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**The American University in Cairo**

**School of Global Affairs and Public Policy**

**LAW, LOVE AND VIOLENCE:  
INTERFAITH ROMANCE IN MODERN EGYPT**

**A Thesis Submitted to the**

**Department of Law**

**In partial fulfillment of the requirements for the degree of  
Master of Arts in International Human Rights Law**

**By**

**Mariam El-Maghlawy**

**September 2018**

The American University in Cairo  
School of Global Affairs and Public Policy

LAW, LOVE AND VIOLENCE: INTERFAITH ROMANCE IN MODERN EGYPT

A Thesis Submitted by  
*Mariam Hamed El-Maghlawy*

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Master of Arts in International Human Rights Law

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## DEDICATION

This thesis is dedicated to all those who cannot be with their loved ones because faith has kept them apart.

To all the couples who wonder if I am writing about them. I am.

## ACKNOWLEDGMENTS

First and foremost, I would like to thank my father for his never ending emotional and financial support. Thank you for believing in me even when I doubted myself. I would never be where I am without you. I would also like to thank my mother whose constant care and support pushes me forward every step of the way. I love you both dearly.

To the person who helped the most with this thesis and put up with me, although he absolutely did not have to, Abdelghany Sayed I am truly thankful for all the time you spent reviewing my thesis and for all of your insightful suggestions. I owe you one.

My friends who listened to me whine over and over again, heard me explain to them my topic and arguments countless times, despite not having the faintest idea of what I was talking about. You make my life better just by being in it. Thank you Farah Wael, Cinderella Alaa, Zeina Zahra, Mirna Sweillam, and Moataz AlQammari. I would also like to extend my gratitude to my lifelong friends and companions, Kassab, Ameena, Farah, Nour, Pilar, Amira, Shourouk, and Sarah. All of you guys truly have a special place in my heart. Finally, it does not feel right not to mention you Amir. Thank you for inspiring me to write this thesis.

This thesis would not be in its current form if it wasn't for the constant guidance and advise of my thesis supervisor, Dr. Mai Taha. Thank you so much for bearing with me for more than a year and a half. I can see how far I have come along in writing this thesis and I have you to thank for that. This thesis would not have been possible without your supervision.

The American University in Cairo  
School of Global Affairs and Public Policy  
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LAW, LOVE AND VIOLENCE: INTERFAITH ROMANCE IN MODERN EGYPT

Mariam Hamed El-Maghlawy

Supervised by Professor Mai Taha

ABSTRACT

For the past few decades, many incidents of sectarian violence have been triggered by rumors of interfaith sexual and romantic relationships between Muslims and Coptic Christians in Egypt. This thesis argues that the ways in which the Egyptian modern state chooses to govern women's bodies and address the Coptic question has inevitably enabled sectarian violence witnessed today to take on its current form. One of the main implications of the modernization of the Egyptian legal system was the state's ability to "jam" women, family, sexuality and religion into the private sphere, as opposed to the public sphere. This essentially has created a form of "cross-contamination" in which the religious came to appropriate the family, and the family acquired the quality of the religious. To that end, this thesis tells the story of the "affective, visceral, corporeal workings of everyday state power" that coheres that cross-contamination between the spheres of the family and religion. Through using the tools offered to it by modernity, the Egyptian modern state has been able to maintain a similar religious hierarchy to that which existed in the Ottoman era, only this time it has confined this religious hierarchy almost exclusively to the domain of the family. One of the main outcomes of such an arrangement is that political conflicts over religious difference often end up unfolding over the terrain of familial and sexual relationships. By regulating love, the state has concretized the conservatism of both the Muslim and Coptic communities and has produced a space for sectarian violence over women's bodies, sexuality and romance.

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## I. Introduction

This thesis is an attempt to produce a genealogical account of state restrictions placed on interfaith romantic and sexual relationships between Muslims and Coptic Christians in Egypt today. It is also an effort to investigate the interplay between legal pluralism, gender relations, and sectarian identities under the auspices of the modern Egyptian state. Building on Michel Foucault’s theory of governmentality,<sup>1</sup> I argue that the modern Egyptian nation-state became the *de facto* arbiter in regulating “the private” sphere—sexuality, intimacy, and marriage.

One of the main implications of the modernization of the Egyptian legal system was the state’s ability to “jam” women, family, sexuality and religion into the private sphere, as opposed to the public sphere.<sup>2</sup> This essentially created a form of “cross-contamination” in which the religious came to appropriate the family, and the family acquired the quality of the religious.<sup>3</sup> To that end, I am telling the story of the “affective, visceral, corporeal workings of everyday state power”<sup>4</sup> that cohered that cross-contamination between the spheres of the family and religion.

This thesis presents a critique of the codification and secularization of the legal system which constitutes the cornerstone of the modern and postcolonial Egyptian state. It is a critique of the modernization process in Egypt which helped shape and transform religious-based personal status laws into their current form. I situate sectarian violence precisely in this modernization process. More specifically, I explore the relationship between interreligious love and marriage, and sectarian violence through the lens of the modern state.

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<sup>1</sup> MICHEL FOUCAULT, *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY* (Graham Burchell et al eds., University of Chicago Press, 1991) (1991).

<sup>2</sup> SABA MAHMOOD, *RELIGIOUS DIFFERENCE IN A SECULAR AGE: A MINORITY REPORT*, 26, (Princeton University Press, 2016), (2016).

<sup>3</sup> *Id.*

<sup>4</sup> Asli Zengin, *Violent Intimacies: Tactile State Power, Sex/Gender Transgression, and the Politics of Touch in Contemporary Turkey*, 12 *JOURNAL OF MIDDLE EAST WOMENS STUDIES*, 225, 225–245 (2016).



On May 2016, a video of a Muslim mob stripping and parading naked, Soad Thabet, an elderly 70-year old Coptic woman on the streets of *al-Karam* village in Minya province circulated social media platforms. The hashtag “Egypt stripped naked” even trended on Twitter following the incident.<sup>5</sup> Sectarian violence, involving around 300 people, erupted in Minya province after a rumor that Mrs. Thabet’s son was involved in a love affair with a Muslim woman circulated the small village of *al-Karam*.<sup>6</sup> The police initially arrested six men suspected of taking part in the violence<sup>7</sup>, but in January 2017, the case was dropped by Egyptian prosecutors.<sup>8</sup> The prosecutors cited the “lack of evidence” as the reason behind their decision to drop the case despite the fact that Mrs. Thabet identified three of the men she said assaulted her.<sup>9</sup> On the other hand, Mrs Thabet’s son, Ashraf Abdo Attia, and the woman he allegedly had an affair with were found guilty of adultery and were sentenced to serve two years in prison and pay a penalty of 1,000 Egyptian pounds.<sup>10</sup> In addition, Attia’s entire family was forced to flee the village and could not return to their homes because of threats by Muslim extremists in the village.<sup>11</sup>

Such an incident should not be treated as an isolated incident. Sectarian violence set off by rumors of interfaith sexual and romantic relationships has become a common occurrence in Egypt since President Anwar al-Sadat’s era until today. This thesis will be an attempt to investigate the reasons behind why this particular form of sectarian violence continues to take place until today. Since it’s important to remember to concretize the discussion from the abstractions of modernity to the concreteness of lived experiences of

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<sup>5</sup> *Muslim Mob In Egypt Strips 70-Year-Old Christian Woman*, THE GUARDIAN, May 26, 2016. <https://www.theguardian.com/world/2016/may/26/muslim-mob-in-egypt-strips-elderly-christian-woman-in-violent-attack>

<sup>6</sup> *Egypt Affair Rumours Spark Inter-Religious Violence*, BBC NEWS, May 26, 2016. <https://www.bbc.com/news/world-middle-east-36391383>

<sup>7</sup> *Id.*

<sup>8</sup> Raf Sanchez & Magdy Samaan, *Egypt Drops Case Against Men Accused Of Beating Christian Grandmother – But Prosecutes Her Son For Adultery*, THE TELEGRAPH, Jan. 16, 2017. <https://www.telegraph.co.uk/news/2017/01/16/egypt-drops-case-against-men-accused-beating-christian-grandmother/>

<sup>9</sup> *Id.*

<sup>10</sup> Nader Shokri, *Son Of «El-Karam Lady» Imprisoned For Two Years For Adultery*, WATANI, July 27, 2017. <http://www.wataninet.com/2017/07/%D8%A7%D9%84%D8%AD%D9%83%D9%85-%D8%A8%D8%AD%D8%A8%D8%B3-%D8%A7%D8%A8%D9%86-%D8%B3%D9%8A%D8%AF%D8%A9-%D8%A7%D9%84%D9%83%D8%B1%D9%85-%D8%B9%D8%A7%D9%85%D9%8A%D9%86/>

<sup>11</sup> *Egypt Affair Rumours Spark Inter-Religious Violence*, *supra* note 6.

actual human-brings, similar incidents of sectarian violence will be discussed and analyzed throughout this thesis.

The first chapter of this thesis interrogates the modern legal technologies that helped preserve the long-standing legal ban on interfaith marriage between a Muslim woman and a non-Muslim man. It investigates the late nineteenth century secularization and codification processes, which shaped and transformed sectarian identities and patriarchal structures into their current status in Egyptian family law. This chapter examines the features that underscore the centrality of the modern state, and especially its legal power, for secularism in the Egyptian context.

A genealogy of the current legal ban on interfaith marriage between a Muslim woman and a non-Muslim man reveals a lot about both the dynamics of Coptic-Muslim relations in Egypt and the discrimination against women in both communities. Thus, the second chapter investigates how the modernization of the Egyptian legal system and the introduction of religious-based personal status laws impacted gender relations both in Muslim and Coptic communities. In this second chapter, I argue that the modernization of the Egyptian legal framework resulted in placing limits on and solidifying the ceiling for progressive reforms when it came to questions of women's rights and gender equality both in the Muslim and the Coptic personal status laws.

The third chapter of this thesis, explores how the modernization of the Egyptian legal system and the introduction of religion-based personal status laws impacted both the unit of the "family" and sectarian identities. I argue that the modernization process saddled personal status laws - and by extension the "family" - with the inordinate weight of being the site of the reproduction and preservation of religious identity. One of the main consequences of this was enabling any reform attempts aimed at the Coptic personal status law to be framed as a violation of the Coptic minority's collective right to "religious freedom". Unsurprisingly, the right of Copts to "religious freedom" is an especially contentious subject given the status of Copts as a minority living in a country where the principles of Islamic Sharia are the main source of legislation.

The fourth chapter looks at modern liberal conceptions of citizenship and inspects how they are being utilized to conceal religious difference under the pretense of equal

citizenship and national unity. These conceptions presuppose the “inclusion” rather than “exclusion” of different religious identities in Egypt, which help disguise every-day religious discrimination as well as larger structures of oppression directed towards Egypt’s Coptic minority. This chapter also examines how different authoritarian regimes, starting with Gamal Abdel-Nasser’s regime, were able to manipulate sectarian identities and cleavages to score political gains. It argues that these regimes’ chosen approach when dealing with incidents of sectarian nature have in fact abetted in generating sectarian violence. I examine how the state, in its different authoritarian moments, has used informal reconciliation sessions and the State Security Investigation Service to deal with cases of sectarian violence pertaining to interfaith love and marriage. Ann Stoler suggests that “to study the intimate is not to turn away from structures of dominance, but to relocate their conditions of possibility and relations and forces of production.”<sup>12</sup> Areas such as marriage, sexuality, and reproduction “tend to be critical sites of state regulation and the focus of persistent state projects.”<sup>13</sup> This chapter looks at how modern secular governance has regulated the sphere of the intimate, and in the process, contributed to the exacerbation of religious tensions, hardening interfaith boundaries and polarizing religious differences.

The fifth and final chapter of the thesis looks at incidents of sectarian violence that were triggered by interreligious relationships and investigates how the Egyptian state chooses to deal with those incidents. It considers whether the perseverance of religious-based personal status laws have helped in nurturing this particular form of sectarian violence through constraining the conditions of legal divorce for Copts and banning Muslim women from marrying non-Muslim men. It also examines existing patriarchal structures in Egyptian society and how women bodies have come to represent broader claims about their own religious communities.

Both the Muslim and Coptic communities have shown conservative stances when it came to calls for secularizing religious-based personal status laws. Paradoxically, the

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<sup>12</sup> Ann Laura Stoler, *Tense and Tender Ties* in HAUNTED BY EMPIRE: GEOGRAPHIES OF INTIMACY IN NORTH AMERICAN HISTORY, 13 (Ann Laura Stoler ed., Duke University Press, 2006), (2006).

<sup>13</sup> Zengin, *Supra* note 3, at 225.

secularization of most of the Egyptian legal system, except for personal status laws, have made those laws the only living witness to the religious character of both communities. Accordingly, reforms aimed specifically at this body of law have come to be seen as a direct attack on the religious sentiments of both communities. Michel Foucault has famously argued that the real danger is not necessarily that individuals are repressed by the social order but that they are "carefully fabricated in it."<sup>14</sup> This is particularly true in Egypt since sectarian attitudes are reproduced within structures of governance and are then reflected and replicated in the fabric of the Egyptian society.

Notably, my argument here should not be construed as offering an anti-modernist critique. Rather this thesis is simply an attempt to investigate the various legal technologies, such as the codification and secularization processes, that coincided with the modern postcolonial state project. The contradictions inherent within secularism has been pointed out by a significant number of scholars and academics. For instance, Peter Berger<sup>15</sup> and Harvey Cox<sup>16</sup>, two influential proponents of secularism, have revised their positions on the subject. Other scholars such as Rodney Stark and Roger Finke<sup>17</sup> have also launched a sustained critique against the secularization thesis through their deconstruction of antireligious secularization theories. Similar criticisms of conceptual and empirical flaws of secularism especially in the context of the Middle East and Egypt has also been highlighted by academics such as Talal Asad<sup>18</sup>, Hussien Agrama<sup>19</sup>, and Saba Mahmood<sup>20</sup>.

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<sup>14</sup> MICHEL FOUCAULT, *DISCIPLINE AND PUNISHMENT: THE BIRTH OF THE PRISON*, 217 (Alan Sheridan. Trans., Vintage Books, 1977) (1977).

<sup>15</sup> Peter Berger, *The Deseccularization of the World A Global Overview* in *THE DESECCULARIZATION OF THE WORLD: RESURGENT RELIGION AND WORLD POLITICS* (Peter Berger ed., William B. Eerdmans Publishing Company, 1999), 1999.

<sup>16</sup> Harvey G. Cox, *the Myth of the Twentieth Century: The Rise and Fall of Secularization*, 27 *JAPANESE JOURNAL OF RELIGIOUS STUDIES*, 6-8, 1-13 (2000).

<sup>17</sup> RODNEY STARK AND ROGER FINKE, *ACTS OF FAITH: EXPLAINING THE HUMAN SIDE OF RELIGION*, 79 (1<sup>st</sup> ed., University of California Press, 2000), (2000). *See also* Rodney Stark, *Secularization, R.I.P.*, 60 *SOCIOLOGY OF RELIGION*, 270, 249-273, (1999).

<sup>18</sup> TALAL ASAD, *FORMATIONS OF THE SECULAR: CHRISTIANITY, ISLAM, MODERNITY* (Stanford University Press, 2003), (2003).

<sup>19</sup> HUSSEIN AGRAMA, *QUESTIONING SECULARISM: ISLAM, SOVEREIGNTY, AND THE RULE OF LAW IN MODERN EGYPT* (University of Chicago Press, 2012), (2012).

<sup>20</sup> MAHMOOD, *RELIGIOUS DIFFERENCE IN A SECULAR AGE*, *Supra* note 2.

However, it's not within the scope of this thesis to pass a value judgment or present a critique on secularism as a theoretical abstract concept. Instead, it only attends to a historically specific trajectory of secularism – the one that took place in modern Egypt. It examines the historical transformation of the Egyptian personal status laws as they passed through the processes of modernization and secularization. It focuses on how these two processes, combined with the authoritarian modes of governance helped in consolidating the legal ban on interfaith marriages, and in producing a particular form of sectarian violence. By regulating love, the state has concretized the conservatism of both religious communities and has produced a space for sectarian violence over women's bodies, sexuality and romance.

## II. Family laws under the Auspices of the Egyptian Modern State

### A. You Can't Just Marry Anyone: The Legal Framework Governing Marriage in Egypt

The concept of “secular” civil marriage does not exist in many Muslim-majority countries. Egypt is no exception. In Egypt, all marriages are conducted by religious authorities, and standard marriage procedures are both simultaneously “religious” and “civil”. The *ma'zoun*, for Muslims or the authorized priest, for Christians, performs a religious marriage ceremony and also acts as an agent for the state. For the *ma'zoun*, a Christian woman is allowed to marry a Muslim man, however, the opposite is forbidden. For the priest, both partners have to be Christians adhering to the same confession (denomination).<sup>21</sup> A restricted form of civil marriage, in the presence of a public legal official, would be permissible in Egypt only in the following exclusive circumstances: “1) Both partners are foreigners; 2) A foreigner marrying an Egyptian, however, even in this case an Egyptian Muslim woman cannot marry a non-Muslim foreign man; or 3) An Egyptian Muslim man marrying a non-Muslim Egyptian woman.”<sup>22</sup>

Only interfaith marriages between a Muslim man and a non-Muslim woman is permitted by law; the opposite, a Muslim woman marrying a non-Muslim man, is prohibited. However, and in spite of its legality, the Egyptian state still attempts to limit interfaith marriages between Muslim men and Christian women; it requests an ‘absence of impediment to marriage’ document from the Church as a prerequisite for registering a marriage between an Egyptian Christian woman and an Egyptian Muslim man.<sup>23</sup> Given that the Coptic Church repeatedly refuses to issue this document<sup>24</sup>, this requirement successfully installs a bureaucratic obstacle to even this type of legally sanctioned interfaith unions.

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<sup>21</sup> Adel Guindy, *Family Status Issues among Egypt's Copts: A Brief Overview*, 11 MIDDLE E. REV. INT'L AFF, 1-7 (2007).

