A POST-QURʾĀNIC RELIGION BETWEEN APOSTASY AND PUBLIC ORDER: EGYPTIAN MUFTIS AND COURTS ON THE LEGAL STATUS OF THE BAHĀʾĪ FAITH

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Abstract

The more than 100-year presence of Bahāʾīs in Egypt has caused a number of legal problems for Muslim jurists and Egyptian courts. Both have dealt with the status of Bahāʾīs in personal status, criminal and administrative law. In this essay, I describe the solutions put forward by muftis and courts for novel problems generated by the presence of a post-Qurʾānic religious minority in Egypt, and I analyze the interaction between shariʿa and state jurisdiction. Special attention is given to methods of dealing with issues that have no precedent in classical Islamic law, like the status of Bahāʾīs of non-Muslim descent and the consequences of apostasy for matters of administrative law or employment in public service.

The Bahāʾī faith in Egypt

The Bahāʾī faith originated in nineteenth-century Iran where, in 1844, Sayyid ʿAlī Muḥammad, known to his followers as the *Bāb*, claimed to be the "Promised Mahdī". His teachings, based upon an allegorical exegesis of the Qurʾān, gained considerable popularity in Iran, even after his arrest in 1847. In 1848, the most prominent of his followers gathered in the town of Badasht, where the assembly declared that the Islamic shariʿa, though a divine revelation, had ceased to be valid—an event that marks the detachment of the Bābī faith from Islam.

The Bāb was executed in 1850, and his followers were arrested, killed or exiled. The large community of exiled Bābīs in Baghdad soon organized itself under the leadership of two brothers known as Ṣubḥ-i Azal and Janāb-i Bahāʾ. It seems that the Bāb had designated Ṣubḥ-i Azal as his successor, but Janāb-i Bahāʾ, who was more charismatic and energetic than his brother, took over the task of reorganizing the shattered Bābī community. In 1863, Janāb-i Bahāʾ

first revealed to his closest followers that he himself was the prophet whose advent the Bāb had promised. Shortly thereafter, the community divided, the majority siding with Janāb-i Bahāʾ, who now made his prophetic claims public and called himself "Bahāʾ Allāh". Also in 1863, and at the request of the Iranian government, the Ottoman government summoned the two brothers and their followers from Baghdad to Istanbul. After a short while, the Bābīs were sent from Istanbul to Edirne. Finally, in 1868 the Sultan banished Bahāʾ Allāh to Acre and his brother to Cyprus.

Bahāʾ Allāh died in Palestine in 1892, the founder of a new religion with adherents in Iran and the Middle East. He had set down the principles of the Bahāʾī faith in a large number of Arabic and Persian writings, among them *al-Kitāb al-aqdas*, "The Most Holy Book", which contains, among other things, the foundations of Bahāʾī family and inheritance law.

Bahāʾ Allāh was succeeded by his son, ʿAbd al-Bahāʾ, who spread the Bahāʾī faith in Europe and America and developed the Bahāʾī theology. After ʿAbd al-Bahāʾs death in 1921, his grandson Shoghi (Shawqī) Effendi assumed the task of organizing and consolidating the community. He died in 1957. Following a period of transition, representatives of all National Spiritual Assemblies—as the Bahāʾīs' administrative bodies on the national level are called—elected a Universal House of Justice. Since that time, the Bahāʾī community, which currently numbers between six and seven million members, has been led by a democratically elected institution.

Bahāʾīs believe in successive manifestations of the Divine through human prophets. The manifestation of God through prophets never ceases; thus, there is no "last prophet", as there is no final revelation or Holy Book. According to the Bahāʾī faith, every prophet has a mission that lasts for a specific period of time, until a new stage of human progress requires a new prophet. The revelations given to the prophets teach the eternal divine truth in a manner that is adapted to their mission and to the capacity of human understanding at their time. Thus, Bahāʾīs consider Muḥammad a prophet and the Qurʾān a divine revelation, but they believe that the Qurʾān has been superceded by the teachings of the Bāb and those of Bahāʾ Allāh, which are best adapted to the present time and include all former revelations.

Apart from these theological doctrines, which are highly offensive to Muslims, the Bahāʾī faith differs from Islam in ritual and religious

law, making it clear, even to a superficial observer, that the Bahā'ī faith is not an Islamic sect, but an independent religion.[1]

The first Iranian Bahā'īs came to Egypt during the 1860s. Two of these immigrants converted to the Bahā'ī faith a number of mostly Iranian inhabitants of al-Manṣūriyya. Around the year 1894, ʿAbd al-Bahā' made a more organized attempt to spread the Bahā'ī faith in Egypt by sending to Cairo Abū al-Faḍl al-Gulpāyagānī, who had been a Muslim scholar before his conversion to the Bahā'ī faith. Al-Gulpāyagānī taught at the Azhar mosque, initially concealing his Bahā'ī identity, and convinced fifteen or more Azhar students and teachers to become Bahā'īs. The small Bahā'ī community attracted the attention of the eminent Salafī, Rashīd Riḍā, who attacked the Bahā'ī faith in *al-Manār* several times.[2]

The Bahā'ī faith received widespread publicity in Egypt for the first time in 1910, when ʿAbd al-Bahā' arrived in the country for a lengthy stay in Alexandria, to which he returned several times until the year 1913. Whereas parts of the secular press and many liberal, modernist intellectuals were impressed with ʿAbd al-Bahā's personality and worldview, the Islamic institutions and the religious press reacted in a hostile manner.[3] The first Egyptian fatwas on the Bahā'ī faith date from this time.

From the 1920s onward, the Egyptian Bahā'ī community flourished. It established a National Spiritual Assembly (NSA) with nine elected members and created a publishing house. At the same time, Egyptian Bahā'īs tried to acquire government recognition as an independent religion. They codified Bahā'ī personal status law and petitioned Parliament to grant them the status of a *milla*, a religious community with the right to apply their own religious law in matters of personal status. Although unsuccessful, the Bahā'īs tried to create facts on

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[1] Peter Smith, *The Babi and Baha'i Religions: from Messianic Shiʿism to a World Religion* (Cambridge, 1987); EI², s.v.v. "Bāb" (A. Bausani), "Bābīs" (A. Bausani), "Bahā' Allāh" (A. Bausani), "Bahā'īs (A. Bausani).

[2] Juan Ricardo Cole, "Rashid Rida on the Baha'i Faith: A Utilitarian Theory of the Spread of Religions", in *Arab Studies Quarterly* 5 (1983), 276-91 (280); *Egypt*, http://bahai-library.org/asia-pacific/country%20files/egypt.htm.

[3] Shoghi Effendi, *God Passes By* (new ed., Wilmette, 1970), 280; Muḥammad Fāḍil, *Al-ḥirāb fī ṣadr al-Bahā' wa'l-Bāb* (2nd ed., Jidda/Cairo, 1986), 30-81, 372; *al-Manār* 13 (1910/11), 789, 833, 922; *ibid.* 14 (1911/12), 78, 138, 707; *ibid.* 15 (1912/13), 731, 901; *ibid.*, 17 (1914/15), 178; *Ṭawāliʿ al-Mulūk* (30 April 1911), 401.

the ground by drafting Bahāʾī marriage contracts[4] and issuing Bahāʾī marriage certificates.[5]

By the end of the 1950s, Egyptian Bahāʾīs numbered around 5,000 persons, including former Muslims, Christians and Jews, with local groups in twenty-four towns.[6] The NSA built a new center in Cairo that had been designed by Egyptian Bahāʾīs.[7] However, Nasser's reign brought a stop to the community's development. In 1960, presidential decree No. 263 ordered the dissolution of all Bahāʾī institutions and made the continuation of their activities liable to punishment, with prison terms of up to three years. Bahāʾī community property was seized by the state and given to the state-controlled "Societies for the Preservation of the Holy Qurʾān".

