrongful act« (Ulpian, Dig. L, XVI, 131 pr).

ement this remained the prevailing purpose of punishment. According to the theocratic concept of the state, punishment could only be legitimised by divine authority. St. Thomas Aquinas justified the infliction of punish-

## THEORIES CONCERNING PUNISHMENT

Metaphysical principle



Justice



*punitur quia peccatum est*

(Talionic principle)

Secular principle

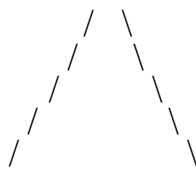


Utility



*punitur ne peccetur*

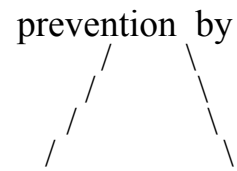
Purpose of punishment:



retaliation

expiation

Purpose of punishment:



general deterrence

rehabilitation of the  
violation

ment on the offender by legitimate temporal authorities.<sup>18</sup> The Reformers, too, justified State-inflicted punishment by reference to the divine will. The state is, according to Martin Luther, a »minister of God,«<sup>19</sup> ordained as the custodian of justice, whose mission is to protect the righteous against the evildoers, to deter them and put an end to their activities.<sup>20</sup> This includes the right to decide over life and death. Hence (referring to Gen. 9:6), Luther justifies capital punishment: »*Quicumque effuderit sanguinem humanum, illius sanguis effundetur per hominem*«: „Whoso shedeth man’s blood, by man shall his blood be shed.“<sup>21</sup> Authorities neglecting this mission are considered to have violated justice, and render themselves guilty in the sight of God.<sup>22</sup>

The philosophers who most radically advocated and formulated this idea of retaliation were Immanuel Kant and Friedrich Hegel. According to Kant, punishment »must always be inflicted upon him [the criminal] only because he has committed a crime... For if justice goes, there is no longer any value in man’s living on the earth«.<sup>23</sup> For Kant, punishment is a re-

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18 S. th. 1/II 9 qu. 46, a 6 ad 2.

19 cf. Rom. 13:4.

20 Tischreden, no. 2341 and 2342, in: *Dr. Martin Luthers sämtliche Werke* (Frankfurt/M. and Erlangen, Verlag von Carl Heyder), vol. 61.

21 Luther also quotes affirmatively the German proverb: »Ein Dieb ist nirgends besser denn am Galgen, ein Mönch im Kloster, ein Fisch im Wasser« (»The best place for a thief is the gallows, as a monk belongs in a monastery and the fish in water«, *op. cit.*, no. 2342).

22 On this subject see Luther’s Lessons on Genesis in the years 1535-1545, in: *D. Martin Luther’s Werke*, vol. 42, p. 360; his »Sendbrief von dem harten Büchlein wider die Bauern«, in: vol. 18, pp. 384-401; *Dr. Martin Luthers sämtliche Werke* (Erlangen 1844), pp. 86 ff. On the whole subject see also Eberhard Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege*, p. 162.

23 *Metaphysics of Morals*, marginal no. 331 (pp. 140 ff.).

quirement of justice, which is beyond all utilitarian purposes; it is a »categorical imperative«<sup>24</sup> in which the essence of justice manifests itself.<sup>25</sup>

Goethe has poeticised the idea that punishment has a metaphysical foundation, aiming at true expiation of the evildoer: In the famous prison scene of *Faust*,<sup>26</sup> Margerethe resists Faust's attempts to save her, as her escape appears to her as a condemnable evasion of justice. She accepts her punishment which »saves« her: »Nay, headman, whence hast thou this right? Whence didst thou power receive to lead me forth to death of night?... God's judgement, to you I have entrusted me.«

Until the sixties of this century, Catholic<sup>27</sup> and Protestant<sup>28</sup> theology advocated retaliation and expiation as the primary purpose of punishment. Other purposes like deterrence and the reformation of the criminal were accepted as complementary.

2.) The other formula, which considers prevention to be the purpose of punishment, goes back to Plato and Seneca: *Nemo prudens punit quia pecca-*

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24 *ibid.*

25 The rigour of his theory is expressed in the famous sentences: »Even if civil society were to be dissolved by the consent of all its members (i. e., if a people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first to have be executed, so that each has done to him what his deeds deserve and blood guilt does not cling to the people for not having insisted upon this punishment; for otherwise the people can be regarded as collaborators in this public violation of justice« (*Metaphysics of Morals*, marginal no. 333 [p. 142]).