<sup>22</sup> *Id.*

<sup>23</sup> United Kingdom: Home Office, *Country Policy and Information Note - Egypt: Christians*, 42 (June 2017), available at: <http://www.refworld.org/docid/5978ad374.html> (last visited June 8, 2018).

<sup>24</sup> Mariam Ibrahim, *A Daughter Marries Outside The Faith: Interreligious Marriages In Egypt Are A Constant Negotiation Of Obligations And Identities*, MADA MASR, Dec. 8, 2017. <https://www.madamasr.com/en/2017/12/08/feature/society/a-daughter-marries-outside-the-faith/>

This legal framework governing marriage falls under the Egyptian civil code and is part of the body of law known as the personal status law. In contemporary Egypt as well as in many other Muslim-majority countries, the term ‘personal status law’ is understood to mean the specific area of law which governs family relations and matters such as marriage, divorce, child custody, and inheritance. The term ‘personal status law’ is itself a modern legal invention. Historically, Islamic law never had a distinct category of family law, or even personal status law.<sup>25</sup> In *fiqh* (Islamic jurisprudence), laws concerning marriage, divorce and child custody were often scattered under different legal categories such as contracts, offences and endowments.<sup>26</sup> Today, Islamic law is the law that governs the personal status matters of Muslims, whereas officially recognized non-Muslim communities<sup>27</sup> (Christians and Jews denominations) have relative autonomy to use their own religious laws to govern personal status matters of their respective communities. In other words, legal pluralism in the area of family law continues to exist today among the dominant Muslim community and the Christian and Jewish religious communities, although it can be argued this legal plurality is in fact asymmetrical.

#### **B. Not All Laws are Equal: The Hierarchy of Personal Status Laws in Egypt**

The overarching framework of *sharia*-based Muslim personal status law is the general law, while the other Christian and Jewish personal status laws can be said to be the exemptions (*lex specialis*) to the Islamic law (*lex generalis*). Islamic law of personal status is the formal law that governs the marriage of spouses who adhere to different religions or even spouses who adhere to different sects of the same religion (denominations). For example, if a Catholic woman marries a Coptic-Orthodox man, Islamic *Sharia* automatically becomes the applicable law if one of the spouses decides to file a case in family court. Also, in the case that both or one of the spouses belongs to an

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<sup>25</sup> Hussein Ali Agrama, *Secularism, Sovereignty, Indeterminacy: Is Egypt a Secular or a Religious State?*, 53 COMP. STUD. IN SOC. & HIST., 495&517, 495–523 (2006).

<sup>26</sup> WAEL B. HALLAQ, *SHARIA: THEORY, PRACTICE, TRANSFORMATIONS*, 271 (Cambridge University Press, 2009), (2009).

<sup>27</sup> Officially recognized non-Muslim religious communities under Egyptian law are four Orthodox Christian communities (Coptic, Greek, Armenian, and Syrian), seven Catholic communities (Coptic, Greek, Armenian, Syrian, Maronite, Chaldean, Latin), all Protestant denominations under one community, and two dwindling Jewish communities (Karaitic and Rabbinic). Baha’is and Jehovah’s Witnesses constitute the most notable unrecognized religious minorities. See Berger (2001) at 96.

unrecognized non-Muslim community, like the *Baha'i* community, Islamic law of personal status becomes the law that governs their marriage.

In contrast, the Christian and Jewish personal status laws only apply in cases where spouses share both the same religion and sect. Such hierarchical legal pluralism is sanctioned by article 2 of the Egyptian constitution (2014) which stipulates that “Islam is the religion of the State and Arabic is its official language. The principles of Islamic Sharia are the main source of legislation”,<sup>28</sup> and article 3 which stipulates that “the principles of Christian and Jewish Sharia of Egyptian Christians and Jews are the main source of legislations that regulate their respective personal status, religious affairs, and selection of spiritual leaders.”<sup>29</sup>

The Muslim personal status code represents the majoritarian norms of national identity, while the Coptic personal status code is framed as the exception. A clear example of this is that non-Muslim family laws may not be applied if they violate Egyptian "public policy" which itself has been repeatedly equated in the Egyptian legal literature with principles which are “essential” in Islamic law.<sup>30</sup> Accordingly, it is established that Islamic law of personal status is the state law and the main framework for Egyptian personal status laws.

All the other laws governing other religious minorities are acknowledged as customary laws and are sanctioned under “plurality of religious laws (*ta'addud al-shara'i*)” as it is generally referred to in the Egyptian legal literature.<sup>31</sup> Maurits Berger even argues that it is more accurate to refer to this as the “duality of family laws” instead of the “plurality of family laws,” as commonly referred to in contemporary Egyptian legal doctrine.<sup>32</sup> This is because a clear and distinct difference is drawn between the family laws for Muslims and the family laws for non-Muslims in the current Egyptian legal system. In what follows, I

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<sup>28</sup> EGY CONST. 2014, Chapter I, art II.

<sup>29</sup> EGY CONST. 2014, Chapter I, art III.

<sup>30</sup> Maurits Berger, *Public Policy and Islamic Law: The Modern Dhimmī in Contemporary Egyptian Family*, 8 ISLAMIC LAW AND SOCIETY, 88, 88-136 (2001).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 123.



interrogate this legal hierarchy that developed with modern legal technologies, focusing on how Egypt has maintained pluralistic personal status codes until today.

### **C. To Secularize or not to Secularize: the Egyptian Legal Framework and Modern Legal Technologies**

As Saba Mahmood has famously argued, the process of secularization involved a reconceptualization of religion that was “modeled on a dominant understanding of religion rooted in the majoritarian religious tradition.”<sup>33</sup> Secularism does not always imply having a firewall separation between religion and state. It is a process whereby religion and the state are intertwined together, producing the paradoxes and contradictions of modern nation-states. While secularism disentangles religion from politics, it relegates it to the private sphere, consequently cohering religion as an integral aspect of individual and collective identity. Building on this point, the paradoxes produced by the secularization of a deeply religious society like Egypt, was one of the results of handing over the private sphere to the religious authority in exchange for eradicating their authority over civic and political affairs. Hussein Agrama even argues that the current practice of secularism, brought on by the modernizing project in Egypt, promotes the politicization of religion. He highlights three features that underscore the centrality of the modern state, and especially its legal power, for secularism: the active principle of secularism, a public/private distinction, and a rule of law framework.<sup>34</sup>

In Egypt, and in other Muslim-majority countries as well, the perseverance of religion-based pluralistic personal status laws is not simply the outcome of an incomplete secularization attempt. It also cannot be explained as simply a remnant of the era of Islamic rule or as a symptom of the deeply religious ethos of Middle Eastern societies as has been widely argued by some scholars of the Middle East. For instance, Herbert J. Liebesny has previously argued that the “continued existence of differing personal status law for various communities in one country is... an example of the survival of an institution based on principles traceable from ancient times to the present. It is also an

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<sup>33</sup> Saba Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, 39 AMERICAN ETHNOLOGIST, 59, 54-62 (2012).

<sup>34</sup> AGRAMA, QUESTIONING SECULARISM, *Supra* note 19 at 72.

example of the adaptation of a long-standing legal principle to the religion-based legal system of Islam.”<sup>35</sup> Moreover, the perseverance of religion-based family laws cannot be solely explained as an outcome of the colonial powers’ willingness to grant religious autonomy to colonized subjects in exchange for secularizing all other bodies of law.

The underlying assumption of these arguments is that if all bodies of law in the Middle East were completely secularized, then the patriarchal attitudes that exists today in the domain of the family will diminish. Clearly, this is an inadequate account that fails to historically address the transformations in religious-based personal status laws over the years. More philosophically, it fails to address the changing conceptions of ‘the family’ itself as it bargained its terrains between the intimate and public. It would be a mistake to assume that if the colonial powers had enforced secularization in all areas of law, the problems of religious strife and gender inequality would have disappeared. I am also not interested in engaging with a hypothetical situation. I merely want to look at the material transformations in personal status laws that took place in congruence with the modernization process.

Secularism and the codification processes simultaneously transformed *Shari’a* from a system of decentralized rules administrated by local *muftis* and *qadis* into a codified system enforced by a centralized state. This is a chapter in Egypt’s history where religious-based family law came to be confined to the realm of the “private”, as well as reduced to the unit of the “family”, and thus was “no longer a tool for the execution of divine law but one of the techniques of modern governance and sexual regulation.”<sup>36</sup>

The modern nation-state became the arbiter of majority-minority relations and in the process, shaped the boundaries between religious communities through legislation. As Talal Asad notes, the colonial powers’ willingness to grant religious autonomy when it comes to family matters to their colonial subjects was not so much a sign of their tolerance of their subjects’ religion rather it was a part of “the secular formula for

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<sup>35</sup> Herbert J. Liebesny, *Comparative Legal History: Its Role in the Analysis of Islamic and Modern Near Eastern Legal Institutions*, 20 THE AMERICAN JOURNAL OF COMPARATIVE LAW, 41, 38-52 (1972).

<sup>36</sup> Saba Mahmood, *Sexuality and Secularism in Religion* in THE SECULAR, AND THE POLITICS OF SEXUAL DIFFERENCE, 52 (Linell E. Cady & Tracy Fessenden ed, Columbia University Press, 2013), (2013).

privatizing religion.”<sup>37</sup> This helped uphold the distinction between the public and the private—the most central tenant of secularism.

Agrama explains the “active principle of secularism” as the principle that “the state has the power and authority to decide what should count as essentially religious and what scope can it have in social life.”<sup>38</sup> This does not necessarily mean that the state gets to decide on matters of religious dogma, but it means that it can decide what doctrine is essentially a religious matter.<sup>39</sup> More concretely, the state is authorized to distinguish between the "civil" and “religious" dimensions of an act, such as marriage, and “on that basis, decide whether the act is enforceable, punishable, or otherwise deserving of protection or exemption under the law.”<sup>40</sup> Hence, the modern nation-state gets to constantly draw the lines between what it deems a “religious” matter and what it deems a “secular” matter, while preserving its sole authority to do so.<sup>41</sup>

The active principle of secularism enabled the Egyptian state to deem matters of personal status such as marriage, divorce, child custody, and inheritance as matters belonging the realm of “religion” or as matters of religious dogma while simultaneously deeming matters such as financial contracts and criminal offenses as “civil” matters that should be governed by secular laws. Moreover, it was the artificial legal separation between the public/private spheres that came with the secularization process that provided the justification for why family matters should be governed according to one’s religious affiliation. By upholding the public/private distinction, the Egyptian state was able to rule that family matters belong to the realm of the “private”. Thus, they should be governed by the personal status laws that are based on one’s religious affiliation, while criminal conduct, for example, should belong to the realm of the “public”, and should therefore be governed by a secular criminal code.

This thesis examines how different authoritarian regimes have utilized these different legal technologies in order to maintain patriarchal family structures and govern different

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<sup>37</sup> ASAD, *Supra* note 18, at 228.

<sup>38</sup> AGRAMA, QUESTIONING SECULARISM, *Supra* note 19, at 72.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

religious communities living under their rule in a way that serve their own interests. These regimes have exploited their authority to decide what should count as essentially a religious matter and utilized the modern artificial separation between the public and private sphere in order to maintain religious-based personal status laws as they are today.

In what follows, I explore the historical development of both the Muslim and the Coptic personal status laws and the impact that this historical process had on women's rights in both communities. I argue that one of the main outcomes of modernizing the Egyptian legal system was putting in place a "glass ceiling" for progressive reforms when it came to questions of gender equality under both the Muslim and Coptic personal status laws. This has enabled the state to continue to limit interfaith marriages and keep its legal ban and bureaucratic restrictions on interfaith marriage in place.

### **III. A Feminist Analysis of the Modernization of the Muslim and Coptic Personal Status Laws**

The delegation of family matters to religious intuitions in Egypt, namely *al-Azhar* and the Coptic Orthodox Church, for many decades has actively contributed to making any calls for women's rights highly contested by both communities. In this chapter, I first outline the historical development of the Muslim personal status code. Second, I address the impact that such a historical process had on the discriminatory gender practices in the Muslim family today. Finally, I conduct an analogous discussion of the development of the Coptic personal status law and how it led to many forms of gender discrimination experienced by Coptic women, particularly when it comes to divorce. Essentially, I interrogate how both religious institutions, along with the state, have redefined the sphere of the family to the detriment of women.

#### **A. The Modernization of the Muslim Personal Status Law**

There were two main processes that transformed the Egyptian Muslim family law: the first process was the reorganization of the Sharia court system, which took place in the mid-nineteenth century and the second process was the codification of Muslim family law, which took place over the first few decades of the twentieth century.<sup>42</sup> The reorganization of the Sharia court system started in 1835, with the creation of the position of the Grand Mufti (*Mufti al-Diyar al-Misriyya*). The appointment of the Grand Mufti marked one of earliest steps taken by the Egyptian modern state to assert its control over the religious institution in its quest towards secularization.<sup>43</sup> This reorganization of the *Sharia* court system was then further asserted through the procedural laws of 1856, 1880, and 1897.<sup>44</sup> Eventually, these procedural laws led to what Kenneth Cuno calls the “Hanafization” of the *Sharia* Courts (i.e. adaptation of the Hanafi *madhab*).<sup>45</sup>

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<sup>42</sup> KENNETH M. CUNO, MODERNIZING MARRIAGE: FAMILY, IDEOLOGY, AND LAW IN NINETEENTH AND EARLY TWENTIETH CENTURY EGYPT, 123 (Syracuse University Press, 2015), (2015).

<sup>43</sup> JASMINE MOUSSA, COMPETING FUNDAMENTALISMS AND EGYPTIAN WOMEN'S FAMILY RIGHTS, 119 (Brill, 2011), (2011).

<sup>44</sup> CUNO, *Supra* note 27, at 123.

<sup>45</sup> *Id.*

Before the “Hanafization” process took place, Muslims had the option to choose from the different *Sharia* courts, which could issue a ruling based on any of the normative rules of the four major *Sunni* schools of law known as *madahhab* (i.e Hanafi, Maliki, Shafi'i, Hanbali). The “reorganization of the Sharia court system” process inevitably eliminated the flexibility that was granted to Muslims for centuries; Muslims could no longer go “forum shopping” or “venue shopping” as they no longer can seek recourse in the school of law that best suited their interests.<sup>46</sup> However, it must be noted that all four *Sunni* schools of law have ruled earlier that a Muslim woman could not marry a non-Muslim unless he would convert to Islam. This means that even before the so-called “Hanafization” process, a Muslim woman still could not marry a non-Muslim man.

The main purpose of reorganization of the *Sharia* court system was “to make the application of the law more predictable and uniform, a hallmark of modern legal systems.”<sup>47</sup> The introduction of the procedural laws of 1856, 1880, and 1897 led to the encouragement and eventually requirement of the use of documentary evidence, such as a written marriage contract, in legal proceedings.<sup>48</sup> By the year 1911, “the courts would not hear any claims regarding marriage or divorce that were not supported by official documents.”<sup>49</sup>

Eventually, this slowly led to the codification process that took place in the 1920s. As discussed earlier, the modernization of the Egyptian legal system also entailed its secularization. Yet, this secularization simply never extended to the Egyptian personal status laws. Only the codification process extended to personal status-related matters, ultimately leading to the mummification of the religious rules pertaining to family matters. For decades, the application of *Sharia* was flexible as religious rulings were issued based on a multitude of sources, opinions and interpretations.<sup>50</sup> Today, Muslim family laws have come to represent a commitment to a codified, and hence essentially rigid body of law.<sup>51</sup>

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<sup>46</sup> *Id.* at 123 & 124

<sup>47</sup> *Id.* at 125

<sup>48</sup> *Id.* at 124.

<sup>49</sup> *Id.*

<sup>50</sup> MOUSSA, *COMPETING FUNDAMENTALISMS*, *Supra* note 28, at 121.

<sup>51</sup> *Id.*

In summary, Islamic law under the modern Egyptian state went from being a dominant system existing within the confines of an Islamic state to a subordinate system existing within an overall secularized legal system made up of legal transplants from European legal codes. Today, after having lost jurisdiction over most other areas of law, Islamic law lives on primarily through the Muslim personal status laws (family law).<sup>52</sup>

## **B. Muslim Personal Status Laws and Women**

*Ijtihad* (legal reasoning) is an Islamic legal term that refers to “the exertion of mental energy in the search for a legal opinion to the extent that the faculties of the jurist become incapable of further effort.”<sup>53</sup> *Ijtihad* is based on the assumption that jurists possess the needed knowledge and competence in order to develop new rules of law through reasoning from *Sharia*'s primary sources.<sup>54</sup> *Sharia* has two primary sources: the *Qur'an* (Muslim's holy book), the *Sunna* (Prophet Muhammad's sayings and behavior). A feature of *Sunni* jurisprudence, is that, unlike its *Shi'i* counterpart, it “reserves the right of *ijtihad* to a few '*ulama*' (religious scholars) alone, who are considered well versed in *sharia* (divine law) and *fiqh* (human legal theorization).”<sup>55</sup> The rulings of the four *Sunni* jurisprudential schools known as *madahhab* (i.e Hanafi, Maliki, Shafi'i, Hanbali), which were coined in the eighth and ninth centuries ad., are generally considered as the authoritative interpretations of the sources of *Sunni* Islamic law.<sup>56</sup>

Many authoritative Islamic scholars argue that the gates of *ijtihad* were effectively closed by the late ninth century.<sup>57</sup> However, many Islamic feminists today, put forth the argument that the gates of *ijtihad* were never really closed and that there is an urgent need to utilize this Islamic methodology in order to fight patriarchal norms enshrined today in modern family laws. Amira Mashhour, for example, argues that *Sharia* “posits an

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<sup>52</sup> Jasmine Moussa, *The Reform of Shari'a-derived Divorce Legislation in Egypt: International Standards and the Cultural Debate*, 1 HUMAN RIGHTS LAW COMMENTARY, 11, 1-31 (2005).

<sup>53</sup> Wael B. Hallaq, *Was the Gate of Ijtihad Closed?*, 16 INT. JOURNAL OF MIDDLE EAST STUDIES, 3, 3-41, (1984).