At this point, Egyptian Bahāʾīs stopped their attempts to gain official recognition and to apply their own religious law. In accordance with the law, they have refrained from organized activities until the present time. Still, there are probably several thousand Bahāʾīs in Egypt today.

Egyptian muftis, fatwas and courts on the Bahāʾī faith

The Bahāʾī faith poses a challenge to Muslim theologians and to Islamic jurisprudence.

Because of their belief in a post-Qurʾānic revelation, Bahāʾīs cannot be classified as "people of the book", like Christians and Jews—from the Muslim perspective, the Qurʾān is God's final revelation. Furthermore, unlike Hindus and certain other religious groups conquered by Muslims in former times, Bahāʾīs cannot be tolerated as a people clinging to a traditional religion who have not yet gained sufficient

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[4] There are no clear rules that would make a Bahāʾī marriage contract contradict Islamic law. The text of the contract usually refers to the Bahāʾī faith and uses religious formulae like *Yā Bahāʾ al-Abhā*. As will be seen below, the validity of Bahāʾī marriage contracts was contested not because of their contents, but for procedural reasons: according to Egyptian law, the Bahāʾī Spiritual Assemblies were not competent to draft, witness or register marriage contracts.

[5] Shoghi Effendi, *God Passes By*, 302, 364; Shoghi Effendi, *Die Weltordnung Bahāʾuʾllāhs: Briefe von Shoghi Effendi* (Hofheim-Langenhain 1997), 26.

[6] "Egypt", http://bahai-library.org/asia-pacific/country%20files/egypt.htm; Shoghi Effendi, *God Passes By*, 302.

[7] *Ākhir Sāʿa* (29 March 1972), *Alladhī lā taʿrifuhu ʿan al-Bahāʾiyya*, article from archive without page number. The newspaper archives mentioned in this essay are: (1) the *dossier de presse* "Tendances religieuses diverses" at CEDEJ (Centre de Recherches et de Documentation Economiques, Juridiques et Sociales), Cairo; (2) the Religious News Service for the Arab World; (3) private collections of Egyptian Bahāʾis that I have had the opportunity to photocopy.

knowledge of Islam to accept it as the true religion. The founders of the Bahā'ī faith, although well-acquainted with Islam, nevertheless claimed that its religious law had ceased to be valid. Thus, many Muslim theologians and intellectuals who could not understand how a person could knowingly reject Islam assumed that these Bahā'ī leaders were servants of Imperialism, Zionism or other evil forces.[8] This point of view, which is widespread in Egypt today, exacerbates the problems resulting from the presence of a Bahā'ī community in the country.

Three aspects of the contemporary Egyptian legal system cause problems concerning the status of Egyptian Bahā'īs. First, matters relating to personal status are governed by the religious law of the different state-acknowledged religions and denominations, which do not include the Bahā'ī faith. Second, after Law No. 263/1960, participation in organized Bahā'ī activities became a criminal offence. Third, according to Egyptian jurisdiction, Islam plays an important role for the definition of the concept of public order and good morals. Egyptian law grants many civil rights and liberties only as long so they do not violate public order and good morals. For example, the free exercise of religion was limited in this manner in the Egyptian constitutions of 1923 and 1956; and welfare societies can be founded only if their aims and methods do not contradict the aforementioned principles. The fact that Islamic criteria determine whether or not public order and good morals have been violated, and that Muslim theologians hold that the Bahā'ī faith constitutes a violation of public order and good morals, has far-reaching effects on the Bahā'īs' legal status.

Since the 1920s, Egyptian courts have dealt with the legal status of Bahā'īs in different contexts. At the same time, Egyptian muftis have tried to define their status in the light of Islamic law. I will now analyze how courts and muftis have responded to the challenge of the Bahā'ī faith.

Fatwas

I will discuss fifteen fatwas issued by Egyptian muftis on the status

[8] Conspiracy theories are pervasive in the anti-Bahā'ī literature available in Egypt. Some examples are ʿAbd al-ʿAzīz Sharaf, *Abāṭīl al-Bahā'iyya wa-Brūtūkūlāt Ṣihyawn* (Beirut, 1993); Muḥammad Thābit al-Shādhilī, *al-Bahā'iyya. Ṣalībiyyat al-ghars—Isrā'īliyyat al-tawjīh* (Cairo, 1990); ʿAbd al-Raḥmān al-Wakīl, *al-Bahā'īyya. Tārīkhuhā wa-ʿaqīdatuhā wa-ṣilatuhā bi' l-Bāṭiniyya wa' l-Ṣihyawniyya* (Cairo, 1962/1986).

of Bahā'īs in Islamic law. The first was issued in 1910 by the Shaykh al-Azhar, ʿAbd al-Salīm al-Bishrī, in connection with ʿAbd al-Bahā''s visits to Alexandria;[9] this was followed by two fatwas issued by Rashīd Riḍā and published in *al-Manār*.[10] Of the remaining twelve fatwas, one was issued in 1939, six were issued between 1949 and 1960, and five were issued between 1968 and 1998.

Eight of the twelve fatwas were written by Grand muftis. The institution of *dār al-iftā'*—the Grand mufti's office—was established at the end of the nineteenth century, when the process of nationalization and regulation spread to the religious institutions and the mufti of Cairo gradually gained the status of state mufti. Both law courts throughout the country and the executive sought his expertise on matters pertaining to Islamic law. In 1895, he received the title of *muftī al-diyār al-miṣriyya*, and the *dār al-iftā'* administration started its work. Consultation with the Grand mufti was not mandatory for the courts and the executive. In 1931, the legislator made it clear that the Grand mufti's fatwas had only an advisory nature and were not binding on the courts.[11] Since 1955, the Grand mufti's office has been subordinate to the Ministry of Justice. In 1978, when the *dār al-iftā'* began to reassert itself under the mufti Jādd al-Ḥaqq ʿAlī Jādd al-Ḥaqq, the office began to edit and publish the Grand muftis' fatwas, an activity that still continues.[12] Four of the fatwas discussed here come from this collection: one by ʿAbd al-Majīd Salīm issued in 1939,[13] two by Aḥmad Harīdī issued in 1960 and 1968,[14] and one by Jādd al-Ḥaqq issued in 1981.[15] Two fatwas by Grand mufti Muḥammad

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[9] Fāḍil, *Al-ḥirāb fī ṣadr al-Bahā' wa'l-Bāb*, 372.

[10] Rashīd Riḍā, "Al-Bābiyya wa-dīn al-Bahā'iyya", *al-Manār* (11 October 1912), 731 f.; ibid., "Duʿāt al-Bahā'iyya wa-majallat al-Bayān al-Miṣrī", *al-Manār* (25 February 1914), 178-80.

[11] Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State. Muftīs and Fatwās of the Dār al-Iftā'* (Leiden/New York/Cologne, 1997), 102.

[12] Ibid., 227, 242.

[13] ʿAbd al-Majīd Salīm, "'Adam jawāz mawtā 'l-Bahā'iyyīn fī maqābir al-Muslimīn li-annahum murtaddūn", in *al-Fatāwā al-Islāmiyya min dār al-iftā' al-Miṣriyya*, ed. Jumhūriyyat Miṣr al-ʿarabiyya/Wizārat al-awqāf (Cairo, 1981), vol. 4, 1269 f.

[14] Aḥmad Harīdī, "Iʿtināq al-madhhab al-Bahā'ī ridda māniʿa min al-irth", in *al-Fatāwā al-Islāmiyya min dār al-iftā' al-Miṣriyya*, ed. Jumhūriyyat Miṣr al-ʿarabiyya/Wizārat al-awqāf (Cairo, 1988), vol. 16, 6082 f.; ibid., "Iʿtināq al-dīn al-Bahā'ī ridda ʿan al-Islām", in *al-Fatāwā al-Islāmiyya min dār al-iftā' al-Miṣriyya*, ed. Jumhūriyyat Miṣr al-ʿarabiyya/Wizārat al-awqāf (Cairo, 1982), vol. 6, 2183 f.