26 Part One, New York: Philosophical Library, 1958.

27 The renowned Catholic encyclopaedia *Lexikon für Theologie und Kirche*, published in 1964, advocates retaliation as the purpose of punishment, quoting the formula: »*Punitur quia peccatum est.*«

28 Paul Althaus, »Das Problem der Todesstrafe«, in: *Sitzungsberichte der Bayerischen Akademie der Wissenschaften*, Phil.-hist. Klasse, München, Heft 2, 1955, p. 21.

*tum est, sed ne peccetur*<sup>29</sup>: »Nobody who is wise punishes because an offence has been committed, but so that none will be committed.« Here, the view is directed to the future. The purpose of punishment is prevention of crimes, punishment a prophylactic measure. This prevention is to be achieved by, on the one hand, deterrence, deriving from the penal provisions and the punishment to be expected, and, on the other hand, by reformation of the delinquent, by resocialization of the law-breaker.

This idea, which can be traced back to Roman Law,<sup>30</sup> was developed in the time of natural law and the Enlightenment. The purposes of general deterrence and resocialization of the violator are not based on metaphysical presumptions but solely on utility. The shift from the metaphysical principle of justice to utilitarian principles was in accordance with the ideas of the European Enlightenment, which aimed at the progressive secularization of the world. Representatives of this theory were such philosophers as Hugo Grotius, Samuel Pufendorf, Thomasio, Montesquieu, Voltaire and Beccaria.<sup>31</sup>

Today, in Western states penal law has lost its metaphysical dimension; it has become utilitarian. Retaliation and expiation as purposes of punish-

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29 The shorter version is »*Punitur, ne peccetur*«: »Punishment is to be inflicted that no crime will be committed«.

30 »*Exemplo deterriti delinquent minus*« (Dig. 48, 19, 6 § 1 [Ulpian]: »*Poena ad paucos, ut metus ad omnia perveneat*« [»They who are deterred by examples commit less crimes«, »Some must be punished in order to frighten all.«).

31 Concerning Cesare Beccaria (1738-1794) Immanuel Kant mockingly remarked, »in opposition to this the Marchese Beccaria, moved by overly compassionate feelings of an affected humanity (compassibilitas), has put forward his assertion that any capital punishment is wrongful because it could not be contained in the original civil contract... This is all sophistry and juristic trickery« (*Metaphysics of Morals*, p. 143).



ment have vanished completely in modern criminal law. The German penal code of 1970, for example, makes no mention of them, and modern criminologists regard them as barbaric relics of an inhuman rigorism.<sup>32</sup> Among the utilitarian purposes of punishment, general deterrence is increasingly regarded with suspicion. Doubts are voiced whether the penal law and punishment have any deterring effect. It has become a secular dogma that rehabilitation and resocialisation of the offender is the only legitimate goal for punishing a criminal: »Punishment should help the delinquent to overcome his *social mal-adjustment*.«<sup>33</sup> However, as the incidence of recidivisms is high, there are more and more voices calling for the complete abrogation of the whole penal system. If punishment does not prevent recidivisms, it is useless and should be abrogated. Progressive criminologists, who call crime »social deviance« (thus avoiding moral disapproval), have coined the slogans »de-criminalization«, »de-penalization« and »non-stigmatisation« for their programme of dismantling the penal system and replacing it with therapy and help for the criminal.<sup>34</sup>

Arno Plack, a philosopher who regards penal law as a »delusional system, based on moral prejudice«,<sup>35</sup> and who uncompromisingly calls for the

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32 cf. Ulrich Klug, »Abschied von Kant und Hegel«, in: Ulrich Klug, *Skeptische Rechtsphilosophie und humanes Strafrecht*, vol. 2: Materielle und formelle Strafrechtsprobleme (Berlin-Heidelberg-New York: Springer, 1981), p. 149-154.

33 Zipf, *Die Strafzumessung* (Heidelberg-Karlsruhe: Müller, Juristischer Verlag, 1977) p. 52.

34 see Working Paper prepared by the Secretary's Office for the Sixth UNO-Congress on Crime and Crime Prevention in Milan in 1985 (A/CONF. 121/7 [17. April 1985] nos. 19,13,18,21,32,34,36,69,70).