<sup>54</sup> L. ALI KHAN & HISHAM M. RAMADAN, *CONTEMPORARY IJTIHAD: LIMITS AND CONTROVERSIES*, 1 (Edinburgh University Press, 2011), (2011).

<sup>55</sup> Fatima Sadiqi, *The Potential Within*, in *Adjudicating Family Law in Muslim Courts*, 121 (1<sup>st</sup> edition, Routledge, 2016).

<sup>56</sup> MOUSSA, *COMPETING FUNDAMENTALISMS*, *Supra* note 28, at 122.

<sup>57</sup> *Id.*

evolutionary quality based on *ijtihad* to interpret the texts in their socioeconomic and historical contexts and to compare their relevance to the contemporary context as a means of responding to the needs of the society and coping with social changes.”<sup>58</sup> She continues her argument by saying that “applying *Ijthad*, or feminist *Ijtihad* in particular, based on justice, which is the core value of Islam, one can fulfill gender equality to its fullest.”<sup>59</sup>

Another example is Islamic feminist Omaima Abou Bakr who refers to the recent works of Islamic feminists as an “uninterpretation” rather than a “re-interpretations.”<sup>60</sup> She explains that Islamic feminist project is a “continuous attempt to un-interpret past gender biased readings done by male jurists to come up with new interpretations that push for gender equality from and within Islam itself.”<sup>61</sup> She argues that Islamic feminism “has proven the possibility of undoing the doings of patriarchy.”<sup>62</sup> Other Islamic feminists, such as Kecia Ali<sup>63</sup> and Ziba Mir Hosseini<sup>64</sup>, also problematize Islamic medieval jurisprudence by arguing that it was solely based on male-centered perspectives.<sup>65</sup> Both of them argue that male jurists were influenced by the patriarchal society present at the time which ultimately impacted their rulings on matters pertaining to gender relations within the family.<sup>66</sup> Nonetheless, the work of Islamic feminists and their utilization of *ijtihad* to come up with new interpretations, has been widely controversial especially in recent Egyptian history.<sup>67</sup>

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<sup>58</sup> Amira Mashhour, *Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt*, 27 HUMAN RIGHTS QUARTERLY, 565, 562-596 (2005).

<sup>59</sup> *Id.*

<sup>60</sup> Omaima Abou-Bakr, *What's Done Can be Un-Done: Un-Interpreting Gender-Hierarchy in Quranic Exegesis*, 17, (12th Mediterranean research Meeting, 2011).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 1 &17.

<sup>63</sup> See for example KECIA ALI, *SEXUAL ETHICS & ISLAM: FEMINIST REFLECTIONS ON QUR'AN, HADITH, AND JURISPRUDENCE*, (Oneworld Publications, 2006).

<sup>64</sup> See for example Ziba Mir Hosseini, *The Construction of Gender in Islamic Legal Thought and Strategies for Reform*, 1 HAWWA: JOURNAL OF WOMEN IN THE MIDDLE EAST AND THE ISLAMIC WORLD, 1-28 (2003).

<sup>65</sup> Liv Tonnesson, *Islamic Feminism*, 6, 3-12 (Sudan Working paper, 2014)  
<https://www.cmi.no/publications/file/5289-islamic-feminism-a-public-lecture-by.pdf>

<sup>66</sup> *Id.*

<sup>67</sup> MOUSSA, *COMPETING FUNDAMENTALISMS*, *Supra* note 28, at 123.



The codification process essentially stripped *Sharia* of two of its most valuable aspects: its adaptability to society's needs and the flexibility of its rulings. By codifying medieval Islamic jurisprudence mainly in the realm of the family, the Egyptian state has effectively made medieval patriarchal norms, inherent in the rulings of the four classical *madahabs*, the primary surviving legacy of Islamic law in the current Egyptian legal system. As a result of this, many proposals that call for reforming the personal status code by eradicating male dominance in family laws were and still are met with vigorous opposition by religious contenders. Those religious contenders often framed such reforms as attempts to Europeanize the Egyptian society and as assaults to the last "Islamic" laws standing.

For instance, there was a proposed reform put forth by the Ministry of Social Affairs' draft law, in 1945, which attempted to restrict both divorce and polygamy.<sup>68</sup> The draft law required a *Sharia* judge's permission as a prerequisite for a polygamous marriage. Before giving out such permission, the *Sharia* judge had to first investigate whether a married man had the financial ability to support more than one wife.<sup>69</sup> The draft law also sought to limit divorce through requiring a court order for it and it stipulated that violators would have to pay a fine, or serve a prison term, or both.<sup>70</sup> However, this proposal never saw the light of day as it was met by rigorous opposition by religious contenders despite the fact that recommendations included in this proposal were justified within the scriptures, and were not solely based on the opinions of jurists.<sup>71</sup>

Another example is the famous Decree-Law No.44 that President Anwar al-Sadat passed on June 20, 1979 without the prior approval of the Assembly. Among other things, it required divorce to be officially and properly registered either by a notary public or by the husband's acknowledgement (*iqrar*) and ruled that a second marriage constituted a harm to the first wife, and thus it was a legitimate ground for divorce, even if the wife

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<sup>68</sup> Fauzi M. Najjar, *Egypt's Laws of Personal Status*, 10 ARAB STUDIES QUARTERLY, 320, 319-344 (1988).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

had not so stipulated in the marriage contract.<sup>72</sup> Opponents of the new law referred to it as "Jihan al-Sadat's law" and accused it of going against fundamental Islamic principles.<sup>73</sup>

Muhammad A. al-Samman, spokesmen for the Muslim Brotherhood at the time, even mounted a vigorous attack on the new law and its supporters. He voiced his objections to the Law, claiming that that it was inspired by Catholicism and the West. He further accused Amina al-Sa'id, an eminent Egyptian feminist who pushed for more reforms than those established by the mentioned Law, of being brainwashed by the West. "[T]hat West which you glorify is the cradle of debauchery, moral laxity, and the dissolution of the family. What the East has experienced in moral decline has come to it from the so-called 'civilized west,'" al-Samman addressed Amina al-Sa'id.<sup>74</sup> The relatively limited changes introduced in Law No.44 of 1979 were short-lived as the legislation was later struck down as unconstitutional on May 4, 1985.<sup>75</sup>

It is then clear that even moderate reforms to limit discrimination in the personal status laws has been often met with great resistance from religious contenders throughout Egypt's modern history. Thus, it is not surprising that progressive reforms calling for sanctioning interfaith marriage between a Christian man and a Muslim woman, are most likely going to be framed today as an automatic heresy.

There are a few possible explanations as to why many secular reforms aimed at the body of law dealing with personal status matters is met with so much resistance in Egypt today. The first possible explanation is that the Egyptian regime is more concerned with ensuring that the "secular" nature of the already mostly secularized fields of laws, such as criminal and commercial law, remains unchallenged than with fighting patriarchy in the realm of the family. Given that the entire Egyptian legal system was transformed into a more secular legal system, the religious intelligentsia were worried that family laws would have to go through those same changes as well. Thus, in order for secularization to take place, there had to be a limit drawn on any reform that could affect family laws. In the words of Lama Abu Odeh:

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<sup>72</sup> *Id.* at 323.

<sup>73</sup> *Id.* at 324.

<sup>74</sup> Muhammad A. al-Samman, quoted in *Id.* at 325.

<sup>75</sup> *Id.* at 319.

In order for all other laws to be secularized, family law had to represent the limit of, the exception to, or the sacrificial lamb of secularization... the Islamicity of the rules on the family came to symbolize the last bastion of a dismantled Islamic legal system, the reform of which threatened to flood Egypt with the European and the secular. Thus, attachment to medieval patriarchy came to mean attachment to the Islamic.<sup>76</sup>

In other words, the modern Egyptian personal status law was essentially a scapegoat offered by the Egyptian regime to conservative religious intelligentsia to atone for secularizing the Egyptian law in most other areas.

The second explanation as to why there is a special attachment to Islamic rules pertaining to personal status matters is that these rules are often claimed or believed to be outlined in greater detail in the *Qur'an* or *sunna* of the Prophet than the rules dealing with other areas of *shari'a*.<sup>77</sup> Those who oppose reforms to the personal status laws put forth the argument that most Qur'anic verses have legal content that concern personal status matters and consequently that Islamic rules pertaining to personal status matters should be treated as sanctified critical components of *Shari'a*. As a result, any reformer that seeks to change these “divine commandments” is met with accusations that they are failing to respect the word of God. It is often argued that subjects of *Shari'a*, that deal with areas other than personal status matters, are largely the products of medieval juristic elaborations of principles and thus, while in theory ultimately grounded in Islamic sources, they actually lack any similar explicit textual authority in the *Qur'an* or *sunna*.<sup>78</sup> Moreover, since the rules pertaining to these subjects are set forth in the technical language of juristic treatises, there is often little popular awareness of or attachment to them.

The third explanation is that this special attachment emanates from the “deeply-ingrained traditions of patriarchal family organization.”<sup>79</sup> For reasons of self-interest and to maintain their rights and privileges, men logically prefer to preserve the structure of the patriarchal family as it is. Given that the majority of decision makers, legislators, and

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<sup>76</sup> Lama Abu-Odeh, *Modernizing Muslim Family Law: The Case of Egypt*, 37 VAND. J. TRANSNAT'L L., 1046, 1043-1146 (2004).

<sup>77</sup> Ann Elizabeth Mayer, *Law and Religion in the Muslim Middle East*, 35 THE AMERICAN JOURNAL OF COMPARATIVE LAW, 140, 127-184 (1987).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

judges in Egypt today are men, it's only natural that they would use their powers to shape the law to fit their self-interest. Moreover, the modernization process, which was accompanied by industrialization and urbanization, had an unsettling impact on patriarchal control over women. Thus, men had to start relying more on law in order to keep women in the same traditional subordinate role they have been previously placed in.<sup>80</sup> In the pre-modern era, forms of informal social control substituted for restrictive legal sanctions against women both in the household and the public sphere.<sup>81</sup> Thus, it can be argued that now Islamic *shari'a* rules of personal status have taken on a more important function today than the one they had in the past.<sup>82</sup>

In the pre-modern era, and before the codification process took place, Muslim women had access to different Sharia courts that applied the different schools of thought. The reform movement in Egypt has used the Islamic techniques of *takhayyur* (selection) and *talfiq* (patchwork or combination) to introduce aspects of Maliki law that were more favorable to the position of women in order to depart from a personal status code based on the Hanafi doctrine.<sup>83</sup> It may be true that the Egyptian Muslim Personal Status Code overtime started to include reforms that were cherry picked from the four schools of thoughts; reforms that were seen at the time as favoring women's rights and/or serving the interest of the state. It also may be true that the codification process led to some improvement in women's status in Egypt.<sup>84</sup> Nevertheless, the Muslim Personal Status Code has yet to introduce any new ground-breaking progressive rights that women did not enjoy in the pre-modern era.

One of the major downfalls of codifying the family laws was limiting the alternatives that women previously had which allowed various Egyptian regimes to then introducing what was previously offered by one Sharia court or another as novel reforms. As Lama Abu Odeh argues, "while secularizing the legal system in Egypt through European transplants allowed for the possibility of either dismissing or radically reorganizing

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Moussa, *The Reform of Shari'a-derived Divorce Legislation in Egypt*, *Supra* note 37, at 11.

<sup>84</sup> Nathalie Bernard-Maugiron and Baudouin Dupret, *Breaking up the family: Divorce in Egyptian law and Practice*, 6 HAWWA, 52, 52-74 (2008).

various elements of the doctrine on the family inherited from medieval Islamic jurisprudence to make it more progressive, it was the same secularization/Europeanization process that placed limits on and defined the ceiling of progressive reforms.”<sup>85</sup>

The codification process ultimately helped put in place a “glass ceiling” for progressive reforms; today any new reforms to the personal status code have to not only be justified by *Sharia*, but also go through institutional complications of a modern legal system. Thus, “radical” reforms such as abolishing the man’s unconditional unilateral right to divorce, outlawing polygamy, criminalizing marital rape, or allowing Muslim women to marry non-Muslim men fail to pass a long road paved with legal impediments, political maneuvers and institutional checks and balances.

Notably, there are different methods of interpretation of *Sharia* law in different Muslim-majority countries. A major feature of *Sharia* is that it is not fixed and that it has constantly changed over time. A look at the progressive Muslim Code of Personal Status of Tunisia known as the *Majallah* and the more conservative Muslim personal status laws of Egypt will support that claim. The reforms that were introduced overtime to the *Majallah* did not completely reject Islamic values and principles but sought to “modernize them by using a distinct interpretative approach to Islam that is unique in the Muslim world.”<sup>86</sup> Interestingly, the most recent reform passed on the laws governing personal status in Tunisia was lifting the decades-old ban on interfaith marriage between a Muslim woman and a non-Muslim man.<sup>87</sup>

### **C. The Modernization of the Coptic Personal Status Law**

Currently there are fifteen religion-based family laws (one for Muslims, two for Jews, and twelve for different Christian denominations) in Egypt, however, it is the Coptic-Christian family law that is most significant in defining Egyptian interreligious affairs

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<sup>85</sup> Abu-Odeh, *Supra* note 60, at 1047.

<sup>86</sup> Nowrin Tamanna, *Personal Status Laws in Morocco and Tunisia: A Comparative Exploration of the Possibilities for Equality-Enhancing Reform in Bangladesh*, 16 FEMINIST LEGAL STUDIES, 328, 323-343 (2008).

<sup>87</sup> Sally Hayden, *Tunisian Muslim Women Allowed to Marry Non-Muslims for First Time in Decades*, INDEPENDENT, Sept. 15, 2017. <https://www.independent.co.uk/news/world/africa/tunisia-muslim-women-marry-non-muslims-first-time-decades-islamic-sharia-religion-a7948916.html>

and politics. Given the fact that majority of the population in Egypt and other Arab countries are Muslims, academic literature has dealt more extensively with the Muslim personal status law. For the purpose of this thesis, however, the same attention must be given to the evolution of Coptic Personal Status Law.

Ryan Rowberry and John Khalil chart the distinctive phases of Coptic personal status law over the past two millennia, using interviews with Coptic clergy and individuals, various primary sources, and a multitude of secondary sources. The authors argue that reforms to Coptic Personal Status Law in the nineteenth century were largely a result of political changes.<sup>88</sup> In 1855, under Sa'id Pasha, Copts were finally granted equal rights of citizenship and were no longer obliged to pay tax (*jizyah*). In 1856, article 9 of the Treaty of Paris, reaffirmed the Coptic Church's governance over Coptic personal status law. Nevertheless, in 1874, in response to petitions by lay Copts, Butrus Ghali Pasha somewhat decentralized control over Coptic affairs; he issued a decree allowing laymen the right to form a *Maglis al-milli* (Coptic Community Council) which had the authority to deal with cases related to personal status issues of Copts.<sup>89</sup>

Inevitably, the Coptic Community Council and the church clergy often clashed, because church leaders felt that their authority was being challenged. In 1938, the Council adopted an ordinance that expanded the scope of permissible divorce that stated ten suitable reasons for divorce including: serious domestic violence, a three-year period of separation due to untenable marriage conditions, and incompatibility.<sup>90</sup> Although this ordinance was the first attempt to codify Coptic personal status law, church leaders disagreed with its “liberal” justifications for divorce.<sup>91</sup>

Legal reforms introduced in the 1950s quickly ended the dispute between the Council and church leaders, while simultaneously undermining the Coptic Church's jurisdiction over

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<sup>88</sup> Ryan Rowberry and John Khalil, *a Brief History of Coptic Personal Status Law*, 3 BERKELEY JOURNAL OF MIDDLE EASTERN & ISLAMIC LAW, 117, 81-139 (2010).

<sup>89</sup> *Id.* at 118

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

personal status law issues.<sup>92</sup> In 1955, Egypt passed Family Status Law No. 462, applicable to all Egyptians. However, this law eradicated *Maglis al-Milli* courts, “replacing them with state-run personal status courts based upon religious laws.”<sup>93</sup> Law No. 462 also constrained the scope of cases that could be heard in personal status courts using non-Muslim law and determined that mixed denominational marriages were to fall under the jurisdiction of *Shari'a* law. It also restricted the Coptic Personal Status Code to matters of “betrothal, marriage, and the dissolution of marriage through divorce or separation”,<sup>94</sup> whereas the Coptic Personal Status Code had formerly “embraced all issues relevant to marriage, divorce, separation, alimony, inheritance, financial rights, guardianship, tutelage, and custody of children.”<sup>95</sup> Rowberry and Khalil argue that judges of the personal status courts, who were predominately Muslim, appeared to “lean more on their cultural understandings of *Shari'a* rather than strictly apply Coptic personal status laws as divorces were readily granted.”<sup>96</sup>

From the year 1938, when *al-Maglis al-milli* (Coptic Community Council) adopted the ordinance that expanded the scope of permissible divorce discussed above, up until the year 2008, the Coptic personal status code remained unchanged.<sup>97</sup> Until 2008, Coptic Christians in Egypt battled to get a divorce under the grounds permitted by this ordinance especially under Pope Shenouda III.<sup>98</sup> Although national courts used to grant Coptic Christians divorces in accordance with the 1938 laws, the Church still viewed couples divorced by the national courts as still married and refused to grant them license to remarry.<sup>99</sup> In the year 2008, the Coptic Church eventually stepped in to amend the controversial 1938 ordinance and the new amendment limited the grounds for divorce to only adultery and change of religion.<sup>100</sup>

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<sup>92</sup> *Id.* at 119.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 119&120.

<sup>97</sup> Nathalie Bernard-Maugiron, *Divorce and Remarriage of Orthodox Copts in Egypt: The 2008 State Council Ruling and the Amendment of the 1938 Personal Status Regulations*, 18 ISLAMIC LAW AND SOCIETY, 356, 356-386 (2008).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 364

<sup>100</sup> *Id.* at 356.