[15] Jādd al-Ḥaqq ʿAlī Jādd al-Ḥaqq, "Zawāj al-Bahā'ī min al-Muslima bāṭil",

Ḥasanayn Makhlūf, undated, but definitely issued during the first half of the 1950s, can be found in a collection of his fatwas.[16] A court ruling of 1952 published as a book quotes another fatwa by an unnamed Grand mufti.[17] A 1986 statement by the Shaykh al-Azhar indicates that this fatwa had been issued on 13 April 1950,[18] when Muḥammad Ḥasanayn Makhlūf was Grand mufti. The fatwa, however, is not contained in his collection. Finally, I discuss a fatwa issued in 1972 by the Grand mufti Muḥammad Khāṭir on the basis of a summary published in a newspaper article and in a report in a religious magazine.[19]

In 1935, the Azhar reacted to the growing number of *istiftā'āt* or requests for fatwas by founding a fatwa committee. The committee is composed of twelve members from all four Sunni schools of law. Under Nasser, the Azhar became a state institution like the *dār al-iftā'* and was put under the control of the Ministry of Pious Endowments (*awqāf*) and Azhar Affairs.[20] The Azhar fatwa committee issued two fatwas on the Bahā'ī faith in the *Majallat al-Azhar*,[21] one in 1949 and the other in 1952. It issued a third fatwa relating to a case that occured in 1998; this fatwa was published by the magazine *Rūz al-Yūsuf* in its coverage of the case.[22]

Apart from Rashīd Riḍā's fatwas of 1912 and 1914, I could find only one fatwa on the Bahā'īs issued by a mufti who was neither Grand mufti nor linked to the Azhar—Yūsuf al-Qaraḍāwī, the famous member of the Muslim Brotherhood who left Egypt to live and teach

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in *al-Fatāwā al-Islāmiyya min dār al-iftā' al-Miṣriyya*, ed. Jumhūriyyat Miṣr al-ʿarabiyya/Wizārat al-awqāf (Cairo, 1982), vol. 8, 2999-3002.

[16] Ḥasanayn Muḥammad Makhlūf, "Iʿtināq madhhab al-Bahā'īyya ridda", in ibid., *Fatāwā muʿāṣira wa-buḥūth Islāmiyya* (2nd ed., Cairo, 1965), vol. 1, 84 f.; ibid., "Majlis al-dawla yaʿtabir al-Muslim al-Bahā'ī murtaddan", in ibid., *Fatāwā muʿāṣira*, vol. 1, 85 f.

[17] ʿAlī ʿAlī Manṣūr, *Al-Bahā'iyya bayn al-sharīʿa wa'l-qānūn* (2nd ed., Beirut, 1971), 9.

[18] *al-Ahrām* (21 January 1986), 6.

[19] *al-Jumhūriyya* (14 March 1972), *Isti'nāf muḥākamat al-Bahā'iyyīn ṣabāḥ al-yawm*, article from archive without page number; *Minbar al-Islām* (April 1972), 165 f.

[20] Skovgaard-Petersen, *Defining Islam for the Egyptian State*, 150.

[21] Lajnat al-fatwā bi'l-jāmiʿ al-Azhar, "Hal yajūz zawāj al-Muslima bi'l-Bahā'ī?", *Majallat al-Azhar*, vol. 25 (1373 H.), 1193, and in Manṣūr, *al-Bahā'iyya*, 13; Lajnat al-fatwā bi'l-jāmiʿ al-Azhar, "Al-Bahā'iyyūn murtaddūn wa-khārijūn ʿan dīn al-Islām", *Majallat al-Azhar*, vol. 24 (1372 H.), 238.

[22] *Rūz al-Yūsuf* (15 June 1998), 82 f.

in Qatar. His fatwa on the Bahāʾī faith, probably issued in the 1970s, was published in his fatwa collection.[23]

Of these fifteen fatwas, the three earliest ones and the most recent one address the status of the Bahāʾī faith and its adherents, but do not deal with the legal consequences of adherence to the Bahāʾī faith. Five fatwas discuss the validity of a Bahāʾī's marriage, three deal with inheritance law, and three address other topics.

Egyptian courts

At least twenty-two court decisions or legal statements involving Egyptian Bahāʾīs were issued between 1925 and 2001, thirteen of them between 1946 and 1960—the period in which the frequency of fatwas was highest, too. I will discuss most of them below, with the exception of two that are of little interest in the present context.

Six of the judgments issued before 1960 concerned personal status cases and were thus issued by Shariʿa Courts or, after 1955, by the personal status divisions of the National Courts. The nineteenth century witnessed the introduction of a secular jurisdiction next to the Shariʿa Courts and in 1897 the competence of the Shariʿa Courts was limited to cases involving personal status and *waqf* (pious endowments). In 1936 all other cases that involved only Egyptians were referred to the so-called Indigenous Courts (*al-maḥākim al-ahliyya*), renamed the National Courts (*al-maḥākim al-waṭaniyya*). Also in 1897, a right to appeal and Appellate Courts ranking above the courts of first instance were introduced. In 1955, the Shariʿa Courts were abolished and their jurisdiction was transferred to the personal status divisions of the National Courts. This meant that, beginning in 1955, personal status cases were heard by graduates of law faculties and not by Azharites with a background in Islamic law. Both the Shariʿa Courts and the personal status divisions of the National Courts followed a number of codifications on different areas of personal status, inheritance and marriage law. In the absence of a legal provision for a case at hand, they had to apply Ḥanafī law.[24] Often, judges unofficially

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[23] Yūsuf al-Qaraḍāwī, "Zawāj al-Muslim bi-ghayr al-Muslima", in ibid., *Hudā ʻl-Islām. Fatāwā muʿāṣira* (Cairo, 1981), vol. 1, 402.

[24] Law no. 78/1931, Art. 280. After 1955, Ḥanafī law was applied to all cases that formerly were under the jurisdiction of the shariʿa courts, but not to non-Muslims who belonged to the same denomination (cf. Law No. 462/1955, Art. 6 II).

relied on the codex of Qadrī Pasha, a collection of shari'a rules on most areas of personal status law. The codex follows Ḥanafī law for the most part. It is not recognized as binding by the jurists of any school of law.[25]

I have been unable to obtain any of the decisions of Sharī'a Courts and personal status divisions of National Courts concerning the Bahā'ī faith. Information about these decisions comes from newspaper articles and religious magazines and from Bahā'ī sources. These sources are generally reliable—they contain exact dates, the court's name and often quote or summarize the judgment without embellishment. Two cases, however, are described only in a Muslim polemic against the Bahā'īs and in a prejudiced newspaper commentary. Because of the vague and sensationalist manner in which these cases are described, it is unclear whether they really took place.[26]

In 1946, Egypt established a State Council (*majlis al-dawla*) as part of the judiciary. The State Council's competence includes jurisdiction in issues of administrative law. Another department issues advisory legal opinions (fatwas) at the request of the executive.[27] Unlike fatwas issued by the Grand mufti or the Azhar fatwa committee, which are based on Islamic law, these fatwas are based on state law, unless they concern a question of personal status, which is decided according to Islamic law if both parties are Muslims or if the parties belong to different religious communities.[28]

Two of the three Administrative Court rulings by the State Council and four of the State Council's advisory legal opinions on the Bahā'ī faith are available in the original, either in the official court records or, in one case, in a book in which one of the judges has published the decision. Other sources are newspaper articles and a fatwa by Ḥasanain Muḥammad Makhlūf.