35 *Plädoyer für die Abschaffung des Strafrechts* (München: List-Verlag, 1974), p. 19. For more details on this subject see U. Schaefer, *The Imperishable Dominion*, pp. 49 ff., 183 ff.

complete abrogation of criminal law and of the judiciary, argues rightly when he states that:

It will become evident that many of the changes already introduced into the doctrine of penal law and the conditions of punishment tend to have the effect of abrogating penal law itself. Those reformers who wish to render the state's penal sanctions more just and humane are not yet aware of the general tendency. The single fact that retaliation as the legitimating reason for penalty has been banned in favour of other principles demonstrates that the days of penal law are numbered. Unadulterated penal law has always been pure retaliation.<sup>36</sup>

*Some general reflections.*

Let us now consider the penal implications of Bahā'u'llāh's revelation, and the prospects thereof for a future criminal law. In attempting to pursue such a project, the following must be taken into account:

- 1) While it is not my place to try to cram the Law of God into the Procrustean bed of historical theories of penal law, the various currents of thought in the field of legal philosophy do offer an excellent framework for the schematic presentation of the law-related contents of the revealed texts, which are not set down in any systematic order.
- 2) We are setting foot on virgin territory. An authorized and annotated English edition of the *Kitāb-i-Aqdas* has only been available since 1993, so that the precise wording of the legal stipulations has been made known only recently in the West. As far as I know, no research into these stipulations has so far been conducted by scholars in the field of Law. The con-

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36 *Plädoyer für die Abschaffung des Strafrechts*, p. 7.

clusions drawn here are, therefore, certainly not to be regarded as final. This is merely an initial attempt to provide food for thought and to promote discussion in academic circles.

- 3) The penal provisions of the *Kitāb-i-Aqdas* must be seen in the context of the sort of future society envisaged by Bahā'u'llāh. Any discussion of these penalties should be prefaced with the fact that the laws in this book have been »formulated in anticipation of a state of society«<sup>37</sup> which will emerge in the future and in which the various steps in educating the populace against crime, encouraged at many and various points in Bahā'ī texts, will be operating. It is therefore envisaged that »humanity may have reached a much higher point of evolution than at present, and the mere threat [of these punishments] may be sufficient in most cases to protect the community and protect the law from being broken«<sup>38</sup>. It may therefore be that the application of these penalties will be a comparatively rare event, a last resort.
- 4) The provisions of the *Kitāb-i-Aqdas* related to criminal acts are to be found in verse 19, where murder, adultery (*zinā'*),<sup>39</sup> backbiting and calumny are generally prohibited; verse 49, where a fine is prescribed for the adulterer: verse 45, where »exile and imprisonment are decreed for the thief« and »on the third offence« his stigmatisation: a mark shall be placed »upon his brow so that, thus identified, he may not be accepted in the cities of God and His

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37 Shoghi Effendi, quoted in: Introduction to *The Kitāb-i-Aqdas*, pp. 6 ff.

38 Shoghi Effendi, quoted in: *Lights of Guidance* no. 1198 (p. 358).

39 cf. *Kitāb-i-Aqdas*, Note 77 (p. 200).

countries<sup>40</sup>; and verse 62, where capital punishment is prescribed for those who intentionally destroy a house by fire or deliberately take another's life. The death penalty may be commuted to life imprisonment.

Other penalties, such as for striking and wounding a person<sup>41</sup> and for certain sexual acts<sup>42</sup> are referred to but not specified. These and other provisions of the criminal law are left to the supplementary legislation of the Universal House of Justice (and may therefore change with time, since the Universal House of Justice is empowered to repeal its own legislation). It must be emphasised that the penal stipulations of the *Kitāb-i-Aqdas* must be brought into force, set down in precise terms and codified by the Universal House of Justice. The characteristics of legal offences need to be exactly defined.<sup>43</sup> The imprecise nature of the revealed text is undoubtedly intentional. These regulations are valid for a long period, up to the next revelation, which will not take place before the passing of a thousand years.<sup>44</sup> The establishment of the precise terms of the criminal law by the Universal House of Justice, which can adjust these norms to the changing requirements of a particular age, guarantees that the divine law remains flexible.<sup>45</sup>

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40 cf. *Kitāb-i-Aqdas*, Note 71 (p. 198).

41 *Kitāb-i-Aqdas* 56. Numbers not preceded by „p.“, refer to numbered paragraph in the text of the *The Kitāb-i-Aqdas*.

42 *Ibid.*, Questions and Answers 49.

43 What are the legal characteristics of theft? What constitutes the »third offence«? For which cases of arson is the death penalty to be applied, and for which life imprisonment? Which cases fall under the term *zinā*, and so on.

44 cf. *Kitāb-i-Aqdas* 37.

45 for more detail on this subject see U. Schaefer/N. Towfigh/U. Gollmer, *Desinformation als Methode* (Hildesheim: Olms-Verlag 1995), pp. 267 ff., 557.