The 2008 revisions were viewed as unconstitutional by some Coptic activists and they even filed for an appeal against them. In an attempt to appease the Coptic Church, the Egyptian national courts have continuously refused to pass a ruling on that appeal.<sup>101</sup> In 2010, the Egyptian Supreme Administrative Court issued a decision requiring Pope Shenouda III to pay damages to Magdi William who sued the Coptic Church over its refusal to issue a certificate to re-marry after he divorced his wife.<sup>102</sup> However, Pope Shenouda never actually paid those damages until his death in 2012.<sup>103</sup> Post-colonial Egyptian regimes, especially Mubarak's regime, helped the Church maintain its financial independence and to ignore court rulings concerning Copts' personal affairs. In many ways, this shows how the Coptic Church often times can act as a state within a state.

Under Egypt's modern authoritarian regimes, the Coptic Church became the only legitimate representative of Egypt's Copts. Today, the Church has two main interests: the first one is ensuring its institutional independence vis-à-vis state institutions and the second is keeping its monopoly as the only legitimate channel responsible for speaking on behalf of the Coptic community.<sup>104</sup> The Coptic Church's ability to have state-like qualities was made possible through the perseverance of legal pluralism in the realm of family laws and its relationship with the Egyptian state. Its control over the Coptic personal status matters became an arena that symbolizes the power struggle between it and the Egyptian state. The end result is that members of the Coptic community are now caught in the middle between these two forces and their two loyalties. These specific points will be further addressed in detail in the fourth chapter of this thesis.

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<sup>101</sup> Azza Soliman, THE INTERSECTIONALITY OF DISCRIMINATION AGAINST THE EGYPTIAN CHRISTIAN WOMAN (Lecture organized by EIPR, Cairo, 26 Nov. 2017).

<sup>102</sup> Thaddeus M. Baklinski, *Egyptian Coptic Pope Shenouda III Fined For Stand against Divorce*, LIFESITE, Sept. 27, 2010. <https://www.lifesitenews.com/news/egyptian-coptic-pope-shenouda-iii-fined-for-stand-against-divorce>

<sup>103</sup> Soliman, *Supra* note 81.

<sup>104</sup> Georges Fahmi, *the Coptic Church and Politics in Egypt*, CARNEGIE MIDDLE EAST CENTER, December 18, 2014.

<http://carnegie-mec.org/2014/12/18/coptic-church-and-politics-in-egypt-pub-57563>



#### D. The Coptic Personal Status Laws and Women

The Egyptian state imposes an ultimatum on Copts wishing to obtain a divorce: 1) make an adultery claim, or 2) change confession or religion, in which case they would have to resort to *Shar'ia* to obtain divorce. Egyptian activist, Ola Shahba, notes that Christian women in Egypt pay a heftier price for the Coptic Church's rigid stance on divorce than their male counterparts.<sup>105</sup> This is because the first option would entail fabricating claims of adultery or admitting to have committed adultery, which, understandably, is extremely difficult for women living in a conservative society such as Egypt. As for the second option, Coptic women are still the main victims of it. Given the patriarchal nature of Egyptian society, Coptic women are usually the ones forced to change their confession or religion in order to obtain a divorce especially when they are stuck in an abusive marriage. For example, Egyptian activist and feminist Dr. Azza Soliman has noted that Christian women who go to report the abuse by their husbands in police stations are often told to resolve their marital problems in the Church because the police fears that this might spark sectarian tensions if they interfere in a Coptic household.<sup>106</sup>

There was even a recent case in 2011 that involved a formerly Coptic woman who identified herself to a local TV station as Abeer Talaat. She was an Assiut resident who said she converted to Islam to escape her abusive husband. She converted in September 2010 and then filed for divorce.<sup>107</sup> Months later, after Talaat had agreed to marry another man, someone reported her to the church authorities. Talaat said that members of the church then forced her into seclusion and encouraged her to embrace Christianity and go back to her husband.<sup>108</sup> A group of Muslims heard of her captivity, according to local media, and clashed with several Copts in the neighborhood of Imbaba, where Talaat was allegedly being held. It all went downhill when rumors circulated that a group of Salafi Muslims was coming to attack the church in Imbaba. An armed battle started between the

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<sup>105</sup> Ola Shahba, THE INTERSECTIONALITY OF DISCRIMINATION AGAINST THE EGYPTIAN CHRISTIAN WOMAN (Lecture organized by EIPR, Cairo, 26 Nov. 2017).

<sup>106</sup> Azza Soliman, THE INTERSECTIONALITY OF DISCRIMINATION AGAINST THE EGYPTIAN CHRISTIAN WOMAN (Lecture organized by EIPR, Cairo, 26 Nov. 2017).

<sup>107</sup> Samia Sidhom, *the Story Of Abeer*, WATANI, Dec. 15, 2011. <http://en.wataninet.com/coptic-affairs-coptic-affairs/sectarian/the-story-of-abeer/6939/>

<sup>108</sup> *Id.*

Muslims and Copts residents within plain sight of the police forces who stood by and allowed for the violence to break out.<sup>109</sup> At least twelve people died and ten others were injured.<sup>110</sup>

Abeer, like many Coptic women in her shoes, could not escape her abusive marriage without first converting to Islam (the state's religion). However, her basic right to convert to the majority's religion is viewed by conservative members of the Coptic community as an insult to the entire community. Her free choice to convert to be with a Muslim man is seen as "tarnishing" her community's honor. Thus, conservative Christian forces wanted her back in order to "restore" the community's honor. On the other hand, conservative members within the Muslim community often frame conversions to Islam as a victory for the whole community. They do not want to allow the Coptic minority to strip them off their new-found "trophy" female convert. Talaat's case in many ways demonstrates how conservative forces from both the Christian and Muslim communities often end up engaging in violent clashes over women's bodies. These conservative forces are emboldened by the state's legal system that aims to restrict romantic and sexual relationships in a way that strikes a balance between ensuring the hegemony of the Muslim majority and appeasing the Coptic minority.

Conservative forces from both communities essentially strip the women involved in sectarian incidents from their agency. They both want to decide for their women which God they get to pray for and which person they get to go to bed with. The state only steps in when its interests are at stake, and in turn, it also treats women as subjects completely void of agency; it views them as the property of the religious community they belong to. This is made clear by the fact that in most high profile incidents of sectarian involving a Christian woman converting to Islam to be with a Muslim man, the state often ends up returning her back to the Church. On the other hand, in sectarian incidents involving a

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<sup>109</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 55.

<sup>110</sup> *Woman at Centre of Sectarian Violence in Imbaba, Abeer Talaat, is released*, AHRAM ONLINE, June 21, 2011. <http://english.ahram.org.eg/News/14761.aspx>

Muslim woman fleeing her house to be in a romantic or sexual relationship with a Christian man, the state ends up forcibly handing her back to her Muslim family.

Talaat's case also sheds light on the fact that Christian women from poor classes in society have to pay an even heftier price when it comes to divorce than their class privileged counterparts. Dr. Azza Soliman notes that throughout her work as the founder of the Centre for Egyptian Women's Legal Assistance (CEWLA) and her engagement with certain Church clergymen, she found that the divorce process for poor Christian women is radically harder than that for rich Christian women.<sup>111</sup> She notes that Coptic clergymen use a drastically different tone with a poor Christian woman who wants a divorce, because her husband beats her, than the tone they use with a rich Christian woman with the same problem.<sup>112</sup> She even mentions that sometimes divorce can be secured through making large sums of donations to the Church and through high-end connections with the clergymen.<sup>113</sup> Not only do poorer Christian women experience restrictions when they seek divorce because of their religion, they also face difficulties because of their class as they cannot bypass the restrictions posed by the church on divorce. They additionally have to deal with gender discriminatory practices and patriarchal norms that sometimes, for example, expect a woman to stay in an abusive relationship for the sake of her children.

Christian women from poorer classes experience discrimination in ways that are both similar to and different from those experienced by Muslim women, Christian men, and even privileged Christian women. In many ways, they experience triple-discrimination as they face the combined effects of practices which discriminate on the basis of class, sex, and religion. For one, Coptic women from poorer classes share the same concerns that other poor Egyptians have about their inability to provide for food, medicine, and other basic needs for themselves and their families. They also share the concerns of other Egyptian women who face sexual harassment in the public space, domestic violence

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<sup>111</sup> Soliman, *Supra* note 81.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

inside the household, patriarchal practices within the family, lack of access to education, etc. Finally, they also face the every-day acts of discrimination as Copts living within a predominately Muslim society where Copts often face discrimination both in public and in private and are also sometimes subjected to senseless acts of sectarian violence.

Consequently, I argue that there is a need to adopt a more intersectional approach to feminism in Egypt, particularly one that takes, incorporates and acknowledges the religious affiliation of women and their socioeconomic statuses, when advocating for legal reforms in favor of women. This is because intersectional feminism will further help in scoring more substantive rights for all Egyptian women and not just class-privileged Muslim women. The problem is that when women's rights groups in Egypt secure a few conservative gains for Muslim women with regards to the Muslim personal law status, these gains are celebrated as achievements for *all* Egyptian "women" and are viewed as a call for celebration for the mainstream feminist movement in Egypt. An intersectional approach to feminism will somewhat remedy this the situation as it will shed light on Christian women's struggles in Egypt as well and their limited access to divorce. In many ways this may help in easing off the tensions surrounding sectarian violence that pertains to interfaith romantic and sexual relationships.

In short, Coptic family law was transformed by the modernization process just like its Muslim counterpart. There are two main similarities between both family laws. First, they both have institutionalized laws that disproportionately discriminate against women. Second, they both have institutionalized the modern concept of the family as a sociopolitical unit necessary to the reproduction of the national and communal life and the preservation of religious identity. Amira Sonbol, for instance, notes how marriage contracts in thirteenth century Egypt did not conceptualize the concept of the "family" in the same manner that modern personal status codes do today. That these earlier marriage contracts did not necessary reflect that the purpose of marriage is to start a family (*usra*) and have children as they did not draw any connections between the spouses and family.<sup>114</sup> In contrast with modern discourses on *Sharia*, the family was not understood

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<sup>114</sup> Amira El-Azhary Sonbol, *History of Marriage Contracts in Egypt*, 3 HAWWA, 170, 159-196, (2005).

as being the “social unit necessary to the *maslaha* (comparative advantage) of the community.”<sup>115</sup>

On the other hand, the major difference between both family laws is that the Muslim family law “represents majoritarian national identity,” while the Coptic family law “is exceptional in the distinct norms and mores it embodies, and in its subjection to communal sovereignty—most potently symbolized in the Coptic Orthodox Church.”<sup>116</sup> This carries additional consequences for Christian women who have to deal with sexism within their already persecuted religious community. An analogous conundrum is highlighted by Kimberlé Crenshaw in her paper “Mapping the Margins” where she talks about the combined effects of patriarchy and racism black women have to endure in the United States. Crenshaw argues that Black women are situated within “at least two subordinated groups that frequently pursue conflicting political agendas”<sup>117</sup> and that Black women’s concerns remain inadequately represented by both. She notes how “some critics allege that feminism has no place within communities of color, that gender issues are internally divisive.”<sup>118</sup> Comparable attitudes towards feminism could also be observed in the Coptic Christian community in Egypt and that’s precisely why there is a need for intersectionality in Egypt.

The Coptic Orthodox Church adopts traditional views regarding female roles within the family and concerning women’s sexuality. For instance, the husband-wife relationship in the Coptic Orthodox religious discourse is modeled after the relationship of Christ to his church.<sup>119</sup> A Christian woman “feels man is her equal without forgetting to be willingly submissive to her husband, not out of fear or humiliation but out of love and respect for

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<sup>115</sup> *Id.*

<sup>116</sup> MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *Supra* note 2, at 123.

<sup>117</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STANFORD LAW REVIEW, 1252, 1241-1299, (1991).

<sup>118</sup> *Id.* at 1253.

<sup>119</sup> One of the arguments presented in Patriarch Shenouda’s text against allowing women to become priests (after demonstrating that they are not called to be so in scripture or in tradition) is that “the priest represents our Lord Jesus Christ” – something that only a male can do.

him just as the church submits to Christ of its free will.”<sup>120</sup> The idea that is pushed forward by the Coptic Church is that Coptic women should be more concerned about their relationship with God and being good Christian daughters, wives, and mothers to serve their community better rather than preoccupy themselves with issues such as “women’s rights”. The former Coptic Patriarch Shenouda III even said in one of his articles that “many speak about a woman’s rights, but the more pertinent issue is that a woman is virtuous.”<sup>121</sup> Furthermore, some conservative members of the Coptic community would argue that feminism has no place in the Coptic community; that discussing domestic violence in the Coptic family and Coptic divorce laws would only cause internal divisiveness in the Coptic community. One of the consequences of this is that there is a marked absence of social movements dedicated to calling for the rights of Coptic women. On the other hand, there are movements that are solely dedicated to calling for the rights of the Coptic community in Egypt, such as the Maspero Youth Union.

The next chapter discusses yet another outcome that the modernization of the Egyptian legal system had on personal status laws, with a view to understanding how the Egyptian state managed to limit interfaith unions in Egypt. This outcome was the delegation of personal status laws, or by extension the unit of the “family”, with the inordinate weight of being the site of the reproduction and preservation of religious identity. The next chapter explores how, under the auspices of the modern Egyptian state, the delegation of family and religion to the private sphere has helped in shaping sectarian identities and defining the majority-minority relation in Egypt.

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<sup>120</sup> BISHOP MOUSSA, DIMENSIONS OF HUMAN SEXUALITY, 24, <http://www.orthodoxebooks.org/sites/default/files/pdfs/Dimensions%20of%20Human%20Sexuality%20-%20HG%20Bishop%20Moussa.pdf>

<sup>121</sup> Pope Shenouda III, quoted in Febe Armanios, *The 'Virtuous Woman': Images of Gender in Modern Coptic Society*, 38 MIDDLE EASTERN STUDIES, 110, 110-130 (2002).

#### IV. Legal Plurality, the Family, and the Coptic Community

##### A. The “Family” as a Legal Category

It was around 1875 that the personal status law was first established, thereby marking a significant shift toward “the family” as a legal category.<sup>122</sup> It was by the end of the nineteenth century that the unit of the “family” became a key subject of public discourse and government policy. In this respect, Egyptian legislators followed the footsteps of Western European countries. The term “family,” referring to a domestic group comprising a couple and their children, acquired its modern connotation in Western Europe during the early nineteenth century.<sup>123</sup> It was during the late 1880s, that new ideologies about the idea of the “family” started to be disseminated and debated among literate Egyptians, and by the 1920s its main tenets had gained widespread acceptance in the middle and upper classes.<sup>124</sup> The idea was that the conjugal family was the main unit of society and thus the welfare of the society depended on the stability and soundness of the family life. This new conception of the family emphasized this unit as first and foremost a reproductive unit.<sup>125</sup> The off springs of the family are the future of the nation, and consequently the modern state should strive to install desirable characteristics in those children.<sup>126</sup> In other words, the stability and harmony of the family needed to be maintained as it was viewed as the social basis for the coherence and well-being of the entire nation.

Consequently, even though the family was to fall under the domain of the private sphere, it still remained as a key site for social reform projects taken by the Egyptian modern regimes. For example, in monarchial Egypt, “the family was one of the most important tents of nationalist and state agendas.”<sup>127</sup> As Saba Mahmood notes, one of the main effects of the modernization process was the transformation of the concept of family from

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<sup>122</sup> RACHEL SCOTT, *THE CHALLENGE OF POLITICAL ISLAM: NON-MUSLIMS AND THE EGYPTIAN STATE*, 169, (Stanford University Press, 2010), (2010).

<sup>123</sup> CUNO, *Supra* note 27, at 78.

<sup>124</sup> *Id.* at 77.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Hanan Kholoussy, *The Nationalization of Marriage in Monarchical Egypt* in *RE-ENVISIONING EGYPT, 1919-1952*, 318 (Arthur Goldschmidt et al. ed., the American University in Cairo Press, 2005) (2005).

a loose network of kin relations to the “nuclear family with its attendant notions of conjugality, companionate marriage, and bourgeoisie love.”<sup>128</sup> The family, under the auspices of the modern state, was seen as the nuclear unit responsible for the reproduction of the society and the nation. The state of the Egyptian family was regarded as a site where the moral, spiritual, and material wellbeing of the state rested and thus it “became central to debates over how best to ensure the (re)production of healthy, “modern” Egyptian citizens.”<sup>129</sup> Debates revolving around family and marriage at the time were essentially about the future of Egyptian society and the nation as a whole.

Egypt remained under British occupation throughout the first half of the 20<sup>th</sup> century up until 1956, when the last British forces withdrew from Egypt. Understandably, nationalistic sentiments were strengthened by an enduring colonial presence. Many Egyptians were still threatened by the British influence over Egypt, even after the Unilateral Declaration of Egyptian Independence was issued on 1922, and that fear lingered throughout the remainder of its monarchial era. According to Historian Hanan Kholoussy, “many Egyptians during the monarchial era viewed the institution of marriage as the foundation stone of the emerging nation.”<sup>130</sup> This has entailed many lasting consequences on how marriage and the family came to be perceived in the country up until this moment. As early as 1931, the family became associated with public order in the *sharia* and *milli* courts, and, by 1956, Gamal Abdel Nasser declared it to be “the foundation of the society itself.”<sup>131</sup> Nasser even later established Egypt’s national family planning program in 1966, which was the foundation stone of his state-building agenda and a key strategy in his plan to create an Arab socialist society.<sup>132</sup>

Kholoussy notes that “the intention of Egyptian legislators was the ‘nationalization of marriage,’ that is, the creation of married subjects who would form adult, permanent, preferably monogamous families that, in turn, would serve as the foundation for a

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<sup>128</sup> Mahmood, *Sexuality and Secularism in Religion*, *Supra* note 21 at 52.

<sup>129</sup> FAMILY IN THE MIDDLE EAST: IDEATIONAL CHANGE IN EGYPT, IRAN AND TUNISIA, 55 (Kathryn M. Yount & Hoda Rashad ed., 1<sup>st</sup> ed. Routledge, 2008), (2008).

<sup>130</sup> Kholoussy, *Supra* note 101, at 318.

<sup>131</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 58.