Additional Egyptian court rulings on the Bahā'ī faith include a decision by the Supreme Court to be analyzed below and several

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[25] Ron Shaham, *Family and the Courts in Modern Egypt. A Study Based on Decisions by the Sharī'a Courts, 1900-1955* (Leiden/New York/Cologne, 1997), 11, 14.

[26] *al-Jumhūriyya* (8 January 1968), *Kalimat ḥaqq*, article from archive without page number; al-Wakīl, *al-Bahā'iyya*, 23 f.

[27] Enid Hill, "Majlis al-Dawla: The Administrative Courts of Egypt and Administrative Law", in *Islam and Public Law*, ed. Chibli Mallat (London, 1993), 207-28.

[28] This can be derived from Law no. 462/1955, Art. 6 I, referring to Law no. 78/1931, Art. 280.

judgments by criminal or state security courts, to which brief reference will be made. After 1960, when the dissolution of the Bahāʾī community blocked the aspiration to achieve recognition of their religious law in the areas of personal status and inheritance, criminal court cases make up the majority of the judiciary's dealings with the Bahāʾī faith.

The legal position of Bahāʾīs in Islamic law according to Egyptian fatwas

Egyptian fatwas on the status of Bahāʾīs are unanimous in stating that the Bahāʾī faith constitutes unbelief (*kufr*), so that Muslims who embrace it become apostates. Rashīd Riḍā, seeking to dampen the positive view that certain Egyptian intellectuals had expressed about ʿAbd al-Bahāʾ, extended this assessment to those who praise the Bahāʾī faith or approve of it or of one of its protagonists.[29] Among the muftis, only Yūsuf al-Qaraḍāwī raised the question of the status of Bahāʾīs of non-Muslim descent. In his opinion, they are polytheists (*mushrikūn*), for two reasons: they believe in a prophet not recognized by Islam, and their sacred scriptures are not of heavenly origin.

Many Egyptian Bahāʾīs married among each other and had children born and raised in the Bahāʾī faith. This raises the question of the status of an apostate's descendants. Of the muftis, again it was only al-Qaraḍāwī who addressed this problem, referring to a court ruling of 1952[30] (see below) which held that the descendant of an apostate may be regarded either as an apostate from birth, or as a Muslim from birth; in the latter case, he too becomes an apostate if he decides to adhere to his parents' religion after reaching the age of fifteen. In any case, after reaching adulthood he may never be considered a legitimate adherent of the Bahāʾī faith.[31] It is noteworthy that Rashīd Riḍā and Yūsuf al-Qaraḍāwī, the only muftis without an official function, were also the only ones who dealt with cases other than the one of a Bahāʾī convert from Islam. Although there have been Bahāʾī converts from Christianity and Judaism,[32] these do not seem

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[29] Riḍā, *Duʿāt al-Bahāʾiyya*, 178-80.

[30] See below; the full text of the ruling was printed as a book: Manṣūr, *al-Bahāʾiyya*.

[31] Manṣūr, *al-Bahāʾiyya*, 37-40.

[32] Shoghi Effendi, *God Passes By*, 302.

to have caused conflicts in the area of personal status law or in any other legal field that might have required a mufti's opinion. The majority of fatwas issued by official Islamic institutions concerned real cases and not theoretical issues; thus the muftis chose not to express an opinion on topics that were not relevant to the case in question. For this reason, all the fatwas on the Bahā'ī faith center in one way or another on the shari'a rules for apostasy.

The validity of a Bahā'ī's Marriage

The validity of a Bahā'ī's marriage, whether concluded in accordance with Bahā'ī or Islamic law, was the focus of debate in both the fatwa literature and the courts. The Bahā'ī faith has its own laws of personal status, marriage, divorce and inheritance, most of which are contained in Bahā' Allāh's *Kitāb al-aqdas*. They differ from the respective provisions of Islamic law, especially with regard to the status of women. Until the mid-1920s, however, Egyptian Bahā'īs seem to have married according to Islamic law.

In 1925, residents of the Upper Egyptian village of Kawm al-Ṣa'āyida brought a *ḥisba* case[33] before the local Shari'a Court. The case concerned three male converts to the Bahā'ī faith who were of Muslim origin and were married to Muslim wives. The plaintiffs held that these Bahā'īs were apostates and that their marriages were therefore null and void. Both the Shari'a Court and the Appellate Court of Bibā confirmed this claim. The Appellate Court emphasized that the Bahā'ī faith was independent of Islam; therefore, the defendants were apostates. Paradoxically, this judgment was hailed as a victory by Bahā'īs worldwide, who regarded it as a milestone in their efforts to be recognized as a religion instead of a Muslim reform movement

[33] *Ḥisba* is the Qur'ānic principle of "enjoining the good and forbidding the evil". Until 1996, Egyptian civil law allowed a popular action based on *ḥisba*: Anyone might file an action in a case that constituted a violation of the "rights of God", even when the plaintiff was not involved in the case and had no personal interest in it. A common type of *ḥisba* action was the claim for the dissolution of an apostate's marriage. When the Abū Zayd case (1993-96) made it obvious that Islamists increasingly were exploiting the *ḥisba* procedure for political purposes, the legislator abolished the *ḥisba* action as a means for a third party to take personal status cases to court; the plaintiff is now required to have a personal and direct interest in the action. Cf. Kilian Bälz, "Submitting Faith to Judicial Scrutiny Through the Family Trial: The 'Abū Zayd Case'", *Welt des Islams* 37 (1997), 135-55.

or sect. As a direct result of the verdict, the NSA of the Bahāʾīs of Egypt and the Sudan codified the personal status laws contained in the Bahāʾī scriptures and started issuing marriage certificates.[34] At least three additional cases in which marriages were dissolved after one of the Muslim spouses embraced the Bahāʾī faith are documented: in the Delta city of al-Maḥalla al-Kubrā in 1946,[35] in Suez in 1947[36] and in Cairo in 1955.[37] Two more cases, one in 1958, the other in the mid-1960s, are described in less reliable sources.[38] Subsequently, no additional cases have been reported. After a number of Bahāʾīs were arrested in Ṭanṭā in 1972, the public prosecutor twice announced his intention of making the competent authorities—in this case, the personal status division of the court—annul the marriages of the accused, but apparently this has never happened.[39] These court rulings are in line with the fatwas dealing with the status of the marriage of a Muslim who converts to the Bahāʾī faith, all of which maintain that such a marriage is invalid, regardless of the spouse's religion. However, it appears from the incomplete sources on these rulings that none of them was based directly on one of the fatwas. Muḥammad Khāṭir's fatwa of 1972, on the other hand, was requested by the Public Prosecutor after the arrest of eighty Bahāʾīs in Ṭanṭā and other cities in order to justify his demands for an annulment of several Bahāʾī marriages, but the fatwa and the Public Prosecutor's demands did not have any legal consequences.

The main reason for the small number of annulments of Bahāʾī marriages in the past decades is no doubt the decrease in the number of conversions to the Bahāʾī faith after the enactment of Law No. 263/1960. Prior to that date, all requests for annulments of marriage that were brought to court were based on a conversion after the marriage had been concluded. Although there are no statistics on this, it can be assumed that the majority of Bahāʾīs living in Egypt today were born into Bahāʾī families and did not adopt the Bahāʾī faith at some point in their adult life.

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[34] Shoghi Effendi, *God Passes By*, 364 ff.

[35] *Majallat al-Azhar*, vol. 25 (1373 H.), 1102.

[36] *al-Balāgh* (24 November 1947), *Zawja taʿtaniq al-Bahāʾiyya*, article from archive without page number .

[37] *al-Ahrām* (19 January 1955), *Al-maḥkama al-sharʿiyya taʿtabir al-Bahāʾī murtaddan ʿan al-Islām*, article from archive without page number.

[38] *al-Jumhūriyya* (8 January 1968), *Kalimat ḥaqq*, article from archive without page number; al-Wakīl, *al-Bahāʾiyya*, 23 f.

