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The American University in Cairo

School of Global Affairs and Public Policy

**TILL' DEATH (OR CONVERSION) DO US PART – COPTIC DIVORCES IN
EGYPTIAN COURTS AND THEIR IMPLICATIONS**

A Thesis Submitted to the

Department of Middle East Studies

in partial fulfillment of the requirements for

the degree of Masters of Arts

by Barbara Viktoria Bishay

May 2010

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ABSTRACT

The American University Cairo

Till' Death (or Conversion) do us Part – Coptic Divorces in Egyptian Courts and Their Implications

by Barbara Viktoria Bishay

under the advising of Dr. Hanan Kholoussy

When President Gamal Abdel Nasser nationalized and unified the courts in 1956, he aimed at fostering unity and equality among the Egyptians. But this move has in fact achieved quite the opposite, as it forces Coptic Egyptians to sometimes choose between the freedom of practicing their religion and equality before the law, two basic human and civil rights that should be granted to all. By nationalizing the courts and yet still adhering to religious codes of personal status laws (PSL), legal dualism has not ceased to exist in Egypt and it is put into an ambivalent status between civil and Islamic state. Through these realities, the church becomes a state within the state of Egypt. This can be proven in the example of divorce, as two valid and at the same time contradicting judgments can and are issued in the exact same divorce case.

This thesis combines historical studies of various kinds, such as on the court system in Egypt, on the country's social and political history, on the relationship between the Egyptian state and the Coptic Orthodox Church as well as on the historical development of the Coptic canon laws since 1938. A historical basis and framework is thus provided for the analysis of Coptic divorces in connection to citizenship rights in contemporary times. As scholarship on contemporary divorce cases is extremely rare to non-existent, newspaper articles build the main reference and primary source for examining this issue. Continuous connections to the history of Coptic divorce laws as well as sectarianism in Egypt have been paid special attention to here, as they are of the utmost importance when analyzing contemporary Coptic divorce with its citizenship aspects.

This thesis's findings prove the reality of legal dualism in Egypt, and that the Coptic Church has developed and inherited state-like qualities through this dualism, as well as through its relationship with the Egyptian state. Divorce becomes here an arena for negotiating not just citizenship but control over the Coptic laity and their private affairs. Both the church and the state enter this discourse with ambivalence and double standards, where both cannot seem to decide if they want Egypt to be a civil or an Islamic state. Citizenship for the Copts is limited by either side, when the Coptic citizen, who is looking to divorce, is put in the middle of the power struggles between these two forces and his two loyalties.

TABLE OF CONTENTS

1	INTRODUCTION.....	1-15
2	DIVORCING IN CHRISTIANITY, ISLAM AND THE EGYPTIAN STATE.....	16-42
2.1	The semi-colonial period.....	18-23
2.2	The Copts under Nasser.....	23-25
2.3	The Copts under Sadat.....	25-32
2.4	The Copts under Mubarak.....	32-35
2.5	The Egyptian State: Unified Laws?.....	35-40
2.6	Concluding Remarks.....	40-42
3	DIVORCING COPTS TODAY: THE PUBLIC DISCOURSE.....	43-76
3.1	Historical Review of the Egyptian Courts and the Copts.....	45-53
3.2	The Discourse of Today.....	53-73
3.3	Concluding Remarks.....	74-76
4	THE STATE AND THE CHURCH.....	77-101
4.1	National Unity.....	81-89
4.2	Two States in Egypt.....	89-99
4.3	Concluding Remarks.....	99-101
5	CONCLUSION.....	102-111
	BIBLIOGRAPHY.....	112-119

1. INTRODUCTION

“When the issue is a strictly religious one, there is no space for people to express a personal opinion.”¹

The issue that the Coptic Pope Shenouda III is discussing in this interview is Coptic divorces in contemporary Egypt. As the personal status laws (PSL) in Egypt are based on religion and its texts, marriage and divorce usually fall into a religious category. Thus, in an Islamic country, such as Egypt, logically the PSL are based on Islamic laws. But as the Copts are an indigenous part of the Egyptian community, it would only be logical that they would have their own legal code for personal affairs, as both religions’ views on matters such as divorce and marriage differ significantly.