<sup>132</sup> FAMILY IN THE MIDDLE EAST, *Supra* note 105, at 56.



modern nation free of social ills.”<sup>133</sup> At the time, there were a set of proposed reforms to limit the marriage of minors, to curtail the ability of males to obtain divorce easily, and to restrict polygamy at the time.<sup>134</sup> However, the inability to pass such reforms is an indicator that they were still highly disputed especially in a society where such practices are religiously sanctioned.<sup>135</sup> It is hence clear why the proposed reforms adopted a conservative approach, as opposed to introducing more radical changes, such as introducing civil marriage as opposed to religious marriage, and sanctioning interfaith marriage between a Muslim woman and a non-Muslim man. For Egyptian elite as well as the masses at the time, such radical changes were apparently too controversial to the point where they were never even considered for debate. Interfaith marriage between a Muslim woman and Non-Muslim man would, accordingly, not fit the state conception of the role of marriage in society. Interfaith marriages, in the eyes of the state, would cause an undesired social instability in a time of political uncertainty. The postcolonial moment required national unity, cohered by moral and religious dogma and juxtaposed against the iniquitous West with its secular legal system. Moreover, it will threaten to destabilize the harmony of the family as children would struggle with their religious identity inside the household.

Although marriage is supposed to be a private union that symbolizes personal love and commitment, this “intimate” union still very much participates in public order.<sup>136</sup> As Nancy Cott notes marriage under the modern state has become is an institution that “facilitates the government’s grasp on the populace.”<sup>137</sup> Today, one of the most important perquisites of the institution of marriage is public affirmation.<sup>138</sup> It is the power invested in the religious clergy by the state that institutes marriage. Marriage needs a license and it has to be registered; it has to be legal; and to be legal it has to be sanctioned by the law. The law sets the terms of marriage and the state enforces them. The understanding of marriage as a contract between a man and a woman by which she is lawfully endowed to

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<sup>133</sup> Kholoussy, *Supra* note 101, at 319.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION*, 1 (Harvard University Press, 2002), (2002).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

him with the objective of forming a family and producing children was actually a new idea to the Egyptian legal and social sphere.<sup>139</sup> As David M. Schneider has previously argued, “pre-state societies did not specifically identify ‘family’ as a unit, nor did they equate ‘family’ with women and children.”<sup>140</sup>

The modern nation-state has the sovereign power to create laws- norms against which all individuals could be judged. At the same time, and as Foucault argues, modern society is a “disciplinary society”. In contrast to the blatant and coercive sovereign power, discipline can be described as a power mechanism that regulates the thought and behavior of subjects through subtle and decentralized methods. This disciplinary society is clearly articulated in modern institutions, whether prisons, hospitals, factories, schools, or even marriages –the marriage institution. Disciplinary power entails directing subjects to the “right” or “normal” path and defining any action or activity that does follow this path as “deviant” or “abnormal”. Foucault situates the family as “the privileged locus of emergence for the disciplinary question of the normal and the abnormal.”<sup>141</sup>

The Egyptian state today feels the need to protect the sanctity of marriage and the unit of the family from being tainted by “deviant” forms of marriage such interfaith marriages, especially ones where a Muslim woman is married to a non-Muslim man. Moreover, it also feels the need to reinforce Islam, the religion of the majority, as the state’s general religion. In fact, the Egyptian judiciary have even previously ruled that children resulting from an interfaith marriage between a Muslim woman and a non-Muslim man are to be removed from the custody of their parents and instead placed in the custody of a male Muslim guardian.<sup>142</sup> Moreover, it previously ruled in cases were a Christian husband or

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<sup>139</sup> AMIRA AL AZHARY SONBOL, *THE ISLAMIC MARRIAGE CONTRACT, CASE STUDIES IN ISLAMIC FAMILY LAW*, 111 (Asifa Quraishi, Frank E. Vogel eds., Harvard University Press 2008) (2008).

<sup>140</sup> David M. Schneider quoted in Kholoussy, *Supra* note 101, at 319.

<sup>141</sup> MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON*, 215&216, (Vintage, 1995), (2012).

<sup>142</sup> THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT, *SECURING THE HUMAN RIGHTS OF COPTIC CHRISTIANS IN EGYPT AFTER THE ARAB SPRING: A VIEW FROM CANADA’S PARLIAMENT*, 14, (MAY 2013), <https://www.ourcommons.ca/Content/Committee/411/FAAE/Reports/RP6158000/faaerp10/faaerp10-e.pdf>

wife decide to convert to Islam, their minor children are to automatically identify as Muslims by the state regardless of the wishes of both their parents.<sup>143</sup>

## **B. The Consequences of “Jamming” of both the Family and Religion to the Private Sphere**

Boundaries and frontiers separating between the state, civil society, and family were “historically invented, institutionalized, legalized, and with time, naturalized in Western states.”<sup>144</sup> These artificial boundaries were later transplanted through colonialist and top-down state-building action into the societies colonized by those western states.<sup>145</sup>

Western states have invested much institutional and legal capital into creating those artificial boundaries which later enabled them to divide social life into “spheres” of activity.<sup>146</sup>

The public-private distinction that emerged in congruence with modern and law and state-formation in the West became one of the main legal technologies used by states to impose social control. Saba Mahmood argues that granting the three Abrahamic religions in Egypt judicial autonomy over “private” family matters has created a “cathexis between religious identity and issues of gender and sexuality”.<sup>147</sup> It is true that concepts such as religion, gender, sexuality and family have been historically intertwined, arguably because the unit of the family has been historically understood to be the site for reproduction and preservation of moral values in most cultures. However, Mahmood argues that “the exaggerated weight that the family commands in contemporary religious debates is an artifact of the state's relegation of both - family and religion- to the private juridical domain.”<sup>148</sup> She further explains that “what appears to be a natural affinity between family values and religious morality is in fact a contingent effect of the privatization of religion and sexuality under modern secularism.”<sup>149</sup>

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<sup>143</sup> *Id.* at 14&15.

<sup>144</sup> *I FAMILY IN THE MIDDLE EAST, Supra* note 103, at 26.

<sup>145</sup> *Id.* at 27.

<sup>146</sup> *Id.* at 26.

<sup>147</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt, Supra* note 18, at 58.

<sup>148</sup> MAHMOOD, *RELIGIOUS DIFFERENCE IN A SECULAR AGE, Supra* note 2, at 119.

<sup>149</sup> *Id.*

Given that the legal category of the “family” was never really secularized in modern Egypt, inevitably the personal status laws remained linked to religious identity. It can be argued that the Egyptian modern state’s choice to keep religious-based laws and to locate them almost exclusively in the domain of the family does not necessarily violate secular principles. In fact, one could argue that this was made easier under the secular modern means of governance. Secularism is not only simply only about the principle of the separation between the state and the church, it also “entails reordering and remaking of religious life and interconfessional relations in accord with specific norms, themselves foreign to the life of religions and people it organizes.”<sup>150</sup>

It could be argued that forcing citizens to marry according to the religious doctrine they are born to is not exactly a grand expression of secularist values. However, one must keep in mind that at the center of secularism lies both its regulatory impulse and its promise of religious freedom intertwined together. Secularism posits the state as the neutral arbiter that gets to decide what matters should be governed by religious doctrines and what matters should be governed by the secular laws of the state. It’s the state gets to decide when to grant religious exceptions to state-mandated laws and when not to. Religious freedom can be described as a sum of claims, privileges, powers, and immunities that governs the relationship of citizens of the state on the question of religion. For how a state decides to allocate these sets of privileges and rights is what distinguishes its own model of secularism from other models. Each distribution affects majority/minority relations differently. The application of political secularism might differ heavily depending on the context. In the case of Egypt, the state’s choice to conserve religious-based personal status laws strengthened religious categories as markers of identity that defined a person’s social purpose in the family, and in society as a whole. By making the family, and by extension sexuality and gender, the locus of faith, religious-based family laws exacerbated the contentious nature of interreligious relationships in Egypt.

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<sup>150</sup> *Id.* at 21.

### C. “Public Order” as a Justification for the Legal ban on Interfaith Marriage

The classical Islamic legal doctrine of *dhimmi*, which referred to protected non-Muslim communities residing within the Muslim territories, in many ways influenced the current legal formulation of the Egyptian personal status laws. Under this legal doctrine, *dhimmis* were entitled to judicial and legislative autonomy with regards to their religious and personal status laws. In all other areas of law, they were bound by Islamic law. The millet system was closely linked to Islamic rules on the treatment of non-Muslim minorities (*dhimmis*). During the Ottoman era, a non-Muslim community was called a *milla* (*millet*) literally meaning “nation” and a *milli* court administered the religious and family law of each community. The same system was adopted in many nation-states emerging from the former Ottoman Empire. Though the *Sharia* and *Milli* courts were abolished and replaced by national (*wataniyya*) courts in 1956, pluralism of personal status laws in independent Egypt was enshrined in the law 462/1956 which limited the application of non-Muslim family laws to parties “sharing the same rite” and “non-violation of public policy.”<sup>151</sup>

The modern Egyptian judiciary has managed to justify the existence of discriminatory marriage law, while simultaneously adhering to the clauses of the constitution that allow for freedom of belief and ratified human rights conventions. This was made possible through invoking ‘*al-nizam al-‘amm*’, or ‘public order,’ which became the “legal barometer of the coexistence between Muslim and non-Muslim communities in Egypt.”<sup>152</sup> The invocation of the notion ‘public order’ in the courts could be traced to the end of the nineteenth century when the country adopted European legal concepts, primarily from the French legal system.<sup>153</sup> In several of its rulings the Court of Cassation defined public policy as “the social, political, economic or moral principles in a state related to the highest (or essential) interest (*maslaha ‘ulya*, or: *masalih jawhariyya*) of society,” or as “the essence (*kiyan*) of the nation.”<sup>154</sup> However, these “principles” that make up public policy were never explicitly outlined in Egyptian legal literature, and thus

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<sup>151</sup> Berger, *Public Policy and Islamic Law*, *Supra* note 15, at 96.

<sup>152</sup> *Id.* at 124.

<sup>153</sup> Maurits Berger, *Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases from Egypt’s Highest Courts*, 25 HUMAN RIGHTS QUARTERLY, 725, 720-740 (2003).

<sup>154</sup> *Id.*

their definition are left to the courts to determine, on an ad hoc basis as is the case with European legal systems.<sup>155</sup>

The principle of “public policy” has continuously enabled the Egyptian state, particularly the judicial branch, to interfere in matters pertaining to religious dogma. In contemporary Egyptian legal literature, it is often assumed that Islamic rules and norms make up an integral part of the Egyptian public policy. Nevertheless, “this central role of Islamic law is never mentioned when scholars *define* public policy, but only when they *interpret* it.”<sup>156</sup> For instance, the Court of Cassation has previously ruled that: “Islamic law is considered an [inalienable] right of the Muslims (*fi haqq al-muslimin*), and is therefore part of public policy, due to its strong link to the legal and social foundations which are deep-rooted in the conscience of society.”<sup>157</sup> Thus, I argue that the notion of public policy was hijacked for some dubious understanding of religious morality or what constitutes the essence of society.

The Egyptian judiciary has oftentimes adopted a conservative approach towards legal issues that pertains to Islamic law, in particular, towards rules viewed by the majority of the Egyptian public and Muslim jurists as “indisputable rules” (*nass sarih qati' al-thubut wa qati' al-dalala*).<sup>158</sup> Remarkably, many of these “indisputable rules” discriminate against women and violate freedom of belief for Muslims and non-Muslims alike. For instance, examples of these indisputable rules include the unilateral right of the husband to divorce his wife (*talaq*), the right of polygyny, apostasy, the prohibition for a Muslim woman to marry a non-Muslim husband.<sup>159</sup> This shows how a secular concept such as public policy was utilized by the Egyptian state to favor majoritarian “Islamic” norms, deemed constitutive of national identity.

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<sup>155</sup> *Id.* at 726.

<sup>156</sup> Berger, *Public Policy and Islamic Law*, *Supra* note 15, at 106.

<sup>157</sup> *Id.* at 105.

<sup>158</sup> Berger, *Apostasy and Public Policy in Contemporary Egypt*, *Supra* note 126, at 726.

<sup>159</sup> *Id.* at 727.

#### **D. Legal Pluralism's impact on Coptic identity and the Coptic community**

Anthony O'Mahony, Emma Loosley, argue that current marriage laws in Egypt help keep the social separation between Muslim and Copts intact.<sup>160</sup> They also note how both the Muslim and Coptic community have used social pressure in order to discourage interfaith marriages.<sup>161</sup> They further argue that the Coptic community make up a distinct group within Egyptian society given how Coptic identity is closely associated with Egyptian nationalism.<sup>162</sup> In Egypt, Coptic identity “with its strong family cohesion, and with its customs, beliefs and values” is deeply rooted in the tradition and history of the Coptic Orthodox Church.<sup>163</sup> Building on this observation, one could note how maintaining a separate personal status law for Copts under the full supervision of the Church became seen as essential for preserving a distinct Coptic identity. Moreover, resistance to progressive reforms aimed at the personal status law does not come from the religious intelligentsia alone. The contemporary Coptic community in Egypt continue to exhibit traditional views towards crucial issues such as personal status law and the limits of personal autonomy. It is therefore not surprising that defending the Coptic family laws as they stand today in Egypt is regarded by many Coptic-Christians as synonymous to defending the religious tradition itself. Under the post-colonial state, the interference of Coptic Church into the domain of personal status “has invested Coptic religious identity in family law to a degree that is historically unprecedented.”<sup>164</sup>

Today, Coptic family law in Egypt has become “the *sole* domain of communal legal autonomy.”<sup>165</sup> It is only natural that Coptic Christians feel that, if it was not for the Church's control over family law, they would have been forced to completely assimilate to Islamic norms that already dominate Egyptian public ethos. As previously argued, there is already an asymmetrical legal hierarchy since sharia-based Muslim personal status law regulates marriages between Christians belonging to different sects and even

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<sup>160</sup> EASTERN CHRISTIANITY IN THE MODERN MIDDLE EAST, 62 (Anthony O'Mahon & Emma Loosley ed., Routledge, 2010), 2010.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> MAHMOOD, RELIGIOUS DIFFERENCE IN A SECULAR AGE, *Supra* note 2, at 123.

<sup>165</sup> *Id.* at 124.

inheritance and custody issues involving all Christians. Accordingly, Coptic family laws on marriage and divorce have come to represent the essence and core of religious identity. This view is shared by Coptic clerics and laity alike.

During the Ottoman era – like Muslim women who engaged in forum-shopping of the different *Shari'a* courts – Copts and Jews had the option resort to *Shar'ia* courts to bypass the more restrictive laws of the Church.<sup>166</sup> This was no longer possible after the codification of personal status unless one of the Coptic spouses changed their denomination or their religion all together. In fact, today, the Coptic Church has become far more aggressive in policing Copts. In the same way that Muslim intelligentsia fights viciously any attempt to undermine their control over personal status laws, the last bastion of a dismantled Islamic legal system, the Coptic Church does the same thing. But in the Coptic case, the struggle is more intense, given that both the Coptic Church and members from the Coptic laity view any attempt to introduce reforms to family law as an incursion on the Coptic minority's constitutional right to religious freedom. It is seen as a violation of their collective rights in a domain where they had preserved jurisdiction for decades. This resistance to reform symbolizes more than just intransigence and patriarchy; this resistance “says a lot more about the modern secular state’s transformation of concepts such as “the family,” religious identity, and intra-communal relations as earlier patterns of religious hierarchy and gender difference are exacerbated.”<sup>167</sup> For centuries, the Muslim and Coptic communities in Egypt have created their own perceptions of artificial frontiers separating between both of their communities.<sup>168</sup> Both religious communities have “stuck to their ideas of frontiers because of the social significance that they attributed to the frontier as an instrument of delimitation and self-definition.”<sup>169</sup>

Today, religious-based family laws have effectively become one of the main tools used by the modern Egyptian state to keep the frontiers between both religious communities

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<sup>166</sup>, Randall P. Henderson, *the Egyptian Coptic Christians: the Conflict between Identity and Equality*, 16 ISLAM AND CHRISTIAN-MUSLIM RELATIONS, 159, 155-166 (2005).

<sup>167</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 56.

<sup>168</sup> MARIO APOSTOLOV, THE CHRISTIAN-MUSLIM FRONTIER: A ZONE OF CONTACT, CONFLICT OR CO-OPERATION, 10 (Taylor & Francis, 2003), (2003).

<sup>169</sup> *Id.* at 9.



intact. Consequently, the unit of the “family” became a sacred site that is heavily guarded by laws and social norms in order to maintain the existing power relations. To that end, calls to legalize all forms of interfaith marriage threaten to break these imagined frontiers maintained legally by the state, and socially, between these two religious groups. Mahmoud Mamdani notes that “the identities of colonized societies are not simply - consensual (traditional), they are also enforced from above, through law. At the same time, law is not external to consensus; it participates in shaping it.”<sup>170</sup> Having a pluralistic personal status law in a post-colonial state like Egypt enforces and strengthens already existing religious identities from above while simultaneously deriving its legitimacy from the consensus that it helped create and maintain.

### **E. The Fallacy of the Public/Private Distinction**

Modern-day Egypt provides formal guarantees on equal citizenship in the secularized areas of law and the constitution, while simultaneously institutionalizing religious difference in personal status laws. Ironically, forcing someone to marry someone of the same religion they are born into or forcing interfaith and intersect couples to marry according to Islamic law is often disguised as an expression of “religious liberty” and articulation of “minority rights” by the Egyptian state. The irony lies in the fact that this move to institutionalize religious difference has contributed to many other forms of discrimination.

In theory, a modern secular state is supposed to guarantee to its citizens that their relationship to the state is not contingent upon their religious identity. Still, Egyptian citizens are not able to marry, divorce, or even convert faiths without having their civil status directly affected by their “personal” or “private” choices. Many feminist scholars have denounced the traditional distinction between the private and the public sphere.<sup>171</sup>

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<sup>170</sup> MAHMOOD MAMDANI, *DEFINE AND RULE: NATIVE AS POLITICAL IDENTITY*, 44 (Harvard University Press, 2012), (2012).