[39] *al-Akhbār* (12 March 1972), 7; *ibid.* (16 March 1972), 6.

A different problem was created by Bahā'ī marriages concluded according to Bahā'ī rite. The most important precedent in this field is a 1952 ruling issued by the Administrative Court in the State Council. The ruling discusses in great detail questions relating both to Islamic law and to constitutional rights.

The plaintiff, a Bahā'ī employee of the Egyptian railway authority, married a Bahā'ī woman in 1947 and then applied for the marriage allowance to which he was entitled, supporting his claim with a marriage contract that followed Bahā'ī religious law and was witnessed at his Local Spiritual Assembly (LSA). The government did not respond to his request. When the plaintiff's first child was born in 1948, he applied for a family allowance, again without receiving a reply. He therefore sued his employer, the Egyptian government. In response to his claim, the government produced two fatwas, one by the Azhar fatwa committee and one by the Grand mufti. These fatwas supported the government's claim that the plaintiff's marriage was null and void on the grounds of apostasy, irrespective of the religious affiliation of the spouse.

The Administrative Court began by examining the case in the light of Islamic law and only then raised the question of whether or not Islamic law is applicable to the case, leaving the issue of the constitutional right to freedom of belief until the end. The court dismissed the plaintiff's argument that he had a right to equal treatment with *dhimmīs*, as the rights of *dhimma*[40] are reserved for Christians and Jews, all other religions being heresy and unbelief (*zandaqa wa-kufr*). The court regarded the plaintiff as an apostate, whether he had been born Muslim or Bahā'ī. Thus, according to shari'a law, his marriage was null and void. The child's status was also described as "null and void" (*bāṭil*) by the court.

The plaintiff held that shari'a law was not relevant to the case, because if the legislator had wished to make the apostate's status subject to shari'a law, he would have included the death sentence for apostates in the penal code. The court replied that Egypt's secular laws were not intended to replace the shari'a, but rather to codify and complete it. In the court's opinion, it is regretable that some of the *ḥadd* punishments[41] have been neglected, but it is still obvious

[40] Legal status of the "people of the book" in classical Islamic law.

[41] Qur'ānic punishments, among them, according to some jurists, the death sentence for apostasy.

that Art. 149 of the Constitution of 1923, which declared Islam to be the religion of the state, established the supremacy of the shariʿa over secular laws. This assessment of the relationship between shariʿa and secular laws, long before Art. 2 of the Constitution of 1971 came into force, is based on an extremely broad interpretation of Art. 149, the argumentative basis of which is thin, as far as it is provided in the judgment. The court went on to discuss the relevance of Arts. 12 and 13 of the Constitution, which guaranteed freedom of belief as well as free exercise of religious rites. After analyzing the protocols of the Constituent Assembly, the court concluded that the legislator did not intend these articles to protect the change of an individual's religion or his adherence to a religion that is not recognized by the state. It therefore dismissed the complaint.[42]

The validity of marriage contracts between two Bahāʾīs remained a contested issue. In several cases, Bahāʾīs tried to register their marriage contracts at the public registration office.[43] These attempts were rejected, either because a "Christian" man had married a "Muslim" woman or because there was no authority competent for registering such marriages.[44] The State Council's fatwa department issued a statement on this issue in 1952. The fatwa, at first sight, appears to open the door to a more liberal understanding of the principle of freedom of belief, but it does not solve the legal problem. The statement argues that the registration offices are responsible for registering marriages of "non-Muslims"; thus, their competence is not limited to Christians or Jews. It adds that Art. 12 of the Constitution grants freedom of belief, which means that every citizen has the right to adhere to the Bahāʾī faith or even to be an apostate, and that the application of the shariʿa rules for apostasy is not permissible according to Art. 12. Thus, the registration offices are required to examine all marriage contracts submitted to them, even if they concern Bahāʾīs. However, after thoroughly examining a specific contract, a judge may, at his discretion, come to the conclusion that the marriage is invalid. The fatwa thus left open the question of the validity of Bahāʾī marriage

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[42] The judgment is quoted in full in Manṣūr, *al-Bahāʾiyya*, 6-54.

[43] Arabic: *maktab al-tawthīq,* the office responsible, among other things, for registering marriages between non-Muslims.

[44] *al-Nidāʾ* (14 October 1952), *Mā raʾy mashāyikh al-Islām*, article from archive without page number; ʿĀʾisha ʿAbd al-Raḥmān Bint al-Shāṭiʾ, *Qirāʾa fī wathāʾiq al-Bahāʾiyya* (Cairo, 1986), 19; *al-Ahrām* (27 September 1958), 7.

contracts.[45] The question was answered by a Cairo court of first instance which, in 1957, ruled that Bahā'ī marriage contracts are *ipso facto* invalid, as marriage contracts are valid only if both parties belong to a *milla* (a religious community recognized by the state).[46]

Again, these court rulings are in line with Egyptian fatwas. Whereas most of the fatwas deal with marriages between Muslims and Bahā'īs, several of them specifically state that a Bahā'ī's marriage is always invalid, irrespective of the spouse's religious affiliation. Most muftis assume that the Bahā'ī spouse is of Muslim origin, but not all of them explicitly mention this.

I have not seen a court ruling regarding the validity of an Egyptian Bahā'ī's marriage that dates from later than 1960. The last statement on this question was issued in 1977 by the State Council's fatwa department, but the relevance of this statement is not clear, as it does not refer to a concrete case. It not only states the invalidity of a Bahā'ī's marriage, regardless of the spouse's religion, but also upholds the duty of the registration offices to reject any Bahā'ī marriage contract submitted to them. The State Council argues that the freedom to exercise one's belief is granted only so long as it does not contradict good morals and public order. In fact, this qualification is not mentioned in the Constitution of 1971, although it was mentioned in the previous Constitutions. The State Council, however, does not elaborate on this point. It sees Islam as a pillar of public order, because Art. 2 of the Constitution declares it to be one of the main sources of legislation. Therefore, the State Council held that the Bahā'ī faith, which is not recognized by shari'a law, contradicts public order. Thus, every Bahā'ī marriage is invalid, even if it involves two persons of non-Muslim descent. It is noteworthy that this statement uses the concept of "public order" instead of referring directly to shari'a law, thus facilitating the resolution of an issue that is problematic in shari'a law and is usually not addressed in fatwas, namely the status of marriages between Bahā'īs of non-Muslim descent.

Inheritance

The *Kitāb al-aqdas* contains a number of provisions for a Bahā'ī law of inheritance that differ from Islamic law in many respects. Some

[45] Majlis al-dawla, Qism al-ra'y al-'āmm mujtama'an, Fatwa No. 582 (19 November 1952), in *Majmū'at Majlis al-dawla li-fatāwā qism al-ra'y*, ed. Majlis al-dawla/al-maktab al-fannī (Cairo, n.d.), years 6 & 7, 9/1951-9/1952, 111 f.

[46] *Minbar al-Islām* (April 1972), 169.

Egyptian Bahāʾīs have left wills in order to achieve a distribution of their inheritance that is in accordance with Bahāʾī religious law—a solution that did not necessarily satisfy all heirs. Furthermore, legal problems were sometimes caused when a Muslim died and there was a Bahāʾī among the otherwise Muslim heirs.

In 1952, an Egyptian newspaper described a case involving the competing claims of a Muslim and a Bahāʾī to an estate. A Muslim woman (A) had designated her house as a *waqf* or pious endowment and had nominated herself as the beneficiary of the *waqf*. She also stipulated that after her death, her daughter (B) would become the beneficiary, and that after her daughter's death, her daughter's children would become beneficiaries, with females receiving the same share as males. The daughter (B) died leaving a Muslim son and a Bahāʾī daughter. The Muslim son claimed that his sister, by her conversion, had forfeited her rights to the endowment. He turned to the Azhar fatwa committee. Rather than asking for an opinion on a Bahāʾī's rights to *waqf* property, he asked: "(1) What is your opinion on the Bahāʾī sect and those Muslims who embrace it? (2) May a Bahāʾī inherit from a Muslim?" The fatwa declared that Muslims who embrace the Bahāʾī faith are apostates and that apostates may not inherit from anyone. The issue of *waqf* property was not addressed.[47] The Shariʿa Court's judgment on the case is not known.