This thesis aims to deal with Coptic divorces in Egypt, a topic that has been widely under researched despite the fact that it has had a revival wave of attention in Egyptian public discourse in recent years. More specifically, this analysis deals with the question of how Islamic laws in Egypt relate to the Copts, and the impact that these laws have on the family and on citizenship rights of the Copts. In order to comprehend the significance of the citizenship issues that the Copts face in cases of divorce, it is important to keep in mind that citizenship in Egypt is not to be understood in the same ways as citizenship is in the West.

Citizenship

The Western model of citizenship as allocated by the state is in its basis a contract between the members of the national community and the state, which is defined by rights given from the state to the citizen in return of certain obligations the

¹ H. Guindy, Shukrallah & Tadros 1999.

citizen has towards the state, both of which might vary from country to country.² Thus, both entities, the state as well as the citizenry, have certain responsibilities toward each other and citizenship can hence “be considered the organizing principle of state-society relations in modern states.”³ Equality and equal rights have to be the main themes of citizenship it seems. Peter E. Makari goes as far as to state that when equality is not given, membership is interpreted as denied in modern societies today.⁴

It is important to bear in mind though that each member of a society experiences “multiple and overlapping types and forms of membership in different groups on such grounds as ethnic, religious or cultural identity (...).”⁵ Hence, the Copt for example has to attempt to connect the religious affiliation with the identification of oneself as an Egyptian. In this process two major concerns rise to the surface: To what extent can one express his or her religious identity and be tolerated,⁶ especially a member of an indigenous religious minority? And “what is the definition of community in Egypt? Is it the community of Egyptians, or is it defined in terms of religious affiliation?”⁷

Suad Joseph makes the point that in Middle Eastern societies the individual citizen is connected to the state through membership in a religious community. A religious identity becomes here a political one, as the citizen-state relationship is negotiated and determined through the religious community and identity.⁸ “Thus, the individual member of the society is accorded his or her legal status by virtue of belonging to a specific group; citizenship becomes in effect an *indirect* relationship

² Butenschon 2000: 5.

³ Butenschon 2000: 11.

⁴ Makari 2007: 16.

⁵ Naim 2008: 158.

⁶ Makari 2007: 8.

⁷ Makari 2007: 16.

⁸ Joseph 2003: 11.

between the citizen and the state (...).”⁹ This fact is highly significant for this research on Coptic divorce. Copts are thus connected through the church to the state, which in result weakens the latter and strengthens the church, putting it into the position of a Coptic representative. In question of Coptic divorces and remarriages, as these are as well religious issues as Pope Shenouda pointed out, one has to always bear this reality in mind.

Citizenship here is ultimately connected to religion and the family, which are both interconnected in Egypt as well through Egyptian family law. As there are no civil alternatives to the religious family laws in Egypt, these codes have been critical in creating the legal identity of citizens, as well as linking the family directly to religious institutions and leadership.¹⁰ The problematic of having no civil alternative to the religious family laws becomes utterly noteworthy here, as the citizen has no chance of asking the state to intervene in the religious institution’s decisions and the state has no chance of it, even if it wanted. Religious institutions as well as religious identities become logically all the more powerful through these linkages and regulations in the PSL, as these are the only area within the state where one’s *own* religion and religious heritage are still practiced and preserved.

This brief account is extremely important for the further developments and illustrations of this research. Only through these considerations and realities become the conflicts and the dilemmas the Copts in Egypt are facing, and the deepness and complicatedness of the discourse on Coptic divorce clear. In connection to the brief illustrations from above derives the main argument of this thesis, which is that even

⁹ Butenschon 2000: 23.

¹⁰ Joseph 2003: 20.

though the nationalization of the courts in 1956¹¹ was supposed to bring about unity and equality among the Egyptians, it achieved the opposite, showing that Coptic Egyptian citizens do sometimes need to choose between equality before the law and freedom of practicing their religion. This can especially be seen in the question of Egyptian PSL in general and divorce in particular, as Egyptian PSL are derived from the shari'a (Islamic law) where divorce is allowed, but generally forbidden in Coptic law. Egypt's peculiar status between religion and secularism makes the church a state within the state, as two different judgments can be derived from the two different personal status laws, such as a divorce and even after nationalization in 1956, legal dualism has not ceased to exist.

The choice between equality before the law versus freedom of religion or rather a civil state code law versus Islamic law is one of the main themes of my thesis. Such a problematic that *some* members of a nation should have to choose between two basic rights as well as the problematic of double standards in the rule of law are both not compatible with the civil state. Every citizen of a civil state should have the same fundamental rights and should be equal before the law. Thus, this conflict then can be used as a way to reveal basic features of Coptic divorce, as it puts the Copts in the position of having to choose one right over the other.