<sup>171</sup> See e.g. Carole Pateman, *Feminist Critiques of the Public/Private Dichotomy* in *PUBLIC AND PRIVATE IN SOCIAL LIFE*, 281 (S.I. Benn & G.F. Gaus eds., Croom Helm, 1983), (1983). See also Linda Nicholson, *Feminism and Marx: Integrating Kinship with the Economic*, in *FEMINISM AS CRITIQUE*, 16 (Seyla Benhabib & Drucilla Cornell eds., University of Minnesota Press, 1987), (1987); Anita L. Allen & Erin Mack, *How Privacy Got Its Gender*, 10 *N. ILL. U. L. REV.*, 441-478, (1990); Susan Boyd, *Can Law Challenge the Public/Private Divide? Women, Work, and Family*, 15 *WINDSOR YEARBOOK OF ACCESS TO JUSTICE*, 161-185, (1996); Theresa Man Ling Lee, *Rethinking the*

What is normally understood to be private (sexuality and family) is actually implied by public society and its politics and vice-versa. One prominent challenge to the distinction is that presented by radical feminist scholar Catharine MacKinnon who argues that “for women the measure of the intimacy has been the measure of the oppression. This is why feminism has had to explode the private. This is why feminism has seen the personal as the political. The private is public for those for whom the personal is political.”<sup>172</sup>

Since the early 1980s when MacKinnon was writing and until today, the public/private distinction provoked much controversy within feminist discourses. There is a wealth of feminist scholarship written on this false dichotomy. It is beyond the scope of this thesis to go into debating how each strand of feminism understands and theorizes this distinction. However, it is possible to identify some common ground between those feminist positions which, despite being critical of the public/private dichotomy, still think of it as a useful framework.<sup>173</sup> In this context, public/private is often considered as an analytical concept, rejecting the “mechanistic separation of the two spheres.”<sup>174</sup> In many ways these feminist critiques can be used to understand how maintaining a religious-based personal status code has been used as one of the tools to oppress women and Copts both in the “public” and political sphere.

Until today the Egyptian Identity cards lists the religion of its holder and this form of discrimination is often justified by stating that this is necessary in order to be able to determine the legal premise of personal matters such as inheritances and marriages. The problem is that the use of national identification cards is not limited to personal or “private” matters only; identity cards must be presented in order to be able to access any type of government service as well as to obtain employment, education, banking services, and conduct many other important private transactions and even to vote. Consequently,

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*Personal and the Political: Feminist Activism and Civic Engagement*, 22 DEMOCRATIC THEORY, 163-179, (2007); Sreyashi Ghosh, *Beyond Spaces: Debunking Public/Private Divide in Understanding Violence against Women in India*, 1 INT. JOURNAL OF GENDER STUDIES, 76 - 95, (2017).

<sup>172</sup> CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, 191 (Harvard University Press, 1989), (1989).

<sup>173</sup> Brigitte Bargetz, *The Politics of the Everyday: A Feminist Revision of the Public/Private Frame*, (2009), available at <http://www.iwm.at/publications/5-junior-visiting-fellows-conferences/vol-xxiv/the-politics-of-the-everyday/>

<sup>174</sup> *Id.*

having a religious based personal status is used as a justification for forcing one's religious identity to be constantly present and on display while engaging in everyday life economic, social, civil, and even political matters which allows for many incidents of discrimination take place. It appears that the private/public distinction is in fact an artificial fragile concept as ultimately matters pertaining to the "private" will always have an influence over matters pertaining to the "public".

Conservative estimates of the Coptic Christian minority in Egypt approximate that Copts make up around ten percent of the Egyptian population.<sup>175</sup> I argue that its status as a minority have pushed it to become even more resilient when it comes to maintaining the Church's monopoly over the personal status laws. The post-colonial state project pushes for a homogenous state founded on the principle of citizenship instead of having an openly heterogeneous society. However, what ended up happening in the modern Egyptian state is that both Muslims and Copts were forced to homogenize under the different personal status laws in the name of dominant reasonableness. This is the case mainly because there is no "inner democratic form" within the Muslim or Coptic community that can influence or reform their respective religious personal status laws in any way. In many ways the post-colonial authoritarian regimes of Egypt have successfully managed to manipulate fears and uncertainties surrounding the majority-minority relation in a way that serves their own interests.

In what follows, I explore how maintaining religious-based personal status laws has enabled authoritarian regimes in Egypt to mold liberal conceptions of citizenship in a way that is reminiscent of the hierarchical *millet* system. I examine how this process helped different authoritarian regimes to govern sectarian identities in a way that provoked sectarian violence.

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<sup>175</sup> Yousra A. Mohamoud et al., *Characterizing the Copts in Egypt: Demographic, Socioeconomic and Health Indicators*, QSCIENCE, 10, 1-13, (2013).

## **V. Modern Secular Governance and the Management of Sectarian Relations**

### **A. Modern Liberal Conceptions of Citizenship**

Citizenship is the basis of civic and political life in the modern nation-state. Legally, citizenship can be defined as “a status that denotes membership of a nation-state and which carries with it certain rights and duties associated with that membership.”<sup>176</sup> In classical liberal theory, citizenship is thought of as “a form of social membership used as a basis for claim-making with which comes access to rights, privileges, and freedoms allocated and protected by state institutions.”<sup>177</sup> However, Shourideh Molavi notes that “an account of ethnicity, culture, gender and sexuality, class and religion” has been absent for the most part from the classical models of liberal citizenship.<sup>178</sup>

Classical liberal theory imagines a state that is impartial to and disinterested in different ethnic or religious groups living inside its borders. It often frames citizenship as “a passive and active membership of individuals in a nation-state with accompanying universalistic rights and responsibilities at a formally defined level of equality.”<sup>179</sup> Yet, despite theoretical proclamations that liberal citizenship grants universalistic rights and does not legally privilege certain individuals or communities, realistically this is almost never the case. There is not a single example of a modern-state that completely grants its citizens direct access to its privileges and protection, in a manner that is entirely consistent with the liberal idealistic understanding of citizenship.<sup>180</sup> This is not necessarily because no state has ever applied liberal citizenship properly, but it’s because the liberal conceptualization of citizenship is in itself lacking. The main problem is that liberalism divorces citizenship “from its social and historical context, and therefore fails

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<sup>176</sup> Keith Faulks, *The Limits of Liberal Citizenship in Modern Britain*, 3 (1997) (Ph.D. dissertation, University of Leicester)

<sup>177</sup> SHOURIDEH C. MOLAVI, *STATELESS CITIZENSHIP: THE PALESTINIAN-ARAB CITIZENS OF ISRAEL*, 23, (Brill Publishers, 2013), (2013).

<sup>178</sup> *Id.* at 24.

<sup>179</sup> *Id.* at 26.

<sup>180</sup> *Id.* at 27.

to take into account the way in which structural inequality restricts access to the resources necessary to the practice of citizenship.”<sup>181</sup>

There are many well-rounded critiques aimed towards debunking liberal conceptions of citizenship. For instance, there is the republican critique, which conceptualizes citizenship “not as the means to an end, but as an end in itself.”<sup>182</sup> The republican tradition does not believe that individuals should be divorced from their community. It believes that the true path to the good life “is through communal political life” and not through the individualism that deeply imbedded within the liberal tradition.<sup>183</sup> There is also the classic conservative critique which is most famously articulated in Edmund Burke’s book *Reflections on the Revolution in France*. The conservative critique is based on the assumption that “citizenship and community cannot be artificially constructed but must develop naturally.”<sup>184</sup> Burke argues that rights can only have real substance and significance when they stem from historical processes owing to tradition. He further argues that rights will always be “contingent upon a complex set of social and political arrangements which cannot be wilfully or rationally constructed as liberals would maintain.”<sup>185</sup>

A third renowned critique of liberal citizenship is the Marxist critique, most notably in Karl Marx's own 1843 essay, “On the Jewish Question”. In this essay, Marx argues that religion is the product of a deep sense of alienation which would not disappear even if the state is secularized. He traces the original foundation of this alienation to the liberal separation between the state and civil society.<sup>186</sup> Finally, there is also the feminist critique that articulated by feminists such as Elizabeth Frazer and Nicola Lacy<sup>187</sup>, Carole

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<sup>181</sup> Faulks, *Supra* note 153, at 36.

<sup>182</sup> *Id.* at 20.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 24

<sup>185</sup> *Id.*

<sup>186</sup> Karl Marx, *On the Jewish Question* in THE MARX-ENGELS READER, 35 (Robert Tucker ed., Norton & Company, 1978), (1843).

<sup>187</sup> See ELIZABETH FRAZER & NICOLA LACEY, THE POLITICS OF COMMUNITY (Harvester Wheatsheaf, 1993), (1993).

Pateman<sup>188</sup> and Diana H. Coole.<sup>189</sup> This critique mainly criticizes the “underlying gendered assumptions of classical liberals’ treatment of categories like the state, the citizen and the social contract.”<sup>190</sup>

Keith Faulks puts forth the argument that “liberalism is an agency-based approach because it stresses the importance of individual action and freedom of choice as explanations of social change.”<sup>191</sup> The liberal assumption that the individual can be understood outside of the collective political community, disregard for the most part the restraints that social structures, such as class, gender, and religion place on individuals.<sup>192</sup> Thus, not only does liberal conception of citizenship fail to adequately address structural inequalities, it also places the blame on the individuals for their weakness and failure to utilize their citizenship in a liberal society.<sup>193</sup>

To better understand the situation of the Coptic minority in Egypt, I retrace the main steps of the path from the *dhimmah* status to citizenship. In this next section, I situate liberal conceptualization of citizenship in the case of Egypt. I argue that although calls towards liberal citizenship in Egypt might theoretically result in a better situation for Copts than their status-quo, one must still be aware of its pitfalls and limits.

## **B. Liberal Conception of Citizenship: the Case of Egypt**

Modern Egyptian personal status laws were derived from a larger sociopolitical order of the Ottoman period, known as the *millet* system. Under the auspices of this *millet* system, non-Muslim religious communities (*dhimmis*) were accorded juridical autonomy over aspects of their internal affairs. Interestingly, as Mahmood notes this “nonliberal model of pluralism’ did not aim to politically transform difference into sameness; instead,

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<sup>188</sup> See CAROLE PATEMAN, *THE PROBLEM OF POLITICAL OBLIGATION* (Basil Blackwell, 1979) (1979). See also CAROLE PATEMAN, *THE SEXUAL CONTRACT* (Polity Press, 1988), (1988); CAROLE PATEMAN, *THE DISORDER OF WOMEN* (Polity Press, 1989), (1989).

<sup>189</sup> DIANA H. COOLE, *WOMEN IN POLITICAL THEORY* (Harvester Wheatsheaf, 1993), (1993).

<sup>190</sup> Faulks, *Supra* note 153, at 29.

<sup>191</sup> *Id.* at 34.

<sup>192</sup> *Id.* at 33.

<sup>193</sup> *Id.* at 34.

various contiguous religious groups were integrated through a vertical system of hierarchy in which Muslims occupied the highest position.”<sup>194</sup> Over the course of the 19<sup>th</sup> century, many aspects of this *millet* system were slowly transformed with the introduction of modern nation-states and new concepts such as civil and political equality.

There was a shift in language that came with the introduction of the post-colonial modern Egyptian state. Novel terms such as equal citizenship and national unity were introduced, which implied the “inclusion” rather than “exclusion” of different religious identities. Under the modern Egyptian state, Copts are no longer called “*dhimmis*” and the *millet* system that was previously employed by the Ottoman Empire has been abolished. Theoretically speaking, non-Muslims are no longer “excluded” from the realm of politics and are granted equal treatment and opportunity under the law. However, as Rachel Scott notes, “an important feature of the Islamist discourse on citizenship in an Islamic state is the emphasis upon citizenship existing alongside the religious social structure of Egyptian society.”<sup>195</sup> Given both the Muslim and Coptic communities’ resistance to any attempts aimed at secularizing the current personal status laws, one could argue that the vast majority of Egyptian masses envision a model of citizenship that preserves and institutionalizes religious difference in the realm of the “intimate”. Nonetheless, one of the inevitable consequences of such model of citizenship is that political conflict over religious difference often end up unfolding over the terrain of familial and sexual relationships.<sup>196</sup>

The modern Egyptian legal framework ultimately retains the same historical separation between Muslims and non-Muslims that existed under the *millet* system only this time it is confined almost exclusively in the realm of the “family” and the “household”.<sup>197</sup> Egypt’s authoritarian rulers ultimately have interests in maintaining the plurality of personal status laws as it is; this plurality preserves religious differences which keeps

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<sup>194</sup> Mahmood, *Sexuality and Secularism in Religion*, *Supra* note 21 at 54.

<sup>195</sup> SCOTT, *Supra* note 96, at 169.

<sup>196</sup> Mahmood, *Sexuality and Secularism in Religion*, *Supra* note 21, at 54.

<sup>197</sup> SCOTT, *Supra* note 96, at 64.

citizens divided. The management and oftentimes the manipulation of religious difference has developed as one of the cornerstones of authoritarian rule. Post-colonial modern Egyptian regimes were able to reproduce and maintain a similar hierarchy of religious difference to the one that existed under Ottoman rule. Only this time they are able to do so while disguising it behind the new-found language of “equal liberal citizenship” and “religious freedom”.

Famous slogans and chants calling for of *al-waḥdah al-waṭaniyyah* (national unity) were hijacked and exploited across Egypt’s modern history to deny the very existence of a sectarian question, while maintaining that recurrent sectarian clashes are only the invention of the “enemies of the country”. An example for such slogans is *El deen lel allah wa al watan lel agmee* (Religion is for God, and the homeland is for all) which was Saad Zaghloul’s famous slogan during 1919 revolution to unify all Egyptian to fight the British colonial rule. Another example is *Yahya al helal maa el saleb* (Long live the cross and the crescent). These slogans along with others such as *Muslim wa Meshei eed wahda* (Muslim, Christian, One Hand) promptly appear all over state media channels whenever a sectarian incident takes place. These phrases in many ways have been used as propaganda to sweep real sectarian issues under the rug rather than addressing the root causes of the problem. For instance, Paola Pizzo notes how “the myth of *al-waḥdah al-waṭaniyyah* (national unity) became the most fashionable political slogan”<sup>198</sup> during the 1980s while in the backdrop there was an increasing process of Islamization occurring in Egyptian society.

### **C. Egyptian Authoritarian Regimes and the Management of Religious Difference**

The modernization of the Egyptian legal framework was one of the processes that ultimately enabled authoritarian regimes to shape, reinforce, and manipulate existing sectarian identities and patriarchal structures in a way that serves their best interest. For decades, the Middle East region has been plagued with authoritarian rulers who, in order to preserve their rule, have often resorted to survival strategies. The most notorious of all

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<sup>198</sup> Paola Pizzo, *The ‘Coptic Question’ In Post-Revolutionary Egypt: Citizenship, Democracy, Religion*, 38 ETHNIC AND RACIAL STUDIES, 2599, 2598-2613, (2015).



is the “divide and conquer strategy”, or as Mahmood Mamadani calls it the “define and rule strategy.”<sup>199</sup> The “define and rule strategy” manipulates social and sectarian cleavages and pits citizens against one another. This strategy was first introduced by former colonial powers<sup>200</sup> and was later picked on by Arab authoritarian regimes.<sup>201</sup> Authoritarian regimes, accordingly, tend to be more prone to sectarianism.<sup>202</sup> Egypt’s growing number of sectarian incidents over the past decades, only confirms that the state’s function has shifted from one that supports social cohesion to one that threatens it.

There is a considerable body of academic literature that primarily deals with the topic of Muslim-Copts relations and sectarian violence in Egypt especially given the growing numbers of sectarian incidents in the past few decades. The following section will outline how Egyptian authoritarian rulers starting with Gamal Abdel-Nasser and ending with Hosni Mubarak have chosen to deal with issues of religious difference and sectarian identities and how ultimately one is the main outcomes of their chosen strategies was sectarian violence.

### **1) Gamal Abdel-Nasser’s Era**

During the 19th century, members of the Coptic laity became more influential in Church matters and Church-State relations. It was the year 1874, that saw the establishment of *al-Majlis al-Milli*, which can be described as “a parallel institution to the Coptic Orthodox Church with a mandate to oversee Coptic endowments (*awqaf*), manage Coptic schools and institutions, and run Copts’ personal status courts.”<sup>203</sup> *Al-Majlis al-Milli*, was exceptionally progressive for its time especially when it came to issues pertaining the Coptic family matters. As mentioned, it was *al-Majlis al-Milli*, which adopted the 1938 ordinance that expanded the scope of permissible divorce for Copts in Egypt

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<sup>199</sup> MAHMOOD MAMDANI, *DEFINE AND RULE: NATIVE AS POLITICAL IDENTITY*, 44 (Harvard University Press, 2012), (2012).

<sup>200</sup> *Id.*

<sup>201</sup> Nader Hashemi, *Toward a Political Theory of Sectarianism in the Middle East: The Salience of Authoritarianism over Theology*, 1 *JOURNAL OF ISLAMIC AND MUSLIM STUDIES*, 69&70, 65-76 (2016).