In another inheritance case, Grand mufti Ḥasanayn Muḥammad Makhlūf issued a fatwa about a Muslim (B) who inherited a share of his father's (A) house and subsequently converted to the Bahāʾī faith. His two daughters and one of his two sons also became Bahāʾīs. When (B) died in 1951, it was discovered that, in his last will and testament, he had designated his Bahāʾī son as the sole heir to his share of the house. Makhlūf explains that according to Ḥanafi, Mālikī and Ḥanbalī law, which he considers to be more correct than Shāfiʿī law in this respect, the share of an apostate's property acquired prior to his apostasy goes to his Muslim heirs; thus the share of the house belonging to the deceased should be inherited by his Muslim son. Any property that an apostate acquires after his apostasy legally never becomes his property and should therefore go to the state. An apostate's will has no legal status.[48]

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[47] *al-Jumhūr al-Miṣrī* (8 December 1952), *Dār al-Iftāʾ taqūl: al-Bahāʾī kāfir murtadd*, article from archive without page number; *Majallat al-Azhar*, 24 (1372 H.), 238.

[48] Makhlūf, *Iʿtināq*, 84 f.

In 1960, Grand mufti Aḥmad Harīdī was asked about a case dating back to 1934, when a Muslim died leaving his wife and several sons and daughters. One of the sons, who was a convert to the Bahā'ī faith, was deprived of his share of the inheritance. Harīdī approved of this action, arguing that the wife and the Muslim children should receive their shares according to Islamic inheritance regulations, as if the Bahā'ī son was non-existent.

In cases relating to inheritance, fatwas serve either to provide the court with a legal opinion or to justify a decision after it has been taken. Again, I know of no cases after 1960. This does not mean that there have been no conflicts over the inheritance rights of Bahā'īs, but such conflicts apparently have not been brought to court since 1960.

Cemeteries

The question of the burial of Bahā'īs, which arose in the 1930s, serves as an example of interaction between state authorities and religious institutions.

When a well-known Bahā'ī from Ismā'īliyya was about to be buried in the Muslim cemetery, riots broke out in Ismā'īliyya and Port Said. The funeral was interrupted and the Bahā'ī was buried in the desert at night. The NSA of the Bahā'īs of Egypt and the Sudan wrote a petition to the Ministry of the Interior, asking for permission to establish Bahā'ī cemeteries in Cairo, Alexandria, Port Said and Ismā'īliyya. The Ministry of the Interior asked the Ministry of Justice for a statement from the Grand mufti, 'Abd al-Majīd Salīm. The Grand mufti issued a fatwa in which he argued that Bahā'īs are not Muslims and therefore may not be buried in Muslim cemeteries. As a result, the Bahā'īs were granted permission to establish two small cemeteries in Cairo and Ismā'īliyya.[49] Apostasy was not discussed in this context.

Administrative Law

In the pre-Nasserite era, it was common for Bahā'īs to register their religious affiliation as "Bahā'ī" on official documents.[50]

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[49] Salīm, *'Adam jawāz*; Shoghi Effendi, *God Passes By*, 367.

[50] *al-Jumhūr al-Miṣrī* (8 December 1952), *Dār al-Iftā' taqūl: al-Bahā'ī kāfir murtadd*, article from archive without page number. Confirmed in an interview with an anonymous Egyptian Bahā'ī living in Europe (7 September 1999).

In 1954, the Ministry of Health informed the Ministry of the Interior that a number of persons had attempted to register their newborn and deceased in birth and death records as "Bahāʾīs". If the state accepted this practice, Bahāʾīs might regard this as an implicit recognition of their religion. The State Council's fatwa department was asked for an opinion. It argued that the Bahāʾī faith has no legal basis, which, it said, was proven by the State Council's judgment of 1952 on the question of the marriage allowance. This argument, however, is based on a false understanding of the judgment of 1952, which had dealt with the status of a Bahāʾī apostate, not with that of the Bahāʾī faith itself. Nevertheless, the fatwa department concluded that Bahāʾīs, whose religion is not legally recognized, should draw a straight line in the space in which they are supposed to enter their religious affiliation. The Ministry of the Interior followed this recommendation and gave it as a directive to its subordinate branches. Grand mufti Ḥasanayn Muḥammad Makhlūf issued a fatwa in which he explicitly approved of this decision.[51] As a result of the ministry's decision, it was generally recognized that drawing a straight line in the space signifies that one is a Bahāʾī. After 1960, government employees exerted increasing pressure on Bahāʾīs to enter an officially recognized religion on their documents. This led to a situation in which the religious affiliation that was entered into the documents nearly always depended on the clerk in the registration office, who was often badly informed about government policies on this matter. As a result, many Egyptian Bahāʾīs are officially registered as Bahāʾīs, whereas others are registered as Christians, Muslims, or as having no religion.[52]

In 1983, the Administrative Court in the State Council, in its function as an appeal court, decided a case relating to this issue. A young Bahāʾī, born to Bahāʾī parents and a student at the Faculty of Education of the University of Alexandria, had been denied an identity card because he insisted on entering his religious affiliation as "Bahāʾī". As a result, he was expelled from university, because, as a male student, he was required to submit an identity card in order to prove that he was not trying to evade military service by not registering with state

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[51] Makhlūf, *Majlis al-dawla*; *Majallat al-Azhar*, vol. 25 (1373 H.), 1102.

[52] Interview (anonymous), 7 September 1999; *Rūz al-Yūsuf* (27 January 2001), 36; *al-Jumhūriyya* (8 January 1968), *Kalimat ḥaqq*, article from archive without page number; *al-Akhbār* (14 March 1972), 6; Bint al-Shāṭiʾ, *Qirāʾa*, 24, 28; *al-Siyāsī al-Miṣrī* (14 January 1996), *Muwaẓẓafū makātib al-ṣiḥḥa yanshurūn madhhab al-Bahāʾiyya fī Miṣr*, article from archive without page number.

authorities. The Court argued that the plaintiff had not only the right, but also the duty to apply for an identity card which contained an entry about religious affiliation. The plaintiff was required to inform the state about his true religion, even if this religion is not recognized by the state. The state has a substantial interest in knowing the real status of its citizens. The court regarded Law No. 263/1960 as irrelevant in this context, because this law had only dissolved the Bahā'ī institutions, but did not attempt to end the presence of individual Bahā'īs in Egypt. Even in times of shari'a rule (i.e. before the beginning of the nineteenth century), the court said, there had always been religious minorities in Muslim countries who were neither Muslim nor *dhimmī*, even if they could not claim official recognition or treatment equal to that of *dhimmīs*. Thus, the court concluded that the plaintiff legitimately had insisted on receiving an identity card that mentioned his religion as "Bahā'ī", and that the authorities had the duty of issuing such an identity card. However, it also held that the plaintiff's expulsion from the university was valid, firstly because the university was not obligated to consider the reasons why the plaintiff did not possess an identity card, and secondly because the plaintiff should not be allowed to study at the Faculty of Education since, as a Bahā'ī, it was not appropriate for him to become a teacher who would teach Egyptian children.[53]

In 1952, the State Council's fatwa department had declared that the Ministry of Education did not have the right to remove a Bahā'ī teacher from service merely on the basis of her religion, as the Constitution guaranteed freedom of belief. This statement by the State Council apparently has never served as a precedent; it is not quoted in subsequent decisions and legal statements or in the press.