## Perspectives of a future criminal law

The Book of God is » guidance<sup>46</sup> for the God-fearing<sup>47</sup>, the »Straight Path«<sup>48</sup> to salvation — for the individual as well as for society. For the individual soul it is redemption from the bondage of »this mortal world of dust«,<sup>49</sup> »from the fetters of this world«,<sup>50</sup> from guilt and sin. However, the Revelation has also a political dimension: society, the state and the law are also in need of redemption and thus the recipient of divine salvation. For this reason, like the Torah and the Qur'ān, Bahā'u'llāh's Book of Laws, the Kitāb-i-Aqdas, contains some penal provisions for a future society, basic norms, indicating the rank which has been assigned in the hierarchy of values to factors such as life, marriage, property etc. These norms represent only certain fixed points, the kernel of a future criminal law, the details of which have been left open for supplementary legislation by the Universal House of Justice at a later date. Moreover, throughout the Bahā'ī scripture are to be found starting points for theological reflection on this subject, as well as occasional explicit statements regarding the deeper causes of criminality and the purpose of punishment, consideration of which is essential in order to understand the philosophical ideas underlying the penal provisions. This is all the more necessary in view of the fact that these penal laws, [with their absolute penalties (capital punishment or life imprisonment in case of intentional killing of a human being

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46 *hudā* from *hadā*: to guide, lead in the right way, direct aright (cf. *Qur'ān* 2:5; 16:38,97,120,159,175,185; 3:4,73,96 etc.; *Gleanings* 27:4,6; 29:1; 50; 115:1; 125:7; *Tablets* 11:20 [p. 169]).

47 *Qur'ān* 2:2.

48 *aṣ-ṣirāṭu'l mustaqīm* (*Qur'ān* 1:6; *Kitāb-i-Aqdas* 14,186).

49 *The Hidden Words*, Persian 14.

50 *ibid.* 14; cf. *ibid.* 41; *Gleanings* 45 (p. 99); 128:3 (p. 274-5); *Paris Talks* 3:7.

and of arson<sup>51</sup>), and the stigmatization of the thief »on the third offence«<sup>52</sup>] are in sharp contrast to modern Western penal concepts and the theories of progressive criminologists.

The following sections deal with fundamental questions of penal law and punishment and with the theological aspects of criminality.

### *Crime as a factor in society.*

In contrast to the expectations occasionally raised in Judaism and Christianity whereby the »Kingdom of God on earth« will be inhabited only by angelic beings,<sup>53</sup> Bahā'u'llāh anticipates that even in the time of the »Most Great Peace«, the messianic era, evil will not vanish completely from the world; it will, however, lose its predominance and become something exceptional, so that the earth will be »the ... metropolis of Satan«<sup>54</sup>. There will always be people who will commit crimes; indeed, the very existence of penal law in the Kitāb-i-Aqdas, whose norms are intended for a future society, is evidence for this.

### *Individual's moral responsibility*

A presupposition of all criminal law is guilt, and guilt in turn presupposes the responsibility of the individual for his actions. People can be held to be guilty only if they had the freedom to act differently. Some schools of thought in the humanities deny the existence of free will, regarding human beings as deter-

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51 *Kitāb-i-Aqdas* 62.

52 *Kitāb-i-Aqdas* 45.

53 cf. Isa. 11:9.

54 *Tablets* 11:46 (p. 177).

mined by external compulsions and own basic drives, and therefore unable to act on the basis of free will. The practical consequence of such deterministic view is the denial of personal guilt. Individuals cannot be made accountable for their actions and are thus morally exonerated; the blame for the individual's actions being shifted to structures such as the family, school or society.<sup>55</sup> As a result, the representatives of the deterministic schools of psychology dispute the right of the state to inflict punishment.

Bahā'u'llāh, in contrast, portrays human beings as responsible creatures. Amongst all created beings »man alone has freedom«;<sup>56</sup> »the power both to do good and to do evil«,<sup>57</sup> the »choice between justice and injustice«.<sup>58</sup> Thus, free will is a basic anthropological condition, a constituent element of the *conditio humana*. Therefore, one is responsible to God for one's actions, for »every idle word«,<sup>59</sup> indeed even for one's thoughts.<sup>60</sup> One's basic responsibility may be undermined by adverse mental or physical conditions, but malformations of character which result in crime are no disease; for these each individual is irrevocably responsible.