This conflict is, in my opinion, also one of the reasons that triggered the national debate on Coptic divorce in the media. Just in recent years there have been a couple of cases, such as a group of 45 Copts that converted to Islam to obtain a

¹¹ Law No 462 was issued under President Nasser in 1956, which abolished the religious PSL courts and brought them under the national courts. This is one of the key years and events in this thesis, as this law included the further centralization of the Egyptian state but did not abolish dual legalism as it incorporated the stipulation that each litigant and each case would still be judged through its own religious canon personal status laws.

divorce and then wanted to convert back to Christianity in 2007. While at first the court's decision opted against it, in the end the Christians won their case and the religion in their identification papers was officially changed again. Pope Shenouda, however, did reject openly to issue them permissions to re-marry. This rejection then triggered many responses from intellectuals, Muslims as well as Copts, and state officials as the Supreme Administrative Court ordered the church to issue such permission. This case is going to be used as one of the main examples in this thesis to illustrate the agendas, motivations and double standards of the church as well as the Egyptian state in this debate. Both represent themselves as protectors or demanders for equal citizenship rights for Copts, but in the end, citizenship is limited by each.

Challenges and Acknowledgments

It becomes quite obvious how complicated and controversial the issue of Coptic divorce is. As with any topic, a scholar should try to research a topic as unbiased as possible, however, it is clear that biases, opinions and tendencies are developed throughout the research process. I have tried my utmost to write this thesis as neutrally as possible. As a Copt and a European, I tried to remain aware of my own biases. Yet I do believe my oscillation between siding with the Egyptian state on one point and with the Coptic Church on another is a reflection of bias or deference, but rather conveys just how complicated the issue at hand is.

This thesis is just the first step towards a comprehensive study on Coptic divorce. Further research needs to be done in various questions and problems that come with it, such as the multilayered nature of the discourse as well as the struggles. This thesis focuses mostly on the political debates and the struggle between the government and the Coptic Church. The inner-laity and inner-church struggles are

touched upon, but surely need to be developed much further, as well as the religious and legal layers of the debates. The politicization of religion, of both Islam and Coptic Christianity, that has happened in Egypt since the presidency of Anwar Al-Sadat is mentioned in this thesis as well, especially in its expressions through sectarian violence. While this point needs to be developed further, it is beyond the scope of my research.

It is naturally quite clear that neither the Egyptian state nor the Coptic Church are homogenous entities. This thesis' aim is neither to homogenize these entities nor to imply that all of the Coptic clergy or all of the state administration act to gain power and influence over the Coptic laity or over the respective other as well. Certainly, there are clergymen that act purely out of the conviction of doing what is best for the laity. The debate, at least for the Coptic Church, is clearly about a religious issue. However, this thesis aims to demonstrate that it has political undertones as well, which should not be underestimated. However, even though throughout the thesis, I refer to these individuals as 'the state' and 'the church', I am aware that these institutions are not homogenous and there are struggles, discourses and conflicts within.

Research Questions

In my thesis I am going to analyze the nature of the national debate on Coptic divorce: Is it political, legal or religious? I aim to illustrate that the question of Coptic divorce combines these three aspects and therefore has to be examined through all its different characteristics. The political aspect, for example, is hidden in the Copts' choice between freedom of religion and equality before the law—two fundamental rights of citizenship—as well as the power struggles between the church and the state.

The question of state intervention becomes evident here, but how much would religious freedom be confined then? It is also a legal debate of course, as it raises the question of which laws should govern whom, or can there be a unified code of laws, which respects and tolerates every citizen's class, gender, beliefs, etc.? The problem then becomes religious as well since personal status law is a religious-based law. The PSL in Egypt, which are based on Islamic law, should have no basis for ruling over the Copts but it would grant them more rights to divorce than their own laws.

My thesis also identifies the actors and structures in the debate over Coptic divorce. I focus on three main actors: the church, the state, and the Coptic laity. What prompts the individual actors and structures? What are their positions, intentions and goals? It is evident that each side of the Coptic divorce issue has to be seen, examined and understood in its different contexts. The Egyptian state for example faces the dilemma of, on the one hand, being progressive and promoting justice and equality among its citizens and, on the other hand, proclaiming itself as being Islamic and honouring its religious traditions and customs.