The State Council dealt with two more administrative law cases in the 1950s. In 1955, the fatwa department issued a statement on the Bahā'īs' attempt to register their publishing house as a welfare foundation (*mu'assasa khayriyya*). In this statement, the Council argued that Law No. 49/1945 allowed the registration only of those foundations whose aims or methods did not contradict public order, good morals or security. It added that the Bahā'ī faith is in conflict with all revealed religions. The publication of Bahā'ī teachings would violate

[53] Majlis al-Dawla, al-Maḥkama al-idāriyya al-'ulyā, Appeal case no. 1109, judicial year 27 (29 January 1983), in *Majmū'at al-mabādi' al-qānūniyya allatī qarrarathā al-maḥkama al-idāriyya al-'ulyā*, ed. Majlis al-dawla/al-maktab al-fannī (Cairo, 1989), year 28, 10/1982-9/1983, 455-60.

the religious feelings of all believers and thus constitutes an attack on public order and security.[54] In 1959, the administrative court in the State Council decided that the Ministry of the Interior had acted legitimately when it refused to grant Egyptian citizenship to a Bahāʾī with permanent residence in Egypt. It argued that the Bahāʾī faith constitutes apostasy and that an apostate may not become part of the Egyptian people (*lā yajūz liʾl-murtadd an yandamij fī ʿl-usra al-Miṣriyya*). The source does not give details of the case or the verdict.[55] Although the court referred to the Islamic legal category of apostasy, it apparently did not examine the case in the light of the shariʿa. It considers the entire Bahāʾī religion to constitute apostasy, whereas no fatwa on the Bahāʾī faith has ever mentioned apostasy in any sense other than that of an individual infraction. Muftis condemn the Bahāʾī faith, but the term "apostasy", in their usage, is limited to the individual act of conversion and is not used to describe the Bahāʾī community or the Bahāʾī religion.

Questions of administrative law have arisen only with the advent of the modern nation state and are not part of classical shariʿa law. In this area of law, fatwas play a minor role. The Grand mufti's role, if any, is limited to agreeing with government decisions. The State Council included "Islamic" arguments in its decisions, but did so in a superficial manner, not going beyond giving a vague moral justification for its reasoning. Technical arguments or references to public order prevail. The decision of 1983, for example, contains detailed and logical arguments about whether or not a Bahāʾī should receive an identity card that mentions his religious affiliation; the reference to the status of religious minorities in "times of shariʿa rule", however, is clearly the weakest part of the reasoning, as it is imprecise and does not refer to any substantial legal norm. The section concerning the Bahāʾī student's expulsion from university is short and seems to be driven largely by moral considerations rather than by legal arguments.

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[54] Majlis al-dawla, Idārat al-fatwā waʾl-tashrīʿ li-Wizārat al-ʿadl, Fatwā No. 129 (17 April 1955), in *Majmūʿat al-mabādiʾ al-qānūniyya allatī taḍammanathā fatāwā al-qism al-istishārī liʾ-l-fatwā waʾ-l-tashrīʿ*, ed. Majlis al-dawla/al-maktab al-fannī (Cairo, n.d.), years 9 & 10, 4/1955-9/1956, 253-6.

[55] *al-Ahrām* (31 October 1959), 8.

Criminal law

Only one fatwa deals with the field of criminal law, and it does so only because Grand mufti Aḥmad Harīdī was explicitly asked for a fatwa by the public prosecutor in the case of a man who was registered as a Muslim, had been arrested as a member of a Bahā'ī community, but denied having embraced the Bahā'ī faith. Harīdī decided that if the person was born Muslim and had embraced the Bahā'ī faith thereafter, then he was to be treated as an apostate. In this case, the court or religious scholars should explain his error to him, and he should be given the opportunity to repent. If he did not repent, he must be killed. But as he obviously denied being a Bahā'ī, it was sufficient for him to attest to his allegiance to Islam in front of witnesses.[56] The mufti apparently wanted to emphasize that shari'a law considers the killing of an apostate to be a last resort. He does not mention the fact that state law does not provide any legal basis for sentencing an apostate to death—apostasy is not a crime under Egyptian law.

The obvious reluctance of Egyptian muftis to address the primary legal consequence of apostasy according to classical shari'a law, namely the death sentence, is noteworthy, especially as compared to more theologically oriented statements of Egyptian *'ulamā'* who are often extremely harsh in their assessment.[57] The muftis, most of whom have official functions, tend to limit themselves to areas in which Islamic law is clearly relevant, according to the standards of modern Egyptian law. An exception is Jādd al-Ḥaqq, who, in his position as Grand mufti, issued a fatwa in 1981 on the marriage rights of a Bahā'ī apostate, the longest of the fatwas discussed here. After explaining the contradictions between Islam and the Bahā'ī faith, he writes:

> There is a consensus among Muslims that the Bahā'ī faith ... is not an Islamic belief, and that adherents of this religion are not Muslims, which makes them apostates from Islam. ... There is a consensus among Muslim jurists that the apostate must be killed if he insists on his apostasy

[56] Harīdī, *I'tināq al-dīn*, 2183 f.

[57] This observation is based on the analysis of several hundred newspaper articles on the Bahā'ī faith and several dozen theological books. For additional details on the results of this analysis, see Johanna Pink, *Neue Religionsgemeinschaften in Aegypten. Minderheiten im Spannungsfeld von Glaubensfreiheit, oeffentlicher Ordnung und Islam* (Würzburg, 2003).

from Islam, according to the *ḥadīth* of the Prophet transmitted by al-Bukhārī and Abū Dāwūd, "He who changes his religion, kill him ..."[58]

In five cases, groups of Egyptian Bahā'īs have been arrested and put on trial for reasons relating to their adherence to the Bahā'ī faith. The first two cases occurred in the 1960s, the third in 1972, and the fourth in 1985. In all of these cases, the accusations were based on Law No. 263/1960, which not only dissolved Bahā'ī institutions, but also made the continuation of their activities liable to punishment. I could not obtain any information about the arrests in the 1960s. The 1972 and 1985 cases were dismissed on procedural grounds. In a fifth case, which took place in 2001, another group of Bahā'īs was arrested. This time, the accusations were based on §98 (w) of the Penal Code, a vague provision directed against those who exploit religion in order to sow discord, to weaken national unity or to deride revealed religions. The Bahā'īs who were arrested were accused of engaging in immoral sexual acts, but they were released after about ten months without a trial.[59]

It is obvious that shari'a provisions play no role in the application of criminal law to Egyptian Bahā'īs. This does not mean, however, that religion is not an issue here. Arrests of Bahā'īs are, at least outwardly, driven by the intention to protect "true religion" and to exclude from the public sphere religions that are not recognized by Islam as revealed religions.

The Supreme Court's Position

In 1969, a decree law created a Supreme Court which had the right of judicial review of laws. This court continued to function after the adoption of the 1971 Constitution and until the establishment of the Supreme Constitutional Court (SCC) in 1979.[60] A number of Bahā'īs who had been arrested and accused of violations of Law no. 263/

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[58] Jādd al-Ḥaqq, *Zawāj*, 3001.

[59] For a more detailed discussion of the criminal prosecution of Bahā'īs in Egypt, see again Pink, *Neue Religionsgemeinschaften*.

[60] Awad Mohammad El-Morr/Abd El-Rahman Nossier/Adel Omar Sherif, "The Supreme Constitutional Court and its Role in the Egyptian Judicial System", in *Human Rights and Democracy: The Role of the Supreme Constitutional Court of Egypt*, ed. J. Kevin Boyle/Adel Omar Sherif (London/The Hague/Boston, 1996), 37-60 (38).