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55 The theory of psychoanalysis holds that conscious actions are directed from depths of which the individual is unconscious. Thus, as he cannot be blamed for his actions, there can be no guilt, only failure. Behaviourism must also be mentioned in this context (cf. B. F. Skinner, *Beyond Freedom and Dignity*, Harmondsworth: Penguin Books, 1977); see also Jacques Monod, *Chance and Necessity. An Essay on the Natural Philosophy of Modern Biology* (New York:Vintage Books, 1972).

56 *Paris Talks* 11:6; 9:18.

57 *Paris Talks* 18:3.

58 *Paris Talks* 49:16.

59 Matt. 12:36.

60 *The Hidden Words*, Arabic. 31; Persian. 44,60; *Tablets* 12:24 (p. 189); *Qur'ān* 17:4; 6:120.

### *The state's responsibility*

The Bahā'ī teachings impart a theocratical concept of the state. Bahā'u'llāh legitimates temporal power and the penal authority of the state: »The sovereigns on earth have been and are manifestations of the power, the grandeur and the majesty of God«. <sup>61</sup> Referring to statements in other scriptures, <sup>62</sup> Bahā'u'llāh confirms that all power is »of God«, <sup>63</sup> and that the kings and rulers should be »the emblems of justice« <sup>64</sup> amongst humankind. God has committed into their hands »the reigns of the government of the people«, that they may »rule with justice over them, safeguard the rights of the downtrodden, and punish the wrong-doers«, <sup>65</sup> a duty for which they are responsible before God. <sup>66</sup>

### *Justitia fundamentum regnorum* <sup>67</sup>

Justice (‘*adl*) – according to Jewish tradition, an attribute of the Messiah, <sup>68</sup> according to Islamic tradition, of the Mahdī <sup>69</sup> – is the cardinal value of temporal power. Justice, law and order are the foundations on which Bahā'u'llāh's world order is established. The essence of justice is manifested in the »two pillars« upon which »the canopy of world order is upraised«: »reward and pun-

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61 *Epistle to the Son of the Wolf* 143 (p. 89).

62 Matt. 22:21, Rom. 13:1 ff. and *Qur'ān* 4:59.

63 *Epistle to the Son of the Wolf* 145 (p. 91); *Gleanings* 102.

64 *Gleanings* 118:3.

65 *Gleanings* 116:3; see also *Kitāb-i-Aqdas* 88.

66 *Gleanings* 116:3.

67 »Justice is the foundation of temporal power«. This sentence originates from Antiquity (Cicero, Sallust, Vergil, although it cannot be determined who formulated it. It was the motto of Emperor Francis I of Austria [1804-1835]).

68 Isa. 11:5; 26:10; 32:7; Ps. 85:11; Micah 4:3.

69 *Shorter Encyclopaedia of Islam*, p. 312.



ishment<sup>70</sup> – this is a fundamental principle on which order in the world depends, both at the metaphysical level and at the level of world affairs. Justice (*iustitia distributiva*) requires that punishment be inflicted for a crime committed. Conversely, the justification for the infliction of punishment is the fact that a crime has been committed. Thus, the primary purpose of punishment is retaliation for the act of injustice committed, the expiation of the perpetrator for his misdeed.<sup>71</sup> The talionic character<sup>72</sup> of the criminal law in the *Kitāb-i-Aqdas* is evident in the fact that the law prescribes the death penalty for murder and arson (with the alternative of life-imprisonment),<sup>73</sup> and that the death penalty inflicted on the arsonist shall be by burning. Punishment has thus regained an absolute rank rather than a mere relative one, oriented only towards utilitarian considerations.

In accordance with the theories of Kant and Hegel, this anchoring of criminal law in the metaphysical principle of justice does not exclude utilitarian purposes for punishment.<sup>74</sup> Punishment serves also »for the security and protection of men«,<sup>75</sup> the preservation of society which »has the right of defence and of self-protection«,<sup>76</sup> for some people are »more savage... more vile, more cruel, more malevolent than the lower animals themselves«, they »plan to work evil, to hurt and to destroy«,<sup>77</sup> some are »like blood-thirsty wolves: If

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70 *Tablets* 8:55; 8:61; 3:25; 11:6 (pp. 126, 129, 27, 164).

71 *Qur'ān* 5:38; 'Abdu'l-Bahā, *Selections* 152; *Some Answered Questions* 77:2.

72 cf. Ex. 21:24-25; Lev. 24:19-21.

73 *Kitāb-i-Aqdas* 62; *Kitāb-i-Aqdas*, Questions and Answers 86, 87.

74 cf. Heiner Bielefeldt, »Strafrechtliche Gerechtigkeit als Anspruch an den endlichen Menschen. Zu Kants kritischer Begründung des Strafrechts«, in: *Goldammer's Archiv für Strafrecht*, p. 115.