The Coptic Church, on the other hand, first and foremost aims to 'protect' its community, whose basis is the family, while also calling for equal national rights for the Coptic citizens of Egypt. Sectarian tensions and violence become especially important here and always need to be remembered and mentioned when analyzing the church's position and the developments of Coptic divorce laws. But wouldn't full equal rights mean as well that the Coptic citizens could divorce just like the Muslim citizens can? This position is perhaps surprisingly widely held. Coptic as well as Muslim journalists point out the double standards in this debate, which lead back to the main issue, freedom of practising religion versus equality before the law.

Chapter Outline

The positions of the church, the state and the laity on Coptic divorces and Coptic PSL do have to be understood in their contexts. Therefore, history plays an important part in comprehending the debate, especially the sectarian tensions that have risen since the 1980s as well as the history of the Copts in Egypt. In Chapter Two, “Divorcing in Christianity, Islam and the Egyptian State,” I analyze the history of the Coptic divorce laws, the specific legal articles and their changes and developments in connection to the political and social history of Egypt, naturally with a specific focus on the Copts in Egypt and the relationship between the state and the church. This chapter demonstrates how Coptic divorce laws developed alongside many significant factors, such as the political climate in Egypt, sectarian tensions, the relationship between the president and the pope as well as the influence of Islamic laws and their changes. Such comparisons will confirm how these PSL and these conflicts about them are as much about religion as they are a reaction to the wider environment, climate and atmosphere of Egypt.

The third chapter, “Divorcing Copts Today: The Public Discourse,” is an illustration and analysis of the media discourse on Coptic divorce, with the main example of the case of 2007/2008 and the question of re-conversion and remarriage. This chapter’s main aim is to demonstrate the double standards of both the church and the state in this debate, proving that divorce becomes here an arena for negotiating citizenship and control over the Coptic laity. While it should not be denied that the religious undertones and levels are important and significant, especially to the Coptic Church as the PSL in Egypt are supposed to be based on religion and thus not a state matter, one cannot refute that the political undertones in this debate are equally strong. The public discourse already hints at the other choice the Copts are facing in this

discourse. Not only are they forced to decide between two basic laws, they also must choose between their state and their church.

“The Church versus The State,” the fourth chapter of the thesis, deals more specifically with this conflict and choice of the Copts. As both the church and the state claim to be the Copts’ representative, when it comes to the question of divorce and remarriage, the Coptic citizen will ultimately have to choose between one of them. This is significant in that the Coptic Church has actually the right to ask for that kind of power and influence over Coptic family affairs, because firstly, the PSL are religious in Egypt and thus leave the church as the authority and secondly because the state is recognizing the church as the Coptic civil and political representative out of the concept of Middle Eastern citizenship. This chapter thus illustrates that the church has become a state within the Egyptian state in regards to family matters as two contradicting judgments can and often will be issued in the exact same divorce case. The question of remarriage is central here and becomes once more a testimony of the discourse’s undertones, which are control and power struggles between the two entities and which put the Coptic citizen right in the middle.

Review of the Literature

The public discourse on Coptic divorce is multi-levelled and truly complicated. One has to keep in mind the social and political environment to understand the true implications and reasons, which are underlying of the actors’ actions, agendas and attitudes. Without keeping those in mind, one fails to truly grasp the complexity and different undertones of this issue. Therefore, a variety of sources are needed to completely comprehend and convey all the underlying nuances and implications.

As I have mentioned above, the topic of Coptic divorce, especially in contemporary times, is highly under researched. Most of the scholarship deals either with the history of the Copts in Egypt in all its variety, be it sectarianism, the history of the church's formation or the Copts' role in politics. Rarely are there sources that deal with Copts divorcing in Egypt, but the few that do mostly describe Copts using the Islamic courts during the Ottoman Empire.¹² I have used the existent scholarship in order to build a historical framework to my arguments as well as provide proof that before the nationalization of the courts, Copts did not face the choices and difficulties they face today. Thus, one of the key years of my thesis is 1956, the year of nationalization. Another is 1938, the year in which a Coptic canon law on divorce was drafted by the Coptic community council and which is still used today by the courts, even though the church does not recognize it. I have focused furthermore on the 1970s, where sectarian tensions have run especially high and in which the conflicts between the state and the church escalated. But as my thesis is a contemporary work, the main focus lies on recent years, such as 2006 and 2008, in which the Supreme Administrative Court issued ambivalent decrees in relation to Coptic divorces.