<sup>202</sup> *Id.*

<sup>203</sup> MARIZ TADROS, *COPTS AT THE CROSSROADS: THE CHALLENGES OF BUILDING INCLUSIVE DEMOCRACY IN EGYPT*, 62 (The American University in Cairo Press, 2013), (2013).

exponentially. Nonetheless, the authority of this progressive consultative body came to an abrupt end during the 1950s under Gamal Abdel-Nasser's rule. The Nasser regime adopted certain policies that attempted to "curb the powers of *al-Majlis al-Milli* and by default that lead to the expansion of the power of the Church leadership."<sup>204</sup> As a result, under Nasser's leadership came "the weakening of the Coptic laity which was accompanied by the strengthening of the political and social role of the Church."<sup>205</sup>

A pact was formed during the 1950s between Pope Kyrollos VI and the State's political leadership.<sup>206</sup> This pact entailed that the Church politically align itself with the regime in exchange for unlimited political support given by the pope on behalf of the Coptic community.<sup>207</sup> Tadros highlights the role that the personal relationship between President Gamal Abd el-Nasser and Pope Kyrollos VI played in resolving many sectarian issues at that time.<sup>208</sup> Moreover, Nasser's regime was known for its tokenism which further reduced levels of Coptic political participation in the government while strengthening the Pope's role in political matters.<sup>209</sup> It was under Nasser's political and economic policies that Egypt witnessed its "first wave of increased Coptic emigration to the West."<sup>210</sup> Moreover, it was under the leadership of Nasser that confessionalism found its way into Egyptian society after the loss of the six-day war in 1967, as many Egyptians, Muslim and Christian alike, turned to mosques and churches after their disappointments in politics.<sup>211</sup>

There are no records of major sectarian violence incidents that erupted under Nasser's rule like the ones witnessed under Anwar al-Sadat's and Hosni Mubarak's regime. Nevertheless, I argue that many of the policies of Abdel-Nasser's regime can be seen as setting the stage for the sectarian violence that followed. Although it was ostensibly a secularist regime, Nasser's policies still had many enduring negative consequences on the

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<sup>204</sup> *Id.* at 63.

<sup>205</sup> *Id.* at 64.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 65

<sup>208</sup> *Id.* at 64.

<sup>209</sup> Michael Wahid Hanna, *The Roots of Egypt's Muslim-Christian Tensions*, FOREIGN POLICY, Jan. 17, 2011. <https://foreignpolicy.com/2011/01/17/the-roots-of-egypts-muslim-christian-tensions/>

<sup>210</sup> *Id.*

<sup>211</sup> Jason Brownlee, *Violence against Copts in Egypt*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, 6, 1-26 (2013).

Coptic community. It was under his regime that the Coptic community was forced to become more homogenous under the hierarchical leadership of the Coptic Church, as the Church assumed its role as the sole representative of the community. Moreover, it was President Abdel-Nasser who curbed the powers of *Majlis al-Milli*, which meant that under his rule there was no longer a parallel Coptic institution pushing for reforming the Coptic Church. Under Abdel-Nasser's regime, religious affiliation became the main marker of Coptic engagement in the public life rather than citizenship. As the Coptic Church assumed its role as the middleman between the Copts and the state under Nasser's rule, Copts could no longer voice their desires, anxieties, and demands directly to the state through conventional civic engagement channels like civil society organizations and political parties.<sup>212</sup>

## 2) Anwar El-Sadat's Era

The death of Nasser in 1970, followed closely by Kyrollos' death in 1971, brought two new actors onto the national scene: President Anwar al-Sadat and Pope Shenouda III. Brownlee goes on to describe how in the 1970s, Anwar al-Sadat started to embrace the Islamists as a counterbalance to the socialists.<sup>213</sup> Inevitably, this led to the deterioration of regime-church relations under his rule. Under Sadat's rule, article 2 which stipulated that "principles of Islamic law (*Shari'a*) are the principal source of legislation"<sup>214</sup> was first introduced in the Egyptian constitution of 1971 as neither the Egyptian constitution of 1923 nor that of 1953 made any such references. The pope unsurprisingly opposed the introduction of this article and resisted what he saw as a creeping Islamization of the Egyptian state and society.<sup>215</sup> Sadat then accused Pope Shenouda of separatism, saying "the Coptic pope wanted to carve off a piece of Upper Egypt to form a Christian state."<sup>216</sup> Against this backdrop, Egypt started witnessing its first major incidents of sectarian violence in decades.

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<sup>212</sup> TADROS, *Supra* note 158, at 65.

<sup>213</sup> Brownlee, *Supra* note 166, at 6.

<sup>214</sup> EGY CONST. 1971, Chapter I, art II.

<sup>215</sup> Brownlee, *Supra* note 166, at 7.

<sup>216</sup> *Id.*

Under Sadat's rule, the renovation and construction of churches was the main trigger for many incidents of sectarian violence<sup>217</sup> and it is an issue that successive Egyptian regimes have failed to address until today. The first major incident of sectarian violence under Sadat's rule took place in November 1972, after a mob of Muslim citizens attacked the local Bible Society in the Delta village of Khanka located in the governorate of Qalyubiya. Coptic Christians in the village were using the Bible Society facilities as their local place of prayer, because there was no church in their vicinity which angered some of the Muslims living in the village.<sup>218</sup> Since the 1972 incident, more incidents of religious discrimination and violence followed and tensions reached its peak between President Sadat and Pope Shenouda between 1980 and 1981. In June 1981, the infamous incident of *El Zawya el Hamra* took place as violence between the two parties broke out over church construction. It left 17 people dead and 112 injured.<sup>219</sup> Brownlee argues that this was the only the projected result given that Sadat's policies nurtured an environment of interfaith mistrust and did not intervene to stop the violence when it began. It only got worse as his political repression intensified; Sadat locked many prominent Egyptian figures and placed Shenouda under house arrest.

Tadros explains that these attacks were the inevitable result of a series of factors that contributed to the heightening of political tensions between Sadat and the pope, including "the rise of Islamist groups, increased sectarian incidents, and the growing role of Coptic immigrants as a lobby group in the United States against Sadat's policies."<sup>220</sup> She adds to these factors Sadat's growing representation of himself as "the believer president" and his support for the Islamization of society. Moreover, the 1980 constitutional amendments, particularly those introduced to article 2, further complicated the situation, as the pope himself openly and personally opposed the amendment.<sup>221</sup>

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<sup>217</sup> *Id.* at 8.

<sup>218</sup> Mostafa Mohie, *Christians and Churches in Egypt: Aggression from all Sides*, MADA MASR, Dec. 14, 2016. <https://www.madamasr.com/en/2016/12/14/feature/politics/christians-and-churches-in-egypt-aggression-from-all-sides/>

<sup>219</sup> Brownlee, *Supra* note 166, at 8.

<sup>220</sup> TADROS, *Supra* note 158, at 67.

<sup>221</sup> Brownlee, *Supra* note 166, at 7.

### 3) **Hosni Mubarak's Era**

Both Nasser's and Sadat's policies paved the way for the sectarian violence that took place under President Hosni Mubarak. With religion replacing nationalism, "matters that should have been governed by law became flash points for identity politics."<sup>222</sup> In 1981, Mubarak took over and maintained Sadat's general domestic policies while easing some of repression.<sup>223</sup> Regime-church relations had a fresh start and the pope was released from house arrest in 1985.<sup>224</sup> Mubarak and Shenouda started a similar pact to that was under Abdel-Nasser; the pope would support Mubarak politically in exchange of the president giving the Church autonomy over matters pertaining to the Copts.<sup>225</sup> As Jason Brownlee notes, this pact, which can be described as a form of "religious corporatism," expanded the powers and authority of Pope Shenouda and simultaneously enabled Mubarak to address the entirety of the Coptic Community via a single proxy.<sup>226</sup> This served to increase confessionalism as Copts who had political objections were compelled to voice their complaints via the Church and not as nationals of the state. Pope Shenouda stood as ruthless supporter of Mubarak even when lay Copts were against it.<sup>227</sup> This pact just served to sweep problems under the rug rather than fixing them and thus sectarian violence continued.

To make matters worse, Mubarak took advantage of the rising wave of attacks against Copts to his own political benefit. Mubarak instead of utilizing the law in the service of both Christians and Muslims equally, "he positioned his regime as the only firewall against sectarianism. For decades he and his coterie propagated the narrative that without Mubarak's protection the Copts would fall into the shadow of a zealously Islamist and anti-Christian regime."<sup>228</sup> Tadros notes the radical change of Pope Shenouda's tone and discourse in respect of Mubarak's government after his release from house arrest in 1985.<sup>229</sup> This radical change was most apparent when Pope Shenouda endorsed the

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<sup>222</sup> *Id.* at 10.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 10&11.

<sup>226</sup> *Id.* at 11.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> TADROS, *Supra* note 158, at 70.

government's position with regards to article 2 of the 1971 constitution, the very same article he openly and fiercely opposed thirty years earlier during Sadat's era.<sup>230</sup> Tadros adds to Brownlee's analysis of Shenouda and Mubarak's pact as she explains that some of the elements of the tactical agreement that existed in the Kyrollos–Nasser pact were restored.<sup>231</sup> This pact also included greater collaboration between the State Security Investigations Service (SSI) and the Church.<sup>232</sup> One of the merits of this new pact was a presidential decree which delegated to governors the responsibility for approving applications for the construction or renovation of churches<sup>233</sup> though in practice this remained problematic.

However, what was new under Mubarak is that the Coptic Orthodox Church had to negotiate the terms of the pact on several levels: the president, the political policy-making arena, and the state security apparatus. This further complicated things as it made it harder for the church to reach an agreement.<sup>234</sup> She argues that in addition to the pope's policy of open support for the Mubarak regime, he also adopted a non-confrontation policy toward sectarian incidents.<sup>235</sup> Interestingly, though some writers might attribute this change of attitude to the government's crackdown on Islamists, Tadros suggests that Pope Shenouda's rapprochement with the government came earlier than this crackdown which in turn refutes the theory of a causal relation between growing Islamist militancy and Shenouda's change of tone.<sup>236</sup> Tadros also addresses the criticism of various Coptic groups to the increasingly political role of the Church and its impact on citizenship. She also talks about the Church's failure to tone down voices of protest among Coptic emigrants, during Sadat's and Mubarak's era, as they remained an entity that acted independently of the Church.<sup>237</sup>

Mubarak's regime resorted to informal avenues to deal with the problem of sectarian violence rather than punishing the perpetrators in accordance with the law. It became

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<sup>230</sup> *Id.* at 73.

<sup>231</sup> *Id.* at 71.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 76.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 71.

<sup>236</sup> *Id.* at 70.

<sup>237</sup> *Id.* at 71.

almost an established pattern, under his rule, that “the judiciary did not hear cases involving sectarian violence.”<sup>238</sup> A report published by Egyptian Initiative for Personal Rights (EIPR) on sectarian incidents taking place in Egypt between January 2008 and January 2010 noted that the security apparatus (SSI) often tried to stop sectarian incidents from getting to the Public Prosecutor’s Office for investigation.<sup>239</sup> The SSI also bargained with the parties to the conflict and pressured them to pursue reconciliation at the police station.<sup>240</sup> This inevitably nurtured an “ongoing climate of impunity” because the government was unwilling to prosecute or get involve with incidents of sectarian violence.<sup>241</sup> Mubarak’s policies that dealt with incidents of sectarian strife was marked by a greater involvement of the State Security Investigations Service (SSI), abuse of the emergency law, and the use of customary reconciliation sessions.

All three of these practices were questionable and failed to stop sectarian strife as the numbers of sectarian incidents continued to rise under Mubarak. For instance, Hossam Bahgat, former director of EIPR noted that “between January 2008 and January 2010, we [EIPR] documented 52 violent attacks on Christians or sectarian violence incidents in 17 out of 29 governorates”<sup>242</sup>. “[T]hat’s very disturbing because it really is a rate of two violent episodes a month in a majority of governorates,” he said.<sup>243</sup> In an open violation of the law, the security apparatus under Mubarak’s regime often held ‘customary’ reconciliation sessions in which victims of sectarian violence were often denied their rights and the suspects involved in those cases escaped punishment. In some cases, these so-called reconciliations even led to the forcible eviction of victims from their homes, as has been documented by Human Rights Watch.<sup>244</sup> Joshua Stacher notes that “this

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<sup>238</sup> EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS, TWO YEARS OF SECTARIAN VIOLENCE: WHAT HAPPENED? WHERE DO WE BEGIN? AN ANALYTICAL STUDY OF JANUARY 2008- JANUARY 2010, 20, (April 2010).

[https://eipr.org/sites/default/files/reports/pdf/Sectarian\\_Violence\\_inTwoYears\\_EN.pdf](https://eipr.org/sites/default/files/reports/pdf/Sectarian_Violence_inTwoYears_EN.pdf)

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> MOHAMED M. MOHIEDDIN, NO CHANGE IN SIGHT: THE SITUATION OF RELIGIOUS MINORITIES IN POST-MUBARAK EGYPT, 3, (2013),

[https://www.ecoi.net/en/file/local/1210055/1788\\_1386670350\\_mrg-rep-egypteng-final3.pdf](https://www.ecoi.net/en/file/local/1210055/1788_1386670350_mrg-rep-egypteng-final3.pdf)

<sup>242</sup> Soraya Sarhaddi Nelson, *Discontent Swells In Hosni Mubarak's Egypt*, NPR, (November 22, 2010), available at <https://www.npr.org/2010/11/19/131450204/discontent-swells-in-hosni-mubarak-s-egypt>

<sup>243</sup> *Id.*

<sup>244</sup> Human Rights Watch, *Egypt: End Mubarak-Era Impunity for Sectarian Violence*, (Jul 16, 2012), available at <https://www.hrw.org/news/2012/07/16/egypt-end-mubarak-era-impunity-sectarian-violence>

extrajudicial model encouraged vigilantism and violence, because perpetrators were not sent to prison when they destroyed property or committed murder in the course of interreligious clashes.”<sup>245</sup>

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<sup>245</sup> JOSHUA STACHER, COUNTRIES AT THE CROSSROADS 2011: EGYPT, 8, (2012)  
[https://freedomhouse.org/sites/default/files/inline\\_images/EgyptFinal.pdf](https://freedomhouse.org/sites/default/files/inline_images/EgyptFinal.pdf)



## **VI. Interfaith Relationships and Sectarian Violence**

### **A. Religious-based Personal Status Codes: One of the triggers for the eruption of Sectarian Violence?**

There are five different scenarios that usually trigger sectarian violence in Egypt: the building and construction of churches, conversion, expressing controversial or “offensive” opinions on religion, interfaith romantic and sexual relationships, personal feuds between Muslims and Christians. In the first scenario, the law regarding the construction and restoration of churches in Egypt, up to the most recent one passed on September 28, 2016 by the House of Representatives, imposes great restrictions on the building of churches. The law is characterized with ambiguous language with the same dominant discriminatory logic, because it gives the executive authority and the security apparatus wide discretion to determine the right to build and repair churches. As for the second scenario, limitations are placed on religious conversion, although in theory there is no legal ban on Muslims converts to Christianity or other religions. In June 2009, a ruling by the Cairo Administrative Court stated that freedom to convert does not extend to Muslim citizens.<sup>246</sup> For the third scenario on expressing opinions of faith, article 98 of Egypt’s Penal Code in 1981, criminalizing contempt of religion, has been used to limit various forms of religious expression and only sanction the ones approved by the ruling elite.

For the purposes of this thesis, I am particularly concerned with sectarian violence fueled by interfaith romantic and sexual relationships. The scope of this thesis is limited to exploring the personal status laws, and its historical connection and present impact on sectarian identities and cleavages. Saba Mahmood notes that “a cursory glance at the last ten years of Muslim–Coptic conflict reveals, a vast number of sectarian incidents are set off by rumors about an interfaith romance, a woman’s abduction, and marriage.”<sup>247</sup>

Egyptian Activist Elham Eidarous notes that some studies place interfaith relationships as the 2nd or 3rd reason for sectarian strife in Egypt.<sup>248</sup> Moreover, a study on sectarian

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<sup>246</sup> Court of Administrative Justice no. 4475, Judicial Year 58, 30 June 2009.

<sup>247</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 59.

<sup>248</sup> Elham Eidarous, THE INTERSECTIONALITY OF DISCRIMINATION AGAINST THE EGYPTIAN CHRISTIAN WOMAN (Lecture organized by EIPR, Cairo, 26 Nov. 2017).

incidents that took place in Egypt from (2008-2012), found that the “escalation of small disputes/fights” was the first trigger behind the eruption of 20.89% of sectarian incidents recorded by this study (61 out of 292 sectarian incidents were triggered by this reason).<sup>249</sup> “Muslim/Christian gender relations and disappearance of women and girls” was found to be the second/third most common trigger for the eruption of sectarian assaults as it was the trigger behind 15.75% of all sectarian incidents recorded by the study (46 out of 292 sectarian incidents were triggered by this reason). Interestingly, sectarian incidents triggered by building/expansion of churches also made up around 15.75% of all incidents recorded.<sup>250</sup>

In what follows, I explore incidents of sectarian violence that were triggered by interfaith romantic and sexual relationships and/or religious conversion inasmuch as it pertains to interreligious marriages. I use a number of high profile cases that were hotly debated in Egyptian media as well as low profile cases that were only mentioned in police reports and did not make it to national news outlets.

## **B. Incidents of Sectarian Violence Triggered by Interfaith Romantic and Sexual Relationships**

The infamous cases of Camillia Zakhir (summer of 2010) and Wafaa Qustuntin (2003) share an almost identical story despite the fact that there was approximately a seven-year gap between them.<sup>251</sup> Both women were married to Coptic priests and both of them suddenly disappeared from their home without leaving prior notice. In both of these cases, violent episodes of sectarian violence were triggered by rumors of the involvement of both of these two women with Muslim men.<sup>252</sup> Both of their husbands accused the members of the Muslim community of kidnapping them and forcing them to convert and to marry a Muslim man. Following these accusations, members of the Coptic community

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<sup>249</sup> Mariz Tadros, *Devolving the Power to Divide: Sectarian Relations In Egypt (2011-2012)*, 45 SPECIAL ISSUE: LOCALISING GOVERNANCE, 73, 69-80 (2014).

<sup>250</sup> *Id.*

<sup>251</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 55.