75 *Tablets* 7:32 (p. 93); 'Abdu'l-Bahā, *Some Answered Questions* 77:2.

76 'Abdu'l-Bahā, *Some Answered Questions* 77:6.

77 *Paris Talks* 31:6.

they see no punishment forthcoming, they will kill men merely for pleasure and diversion«. <sup>78</sup> Moreover, punishment has also the purpose of crime prevention by general deterrence: it causes »the wicked to restrain their natures«. <sup>79</sup> Society must punish the perpetrator »so as to warn and restrain others from committing like crimes«. <sup>80</sup> Even the concept of crime prevention by rehabilitation and resocialization of the offender as a purpose of punishment can be found in the Bahā'ī scripture: the punishment of the thief may at first include exile, <sup>81</sup> thus removing the offender from his milieu, giving him the chance of a new beginning, whereas his stigmatization on the third offence explicitly serves the protection of the public from a recidivous thief.« <sup>82</sup>

### *On the relationship between justice and love*

As 'Abdu'l-Bahā emphasised, »the object of punishment is not vengeance«, <sup>83</sup> nor is it, as often imputed, the expression of subliminal feelings of hatred and aggression; rather it is the essence and the demand of justice. Reference to the Sermon on the Mount, <sup>84</sup> or, with regard to the death penalty to the fifth commandment, <sup>85</sup> as reasons not to administer justice appears are erroneous, since

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78 'Abdu'l-Bahā, *Some Answered Questions* 77:9 (p. 273); 'Abdu'l-Bahā, *Selections* 138:1; similarly *Aristotle*: »Peior enim est malus homo quam bestia et plus nocet«: »An evil man is worse than a beast and does more harm« (*The Nicomachean Ethics* VII, 7 1150a); see also *Thomas Aquinas*, S. th. II-II, q 64a 2 ad 3.

79 *Tablets* 11:6 (p. 164).

80 'Abdu'l-Bahā, *Some Answered Questions* 77:3.

81 *Kitāb-i-Aqdas* 45.

82 The principal purpose of the fine imposed in the *Kitāb-i-Aqdas* on every adulterer and every adulteress is, according to 'Abdu'l-Bahā, their social stigmatization, »the exposure of the offenders — that they are shamed and disgraced in the eyes of society. He affirms that such exposure is in itself the greatest punishment (*Kitāb-i-Aqdas*, [Note 77](#) [p. 201]).

83 *Paris Talks* 47:3.

84 Matt. 5:44; 6:12.

85 Ex. 20:13.

the addressee of these commandments is the individual, the *homo privatus*, not the state.<sup>86</sup> The commandment of love (with the inherent attitudes of mercy, compassion and forgiveness) relates to the realm of interpersonal relationship, whereas the realm of order is ruled by the principle of justice.<sup>87</sup> The commandments of the Sermon on the Mount are not directives for political action,<sup>88</sup> but are a radicalized ethic for observance by the individual.<sup>89</sup> Just as justice without love turns into cruelty,<sup>90</sup> love which is devoid of justice is »the mother of disintegration«,<sup>91</sup> and becomes mere sentimentality,<sup>92</sup> leading eventually to the breakdown of order. The growing orientation of Western societies to the secular value of humaneness (with the inherent attitudes of forgiveness and compassion), is bound to result in the disruption of the social order. In response to those who refer in this context to God's mercy, 'Abdu'l-Bahā objected that »also justice is one of the attributes of the Lord«.<sup>93</sup>

Bahā'u'llāh appears to be warning against such tendencies when he states in the *Kitāb-i-Aqdas*: »Take ye hold of the precepts of God with all your strength and power, and abandon the ways of the ignorant«<sup>94</sup>, and »Beware lest, through compassion ye neglect to carry out the statutes of the religion of

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86 On this subject see Martin Luther, *Sämtliche Werke* (Erlangen 1844), vol. 36, pp. 86 ff.

87 'Abdu'l-Bahā, *Some Answered Questions* 77:8.

88 'Abdu'l-Bahā, *Some Answered Questions* 77:7.

89 And as such are also present in the Bahā'ī teachings; cf. *Some Answered Questions* 77:5,7.

90 Thomas Aquinas, *Super Evangelium Matthaei*, in vol. 6: Reportationes, Opuscula dubiae authenticitatis, p. 149 (085 REM cp. 5.2 [(line 536)]).