1960 made use of the newly established Supreme Court and filed a case, asking the court to review Law no. 263 and to declare it unconstitutional. The Supreme Courtʿs verdict was issued in 1975.[61]

The Supreme Court rejected the case and maintained the constitutionality of Law no. 263, providing two rules concerning the question of freedom of belief. First, it stated that the law in question does not violate or even touch upon the principle of freedom of belief because it does not inhibit anyone from being a Bahāʾī, i.e., believing in the truth of the Bahāʾī faith. The freedom to exercise one's religion, however, is a different matter; such freedom is granted only to the three religions recognized by Islam, and thus, by the state. Second, the court held that the law in question does not violate the principle of equality, because this principle does not refer to the equal treatment of all individuals, but only to the equal treatment of those individuals who are comparable to each other with respect to their legal status—which means, the court explained, that Muslims should be treated as equal to other Muslims, and Christians to other Christians or to Jews, but Christians should not necessarily be treated as equal to Muslims, or Bahāʾīs to Christians.

Thus, without referring to specific shariʿa rules or openly declaring the supremacy of shariʿa law, the court manages to interpret constitutional rights in a way that limits their meaning and validity to religions recognized by Islam. It also strips the relevant articles of the Constitution of any substantial meaning. The judgment does not address the question of why the legislator should guarantee freedom of belief and at the same time limit the concept to freedom of internal belief, which does not really need to be guaranteed, as it cannot be easily be infringed upon. The court's reasoning with respect to protection against religious discrimination as guaranteed by the Constitution is contradictory: a provision that is meant to ensure equal treatment only of members of the same religion cannot provide any protection against religious discrimination.

The Supreme Court, in this verdict, takes it for granted that Islam is the sole basis for deciding upon the acceptance or rejection of a religion; but it only superficially discusses the central question of why it should be that way, referring to earlier constitutions and to

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[61] Al-Maḥkama al-ʿulyā, case 7, judicial year 2 (1 March 1975), in *Majmūʿat aḥkām wa-qarrārāt al-maḥkama al-ʿulyā*, ed. al-Maḥkama al-ʿUlyā (Cairo, 1977), vol. 1, part 1, 228-44.

the protocols of the Constituent Assembly of 1923 (not 1971!). Since the 1950s, the Egyptian judiciary has largely avoided a thorough discussion of the relationship between shari'a law and constitutional guarantees with respect to new religious communities, summarily equating state-approved religions with religions recognized by classical Islamic law in the core lands of the Muslim world, i.e. Islam, Judaism and Christianity.

Conclusions

Egyptian courts have regularly drawn on shari'a regulations where suitable, mainly in the area of personal status law. However, for the past forty years, courts have been confronted primarily with problems of administrative and criminal law, where shari'a norms are either not applicable or non-existent. This does not mean that courts do not justify their decisions in religious terms. But rather than employing methods and arguments drawn from classical shari'a sources, they declare the shari'a an important pillar of public order and define the boundaries of constitutional rights on the basis of public order.

Many courts presume that the shari'a rejects the Bahā'ī faith as a whole, which is problematic, as fatwas and the few court judgments that actually base their argument on Islamic law deal only with individual cases, mostly of apostasy, but not with the status of the Bahā'ī community itself. It remains unclear whether the courts base their assumption that shari'a law rejects the Bahā'ī faith on the fact that the Bahā'ī faith is not a revealed religion according to Islamic standards and therefore has no *dhimma* status, or on an idea of collective apostasy. Apparently, the reference to Islam serves as general justification and not as a precise legal argument.

The simple act of declaring the Bahā'ī faith incompatible with Islam does not lead to an "Islamic" solution to complicated problems, e.g. Bahā'īs who want to register their religious affiliation as "Bahā'ī". Neither state law nor shari'a regulations are of any help on this issue, which was produced by the emergence of a nation state that places great emphasis on the religious affiliation of its citizens. Consequently, the legal situation is obscure with respect to this question.

Egyptian muftis have issued clear opinions on the legal status of individual Bahā'īs—for the most part, formerly Muslim Bahā'īs—in all areas of personal status law. These opinions have often been taken into consideration by the courts; sometimes, the judiciary or

the executive has requested such expertise as a guideline for its decisions. However, most of those cases date from before the abolition of the Shari'a Courts in 1955. After 1960, Egyptian Bahā'īs have refrained from attempting to settle their conflicts of personal status law in court. As a consequence, the number of fatwas issued on this subject has declined.

The muftis clearly focus on cases of apostasy that can be solved easily on the basis of classical shari'a literature. They tend to avoid more complicated issues for which classical Islamic law does not provide definite solutions, especially the question of Bahā'īs of non-Muslim descent. This issue has been addressed only by Yūsuf al-Qaraḍāwī, but even he does not discuss the legal consequences of his categorization of such persons as polytheists. After all, this is an unprecedented problem for Islamic law—the existence of a post-Qur'ānic religion in the Islamic world that is not only an offshoot of Islam, but defines itself as an independent religion and attracts converts from other non-Islamic religious communities. Egyptian muftis, however, make no attempt to find a genuine solution to this legal problem, preferring to apply traditional categories—mainly apostasy—where suitable and to ignore cases that do not have an obvious solution. The question of *ijtihād* as a tool for creating solutions to new legal problems has not been discussed in Egypt in this context. This is also true with regard to the legal consequences of apostasy, which are not always as easy to solve as are cases involving marriage and inheritance law.

The muftis concentrate on the secondary consequences of apostasy in personal status law and neglect the primary consequence, namely the death sentence that is to be imposed if the apostate does not repent. They generally are reluctant to deal with topics that are not governed by Islamic law, like penal law and administrative law. This is true even of Rashīd Riḍā and Yūsuf al-Qaraḍāwī, who had no institutional link to the state judiciary and whose fatwas are not limited to the discussion of concrete cases. Of the two fatwas that deal with criminal and administrative law, one offers a solution that realistically can be adopted by the state executive instead of merely calling for the apostate's execution, and the other one contents itself with approving the state's decision on dealing with Bahā'īs' official documents.

Of the remaining fatwas, only the most recent one, issued by Jādd al-Ḥaqq, mentions the duty to kill an apostate. Subsequently, in his capacity as Shaykh al-Azhar, Jādd al-Ḥaqq issued two official state-

ments on the Bahāʾī faith that reveal his continuing harsh stance towards this religion.[62]

The fact remains that rigorous rejection of the Bahāʾī faith does not solve the practical problems caused by the continuing presence of Bahāʾīs in Egypt. In 1998, a dispute arose at Cairo University regarding the promotion of a teacher at the Faculty of Dentistry who was known to be a Bahāʾī. Some faculty members who were opposed to her promotion on religious grounds turned to al-Azhar's fatwa committee for an opinion. The resulting fatwa states that "whoever belongs to this sect is an apostate … In Egypt, the Azhar *ʿulamaʾ* and shariʿa jurisdiction and the government fought them [viz., the Bahāʾīs]." The fatwa then refers to three previous fatwas by Azhar institutions and to the State Council's decision of 1952 and concludes: "As has been shown in this short summary, the Bahāʾī faith is a false creed that has nothing in common with Islam, nor does it belong to Judaism and Christianity, and the Muslim who embraces it is an apostate and has left Islam."[63] This unambiguous assessment fails to provide any solution for the problem at hand, which may partly be due to the fatwa committee's wish not to become entangled in the political struggle between Islamist and secularist factions at Cairo University. In any case, this recent fatwa is completely in line with the earlier Egyptian fatwas on the Bahāʾī faith, which readily apply rules from classical Islamic law to modern cases of Bahāʾī apostates, but avoid cases that would force them to adapt these rules or to create new rules. The problem is left to the courts, which apply the broader and more flexible concepts of state religion and public order.

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[62] *al-Akhbār* (15 March 1985), 3; *al-Ahrām* (21 January 1986), 6.
[63] *Rūz al-Yūsuf* (15 June 1998), 82 f.