<sup>252</sup> *Id.*

took the streets demanding the state's intervention and demanding that the state return both of them back to the church and to their families.<sup>253</sup>

In both cases, the notorious SSI eventually managed to uncover the locations of both women and accordingly they were "arrested" and handed over to the church authorities.<sup>254</sup> In the case of Waffa Qustuntin, the Coptic patriarch then, Shenouda III, even used his personal relationship with then president Hosni Mubarak to pursue this demand and Mubarak complied by giving out presidential orders to find her.<sup>255</sup> Upon Mubarak's presidential orders, the state security police arrested Qustuntin and handed her over to the church authorities.<sup>256</sup> The church authority promptly announced she had not converted to Islam and was holding firm to her faith. Qustuntin has not been seen or heard from since and reportedly she lives in the seclusion of the pope's monastery in Wadi al-Natroun.<sup>257</sup> As for the case of Camillia Zakhir (2010), the church authorities handled the situation in a similar manner as they promptly announced she had not converted to Islam, but that she left her home because of marital problems.<sup>258</sup> She was then held under the custody of the Coptic Church until her appearance on television almost a year later. After her televised appearance, a public campaign that was sponsored by different Muslim groups accused the church of kidnapping Zakhir in complicity with the state, and commanded that she be "restored" to the Muslim community.<sup>259</sup> At the time of the incident, "mosques packed for prayers at the end of Ramadan became rally sites where banners were lifted for 'freeing sister Camillia' and taking disciplinary action against Pope Shenouda."<sup>260</sup> A number of attacks were subsequently launched on Coptic churches in connection with the incident. Some members belonging to the Coptic community even linked the deadly and unprecedented bomb attack on a prominent

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<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> TADROS, COPTS AT THE CROSSROADS, *Supra* note 158, at 103.

church in Alexandria (which took place on January 1, 2011) to the protests surrounding the Zakhir controversy”<sup>261</sup>.

The above-mentioned cases were high profile cases that most Egyptians were aware of as they were discussed on leading media outlets and TV shows. Further, other incidents of sectarian violence, albeit of equal gravity, did not receive similar media attention. One of those cases took place in the province of Giza where a middle-class worker tortured a Christian man, after he caught him with his daughter at his house. The worker then invited his nephew and together they tortured the Christian man, as they burnt him with cigarettes and a heated knife, and then placed him on impalement until he lost consciousness.<sup>262</sup> The girl’s father did not try to hide his crime, on the contrary, he carried the man’s unconscious body and threw it in front of the Christian man’s family house.<sup>263</sup> For the father this was an honor crime. The incident was then reported to the police which quickly intervened and formed a blockade surrounding the area.<sup>264</sup> The prosecution then questioned the girl who said that they were simply in love and wanted to get married and was thinking of conversion to be able to do so.<sup>265</sup> This incident could have turned into a wide spread sectarian violence if it was not for the fact that it took place just four days before 2011 Alexandria bombing of the Saints Church and got lost with all the fuss surrounding the bombing.<sup>266</sup> A very similar case recorded by police report number 4702 administrative *Hadyaa El-Quba*<sup>267</sup> but it was the Muslim girl that was reported by the neighbors to be visiting her Christian lover’s house. Consequently, the house was put under surveillance and the police raided the house when it was sure that the girl was in it.<sup>268</sup> The police then proceeded with investigation just to discover that they were married with a *orfi* contract and that the girl was pregnant and she later gave birth to a boy.<sup>269</sup>

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<sup>261</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 55.

<sup>262</sup> AHMED ATALLAH, MARYAM: MA' KHALS HOBI WAA A'TKADI, 209, (El Masri Publication, 2013), (2013).

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 209.

<sup>267</sup> *Id.* at 210.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

All law is inherently violent, as Jacques Derrida famously argues "there is no such thing as law (*droit*) that does not imply in itself, in the analytic structure of its concept, the possibility of being 'enforced', applied by force."<sup>270</sup> The enforcement of law presupposes a state monopoly on violence. The family exists by virtue of laws that police exactly what and who institutes a family. The state's enforcement of the ban on certain forms of interfaith marriages and restriction of divorce for the Coptic minority, is a symbolic act of violence. When people try to defy the laws that interfere with their own personal choices, the emblematic violence inherent within those laws becomes translated into tangible violence the public space.

What the above-mentioned cases reveal is that state restrictions on interfaith marriage and conversions in Egypt, though they to blame, are just the tip of the iceberg; underneath the water lies a much more complex sociopolitical situation. Foucault argues in "the Subject and Power" that as the modern nation-state has advanced out of Christian institutions, it inherited the "pastoral power" that these institutions originally possessed. That this pastoral power of the state (which is an extension of disciplinary power, and an alternative perspective to sovereign power discussed above), is not a force that lingers above the people living in the society it rules, rather, it is deeply entrenched in the social nexus of this society.<sup>271</sup> So from a Foucauldian lens, the Egyptian masses have internalized the idea perpetuated by the state that interfaith relationships are a taboo topic; just the thought of amending the personal status law would be seen as a direct insult to their belief system. They started to take the violence sanctioned by law into their own hands, so that when a couple decide to go against the laws that govern marriage and family, one of the reactions to that is sectarian violence. It's like a never-ending cycle; law which is inherently violent makes the society, and the society in turn makes the law that is inherently violent.

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<sup>270</sup> Jacques Derrida, *Force of Law: The Mystical Foundation of Authority* in DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE, 6 (Drucilla Cornell, Michael Rosenfield and David G. Carlson eds., Routledge, 1992), (1992).

<sup>271</sup> Michel Foucault, *the Subject and Power*, 8 CRITICAL INQUIRY, 791, 777-795, (1982).

### C. A Feminist Analysis of Incidents of Sectarian Violence

This construction of nation as feminine is representative of the symbolic weight given to women as procreators of a nation's culture and tradition,<sup>272</sup> in this sense women's bodies come to represent broader claims about culture, identity, and territoriality.<sup>273</sup> "The very language of nationalism singled women out as the symbolic repository of group identity."<sup>274</sup> Ancient myths, such as Helen of Troy in the *Ilyad* and Sita in *Ramayan*, about violent nationalistic struggles that started with women being abducted, and armies (of men) mobilizing to go for their "rescue" have existed since ancient times.<sup>275</sup> Ironically, Helen of Troy was never really abducted to begin, perhaps like Qustuntin and Zakhir. Rather, she eloped with Prince Paris of Troy whom she has fallen in love with despite being married to King Menelaus of Sparta. As many feminists have previously observed, women are often the objects of such narratives but they are rarely their subjects or agents<sup>276</sup> as men are always portrayed as the abductors and women as the abductees that need men to save them. This gendered narrative has not changed as women's bodies continue to appear prominently in almost all nationalist and communitarian struggles (whether ethnic, racial, or religious) in the modern period.<sup>277</sup> Thus, the incidents of sectarian violence outlined above "are yet another example of the anxiety that haunts relations of power across lines of sexual and gender differences."<sup>278</sup>

Recent incidents of sectarian violence that involve a love relationship between a Christian man and a Muslim spark outrage for the Muslim majority. Conversely, if it involved a Muslim being in a relationship with a Christian woman, it is considered an anathema for the Coptic minority. What's significant about all the above-mentioned cases is that they all involve a "woman" converting to Islam. Egyptian Christian men convert as well to Islam and sometimes they choose to convert back to Christianity but no one bats an eye.

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<sup>272</sup> Elif Gözdaşoğlu Küçükaliöğlu, *Imagination of Gendered Nationalism: The Representation of Women as Gendered National Subjects in Ottoman-Turkish Novels (1908-1938)*, 2 (2005) (Ph.D. dissertation, University of Bilkent). <http://www.thesis.bilkent.edu.tr/0003083.pdf>

<sup>273</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 56.

<sup>274</sup> NATIONALISM: CRITICAL CONCEPTS IN POLITICAL SCIENCE, 1495, (John Hutchinson et al. eds., Psychology Press, 2000). (2000).

<sup>275</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 56.

<sup>276</sup> LATA MANI, *CONTENTIOUS TRADITIONS*, 117 (University of California Press, 1998), (1998).

<sup>277</sup> Mahmood, *Sectarian Conflict and Family Law in Contemporary Egypt*, *Supra* note 18, at 56.

<sup>278</sup> *Id.*

Never has a Salafi demonstration went out calling for their “brother” to be brought back and never has the Egyptian state intervened to force a Christian man to return back to the Church.

Essentially, women are the ones who reproduce the boundaries of ethnic, racial, or religious groups, and they are the “privileged” signifiers of religious difference and their bodies are the symbolic repository of group identity. In these incidents of sectarian violence, women's bodies came to signify the sanctity of their religious community. Through these kinds of sectarian conflicts, women's bodies became arenas for violent religious strife. This violent regulation of female sexuality and women’s bodies is also largely manifested in the practice of honor killings in Arab societies.

Honor killings is well documented practice in Arab countries, and some Arab countries even have in their penal codes articles that grants mitigation to male family members who kill their female relative for engaging in, or being suspected of engaging in, sexual practices before or outside of marriage.<sup>279</sup> Lama Abu Odeh notes how “reports of the crime reveal that poor women killed by their male relatives are more frequently the victims of honor killings.”<sup>280</sup> She further argues that “nationalist honor is upheld by dividing women into sexual rebels (the well-off) on the one hand, and possible victims of killing (the poor) on the other, and in a parallel fashion, dividing men into possible killers (the poor) on the one hand, and disciplinarian, beneficiaries-of-the-killing-of-the-poor (the well-off) on the other.”<sup>281</sup> It should be noted that sectarian violence triggered by rumors of interfaith relationships is also divided along class lines, as it often confined in poor working-class neighborhoods and underprivileged provinces and villages.

In Egypt, a female’s honor is not only associated with her male family members’ honor but it also linked to her entire religious group’s honor especially if her lover adheres to a different religion than her own. Today, both Muslim and Christian women are still seen as the bearers of the honor of their entire religious communities. This is why the act of

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<sup>279</sup> Lama Abu-Odeh, *Honor Killings and the Construction of Gender in Arab Societies*, 58 AM. J. COMP. L., 911-952, (2010).

<sup>280</sup> *Id.* at 912.

<sup>281</sup> *Id.*

women leaving her religious group, whether it is by choice or by force, is usually framed shameful to her entire religious community.

The gendered narrative in the above cases, is built around the idea that women, especially Coptic women, are vulnerable subjects void of agency that can be easily manipulated by predatory practices of men belonging to the other religious community. When a woman chooses to leave her religion, it is no longer an expression of her own religious liberty because she is the bearer of her community's religious freedom. Egypt's asymmetrical recognition of one-way religious conversion further complicates the story; Egyptians can only convert to Islam, but not to any other religion. Even though both the constitution of 1971 & 2014 ostensibly gave all citizens freedom to practice their religion, this right was once again limited by the concept of "public order". In 1980 the High Administrative Court ruled that "it is completely acceptable for non-Muslims to embrace Islam but by consensus Muslims are not allowed to embrace another religion or to become of no religion at all."<sup>282</sup> Logically, the Coptic community has anxieties over their eventual dissolution from the Egyptian state given the large numbers of Coptic emigration to the West<sup>283</sup> and the asymmetrical Egyptian rules on religious conversion. It might appear to be counterproductive for the Coptic Church to maintain its intransigent stances on divorce as Copts who are stuck in an unhappy marital situation have no other choice but to convert to Islam or change their sect.<sup>284</sup> For the Church, "the issue of divorce symbolizes the growing encroachment of Islamic law upon its teachings and upon the Christian way of life."<sup>285</sup>

Both the Muslim and Coptic communities are interested in maintaining religious-based personal status laws as they are. For most of the Muslim community, the hierarchy that places Islamic personal status law over all other religious personal status laws is an articulation of their majoritarian hegemony and an admittance of the Islamic character of the Egyptian state, both of which they intend to keep. On the other hand, the Coptic minority is interested in maintaining its autonomy over the only body of law that the

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<sup>282</sup> SCOTT, *Supra* note 96, at 87.

<sup>283</sup> Emad Khalil, *NGO report: 93,000 Copts left Egypt since March*, EGYPT INDEPENDENT, Sept. 25, 2011. <https://www.egyptindependent.com/ngo-report-93000-copts-left-egypt-march/>

<sup>284</sup> SCOTT, *Supra* note 96, at 172.

<sup>285</sup> *Id.*



Church still maintains its control over. From the perspective of the church, civil marriage would diminish the church's control over the community, and that, it is feared, would lead to the dissolution of Coptic identity. Civil marriage also provides easier paths to conversion, which would further decrease the numbers of Coptic Christians in Egypt.<sup>286</sup> The same fear surrounds interfaith marriages, which, while rare, are usually accompanied with religious conversion and are thus considered a loss.<sup>287</sup> Thus there are vested interests: for Christians, keeping the religious identity of the marriage helps preserve the balance between the Coptic and the Muslim communities.

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<sup>286</sup> *Id.* at 171.

<sup>287</sup> *Id.*

## VII. Conclusion:

Marriage is often romanticized in the popular imagination as the union of two people as partners in a romantic and personal relationship. However, the realities and state restrictions imposed on the marriage institution today distort this simplistic understanding of marriage. Marriage in many ways can act as an influential hegemonic tool that helps the state with defining and dividing the society on the bases of identity, be it gender, class, or religion. In Egypt, marriage is a legal right granted only to couples that will reproduce “normal,” “healthy,” “heterosexual” and “homogeneous” offspring who would turn into ideal citizens in the future. By sanctioning certain types of marriages and prohibiting others, the state attempts to ensure the stability of the society and homogeneity of the religious communities living within its borders. Through its maintenance of pluralistic religious-based personal status laws, the Egyptian state gets to attain the best of both worlds: it gets to ensure the hegemony of the Muslim majority while simultaneously appeasing the Coptic minority.

The main difference between the current Muslim and Coptic personal status laws is that the former represents majoritarian national identity, while the latter is framed as an exception. On the other hand, the main similarities between the two bodies of law is that they both conceptualize the concept of the family in a similar way while discriminating against women from their respective communities in their own distinct ways.

Both women and Coptic Christians are situated between overlapping structures of subordination. The Egyptian state governs sects in the same way it governs sex. Women and Coptic Christians are not just subordinate in the Egyptian legal framework; they are similarly subordinate. Both groups are viewed as subordinate from the point of view of family laws. Islamic *Shar'ia* is seen as the overarching system that governs all of family law matters, while the Coptic family law is framed as its subsidiary exception. Thus, the idea that being Muslim is the gold standard while being Christian is the exemption is reinforced. Similarly, women are treated by family laws as subordinates to the men of their respective religious communities. Egyptian family laws have actively served in reinforcing patriarchal gender dynamics and perpetuating ideas about women's

subordinate place within the family. In that sense, men become are framed as the superior subject of family law and women as the inferior.

Moreover, Coptic Christians are punished by violence in the same way women are punished by it. Christians will be punished for actions that Muslims get to do without any repercussions, such as for their efforts to proselytize, praying in vicinities not licensed as churches, and renovating churches without permits. In the same token, Egyptian women are subjected to violence for their sexual conduct or for expressing their sexuality; acts that their male counterpart often get away without suffering any consequences. It's important to remember the intersections of patriarchy, sectarianism, and classism when talking about a complex issue such as sectarian violence triggered by interfaith relationships between Egyptian men and women. As has been mentioned in this thesis, underprivileged Coptic women belong to three overlapping structures of subordination. Thus, the consequences they suffer for their expressing their personal autonomy does not take place in a vacuum and cannot be separable from their overlapping identities as Copts, women, and individuals coming from an underprivileged class.

The conservative attitudes the Coptic minority have shown towards marriage, divorce, and freedom of religion show that while the Copts oppose having Islamic law as the overarching law, they still want an understanding of citizenship that preserves the centrality of the church. They fear that the Coptic community will eventually disappear. The Christian family is the center of the Coptic community, as such, personal status laws need to remain as they are. However, the paradox lies in the fact that this emphasis on personal status law reinforces the Church's emergence as a political and social representative of the Copts, which seems incongruent to liberal conceptions of citizenship.

The language used by the Coptic community to call for their rights as equal citizens has endorsed religion as the marker of their group identity while simultaneously emboldening the modern 'secular' state as the *de facto* arbiter and definer of religious difference. It's within the state's best interest to define, regulate, and reshape religion in the image of the majority. The state will utilize secular concepts such as "public order" to allow the religion of the majority to become the 'neutral' standard by which minority groups and

religions are judged against. This was one of the factors that enabled the Muslim-Christian relation in Egypt to take on its particular form that we witness today, a relationship that is marked by discrimination against the Coptic community and episodes of sectarian violence.

The historical development of both the Muslim and Coptic personal status laws and the introduction of modern legal technologies have both helped shape the current Egyptian legal framework. Religious-based personal status laws, a leftover from the Ottoman millet system, underwent various transformations under the modern nation-state. The legal pluralism of the Egyptian legislative system in many ways highlights the paradoxes and tensions created by modernity. On one end of the spectrum, there is the notion of equal citizenship which attempts to eradicate religious difference and on the other end there the religious based personal status laws which exacerbates religious difference by dividing citizens into separate legal communities. I argue that in order to form a complete picture around the problem of sectarianism in Egypt, one needs not to ignore the structural tensions created by the postcolonial state and the model of religion–state accommodation adopted by the Egyptian state.

The publically recognizable personality of the Egyptian state is heavily mediated by its Islamic character. Initially, it appears that the simple answer to solve the problem of state restrictions on interfaith romantic and sexual relationships is to extend the secularization process to the personal status laws. However, the application of *Shari'a* has always had a secular tool that complemented it. There had been no point in modern Egyptian legal history when *Shari'a* had been strictly adhered to. In fact, the modernization process of the Egyptian legislative system was one of the historical processes that led to the laws being the way they are currently. The model of secularism that was implemented in Egypt did not guarantee religious tolerance, rather it has consistently placed the Coptic minority in a defensive position.

Religious-based family laws have also been entrenched in society to the extent that they have been internalized by both the Muslim and the Coptic communities, and came to define the very identity of both communities. In that sense, law has been successful – it has divided society. As Talal Asad notes “the law never seeks to eliminate violence since

its object is always to *regulate* violence.”<sup>288</sup> Law has been internalized by the collective consciousness as truly a manifestation of society’s own desires. As a result of this, the symbolic violence inherent within the laws came to be materialized in the form of episodes of sectarian violence whenever someone attempted to go against those laws or norms. Only this time this violence was not necessarily perpetuated by the state but rather by the people themselves.

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<sup>288</sup> ASAD, *Supra* note 18, at 8.