91 Thomas Aquinas, *ibid.*

92 »Love which is not just in the world of institutions is sentimentality. And sentimentality, feelings for feeling's sake, is the poison the solvent which destroys all institutions of justice« (Emil Brunner, *Justice and the Social Order* (New York: Harper & Brothers, 1945, p. 129). This book is a thorough investigation of the relationship between love and justice. On this subject see also U. Schaefer/N. Towfigh/U. Gollmer, *Desinformation als Methode*, pp. 302-306.

93 'Abdu'l-Bahā, *Some Answered Questions* 77:8.

94 *Kitāb-i-Aqdas* 62.

God; do that which has been bidden you by Him Who is compassionate and merciful«<sup>95</sup> — a warning against human arrogance in presuming to be more merciful than God, the All-Merciful.

*The metaphysical dimension*

Thus, Bahā'u'llāh advocates that society turns back from a criminal law with purely utilitarian motives to one which is anchored in the metaphysical. The metaphysical dimension of this law is evident, *inter alia*, in the fact that a just punishment (i. e. one inflicted in accordance with the divine law) has a metaphysical, expiatory significance for the offender, who accepts it, since its effect extends into the hereafter: »God in his justice will impose no second penalty upon him, for divine justice would not allow that«<sup>96</sup> — a metaphysical principle of *ne bis in idem*, so to speak, in accordance with the Qur'ānic assurance that: »In retaliation there is life for you«.<sup>97</sup>

Hence, the offender can perceive a meaning in his punishment, which is not the case when punishment is inflicted with a purely utilitarian purpose. Even a death sentence carried out in error (a strong argument put forward by opponents of capital punishment) — the worst injustice any individual on earth can suffer at the hands of those charged with the upholding of justice — loses its absolute irreparability in the face of this metaphysical dimension: God, the allwise Lawgiver, who is aware of the relativity of human judgments, who therefore knows that such a risk exists, and yet, nevertheless, has

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95 *Kitāb-i-Aqdas* 45; cf. *Qur'ān* 24:2.

96 'Abdu'l-Bahā, *Selections* 152.

97 2:179.

commanded this punishment, will compensate the person who was falsely condemned »a thousandfold in the next world, for this human injustice«<sup>98</sup> — an idea that should not be misunderstood and interpreted cynically.

Seen from this perspective, the doctrine that the only acceptable legitimation for punishment consists in the resozialization of the offender<sup>99</sup> is not upheld by the Bahā'ī teachings. The Bahā'ī position derives from a basic political concept in the Bahā'ī Faith whereby the common weal and the security of the public has to be balanced against the rights of the individual.<sup>100</sup> Society should neither suppress the individual nor exalt him »to the point of making him an antisocial creature, a malice to society«.<sup>101</sup>

### *The Fear of God*

Bahā'u'llāh refers to the inevitability of penal sanctions for »the security and protection of man«,<sup>102</sup> without which »the world would be disordered, and the foundations of human life would crumble«.<sup>103</sup> However, he regards them only as an outward instrument: they are powerless to remove the fundamental causes of criminality: »That which guideth and restrained man both outwardly and inwardly hath been and is still the fear of God. It is man's true protector and his spiritual guardian«.<sup>104</sup> The fear of God results from man's spiritual responsibility before God, the consciousness that all one's deeds, even the se-

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98 Shoghi Effendi, in: *Kitāb-i-Aqdas*, Note 86.

99 with the practical consequence that even dangerous criminals serving life-sentences should have the chance of eventual release.

100 cf. *Paris Talks* 47:5.

101 Shoghi Effendi, in: *Unfolding Destiny*, p. 436.

102 *Tablets* 7:32 (p. 93).

103 'Abdu'l-Bahā, *Some Answered Questions* 77:8.

104 *Tablets* 7:32 (p. 93).

crets of the heart are »openly manifest in the holy Presence«<sup>105</sup> and that he will eventually be »called to give account«<sup>106</sup> for them before God. This consciousness, together with conscience, is an control mechanism constituting for the faithful a strong motivation to refrain from evil deeds, even when there is little likelihood of their discovery and subsequent punishment.<sup>107</sup>

### *Religion and the political world*

This demonstrates the political dimension of religion, its power as a factor for the establishment and stabilisation of order in the world. For religion is »the chief instrument for the establishment of order in the world, and of tranquility amongst its peoples«,<sup>108</sup> »a radiant light and an impregnable stronghold for the protection and welfare of the peoples in the world«.<sup>109</sup> Since the value system, the pivot of society, is anchored in religion, the decay of religion inevitably brings in its wake the dissolution of moral order, increasing »waywardness of the ungodly«,<sup>110</sup> sedition, the subversion of »the order of things«,<sup>111</sup> the disruption of order, »chaos and confusion«,<sup>112</sup> and, eventually the end of civilisation. If the fear of God is the true motivation which impels us »to hold fast to that which is good, and to shun evil«,<sup>113</sup> then the corollary of that is that today when »the vitality of men's belief in God is dying out in

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105 *The Hidden Words*, Persian. 59, 60; *Gleanings* 77; *Qur'ān* 50:16.

106 *The Hidden Words*, Arabic. 31; cf. also *Gleanings* 114:12 (p. 236).

107 'Abdu'l-Bahā, *Selections* 227:21 (p. 302 f.).

108 *Epistle to the Son of the Wolf* 52 (p. 28).

109 *Tablets* 8:53 (p. 125).

110 *Tablets* 6:19 (pp. 63 ff.).

111 'Abdu'l-Bahā, *Selections* 227:21 (pp. 302 f.).

112 *Epistle to the Son of the Wolf* 52 (p. 28); *Tablets* 6:19; 8:53 (pp. 63 f.; 125).

113 *Tablets* 8:53 (p. 125).

every country«,<sup>114</sup> criminality is spreading like an epidemic in all strata of society. Thus it is becoming increasingly evident that the global problem which threatens to devour society cannot be overcome without recourse to religious commitment and to humanity's transcendental responsibility.

### *Moral education*

Criminal law and penal provisions are thus not by themselves the remedy. The solution lies in the moral healing of a society faced with loss of its defences<sup>115</sup> against the onslaught of crime. The establishment of moral health, which alone can ensure that crime becomes the exception, cannot, however, be achieved by state decree. Bahā'īs believe that this transformation will result, as in mankind's past upheavals, from a new faith, from the new Word of God revealed by Bahā'u'llāh, which, in the fullness of time, will bring about a »new race of men«, for this Word is »endowed with such a potency as can instill new life unto every human frame«:<sup>116</sup> »The Word of God, alone, can claim the distinction of being endowed with the capacity required for so great and far-reaching a change«.<sup>117</sup> Only the spiritual rebirth of humanity will bring about its liberation from the clutches of crime and overcome the chaotic conditions prevailing today.

The moral education of humanity through which all are spurred on »to acquire virtues, to gain good morals and avoid vices, so that crimes may not oc-

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114 *Gleanings* 99.

115 in the German text: Immunität

116 *Gleanings* 74.

117 *Gleanings* 99.

cur«<sup>118</sup> is a long-term process. A hardened criminal can only change his ways if he himself wants to change, and it is one of the tasks of religion to bring about such an individual spiritual transformation. To stand the greatest chance of success, however, the process of character training must begin in early childhood, »for when the bough is green and tender it will grow in whatever way ye train it«.<sup>119</sup> Therefore: »Schools must first train the children in the principles of religion so that Promise and the Threat recorded in the Book of God may prevent them from the things forbidden and adorn them with the mantle of the commandments«; although it is accompanied by a warning only to do this in such a measure that »it may not injure the children by resulting in ignorant fanaticism and bigotry«.<sup>120</sup> Character formation is not possible without moral discipline and moral responsibility towards an omnipresent authority, something which is absent from a society which has abandoned all things metaphysical.

When ‘Abdu’l-Bahā gives preference to education, enlightening and spiritualization over »punitive and retaliatory laws«<sup>121</sup> so that »without any fear of punishment or vengeance to come, they will shun criminal acts«,<sup>122</sup> that they will become »enamoured with human perfections«<sup>123</sup> and will »look upon the very commission of a crime as a great disgrace in itself and in itself the harshest punishment«,<sup>124</sup> it is not perhaps the specific offender and the educative

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118 ‘Abdu’l-Bahā, *Some Answered Questions* 77:11.

119 ‘Abdu’l-Bahā, *Selections* 95:2.

120 *Tablets* 6:28 (p. 68).

121 ‘Abdu’l-Bahā, *Selections* 105:1-2; ‘Abdu’l-Bahā, *Some Answered Questions* 77:11-13.

122 ‘Abdu’l-Bahā, *Selections* 105:2

123 *op. cit.*

124 *ibid.*



actions undertaken for that individual's rehabilitation to which he primarily refers, rather it is the long-term educative process leading to the moral reconstruction of society, which is complementary and which should not be mistaken as an alternative to punishment. Since the penal laws of the Kitāb-i-Aqdas relate to a future state of society, it must be borne in mind that then when that future society arrives, the long process of moral education will already have been under way.

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