Contemporary works are difficult, and in English I would say impossible to find. Arabic sources are more widely available but contemporary works on Coptic divorce are also lacking. Mostly they are, as their English-language counterparts, theoretical works on the power structures or politics of law. I think this is probably because of the high controversy of this topic as well as the 'public sensitivity' among many Copts that church matters should stay inside the church. Only very few authors have taken on the task of writing about Copts divorcing today. The most prominent

¹² See for example the works of Najwa al-Qattan (1999), Muhammad Afifi (1999) or Ron Shaham (2006).

study is by Coptic journalist and activist Karimah Kamal (2006). Her study provides an historical background but focuses on the present issues. Her sources consist primarily of her numerous interviews with intellectuals, such as Professor Muhammad Nur Farhat and Dr. Samir Tanaghu, and examples of divorce cases filed by Copts in the past and present. She has also included letters to her from readers, both pro-divorce and anti-divorce voices from the Coptic laity. My project departs drastically from hers, as she neither focuses on citizenship nor on the public debates in the press. It becomes obvious in her research that she is not in the pro-church camp in this conflict, as she is not attempting to scrutinize the church's position sufficiently.

I have used a variety of diverse historical studies. Some sources deal with the history of the Copts in Egypt, which does play a (granted) minor part in the thesis. However, I incorporated these studies, such as Pennington (1982), McCallum (2007) and Tadros (2009), since I believe it is important to know the history of the Copts in Egypt and the history of the church-state relationship in order to understand the different positions in the contemporary conflict, especially the church's and its devote followers. My second chapter describes the history of Copts in Egypt alongside the history of the divorce laws, in order to illustrate their connection. In this respect, these historical studies become extremely important to analyze and understand the church's attitude in this issue.

Many works in related scholarship that I have used are theoretical or historical works on the Egyptian court system or Islamic law in Egypt. In these works, one can sometimes find a few pages or a chapter about non-Muslims who use these courts. I have utilized studies like Sulayman's (2006), Brown's (1997), Afifi's (1996), al-Qattan's (1999) and Shaham's (2006) to provide the historical background of my project. But mostly the scholarship describes Coptic divorce from a legal and

historical perspective, such as the history of Egypt's courts, the historical development of Coptic divorce laws and how Egypt's Copts figured into Egypt's legal history. Thus, one can build a theoretical framework in regards to the Egyptian court system and its history, Egypt's legal and political history as well as Islamic law and its developments. Actual research for contemporary cases on non-Muslims using these laws though is very rare. Other sources, such as Afifi (1996) or Shaham (2006), explain how Copts used the Islamic courts, which will be important to show that before the nationalization in 1956, the non-Muslim citizens did have a choice of which court to adhere.

The problem with these studies is that they do not connect their research to contemporary times. Therefore I think my thesis can make a niche for itself by connecting the past with the present. Furthermore, my thesis links Coptic divorce directly to Coptic citizenship, something that has not been done in the related scholarship. My project departs thus from previous research, as its aim is to analyze Coptic divorce and its discourse in contemporary times in connection with the choice between two basic laws that every Copt, who strives to divorce, faces. As it has been illustrated, scholarship on this topic is scarce, therefore I use newspaper articles to provide a basis for my arguments and for my analysis on the public discourse.

Sources and Methodologies

One of this thesis' main sources include newspaper articles from *Al-Ahram Weekly*, *Al-Masry Al-Youm*, *Daily News* and *Egypt Today*. These articles are my main primary sources as they are one of the only ways to gain insight into the contemporary state of the Coptic divorce issue. They also voice the opinion of the state officials, public, and clergy alike. As these articles build the basis for my arguments on

contemporary times, I have focused solely on these years, starting with the year 1999 until 2010, especially concentrating here on 2006, 2007 and 2008. I have decided to include governmental (*Al-Ahram Weekly*) as well as independent newspapers (*Daily News Egypt, Al-Masry al-Youm, Egypt Today*) in order to obtain and balance a variety of viewpoints.

All of the articles I have drawn upon can be found in the Internet archives of each newspaper's website. I have used only the English sections of these archives, as I needed to narrow my research further. Because the public debate has been revived in recent years, numerous articles on this topic are available. All of the newspapers I have used are major ones in Egypt and have huge, accessible websites and archives. While searching for and reading these articles, I put my focus on the question of citizenship in connection to divorce, concentrating more on the Coptic voices, as this thesis is about Coptic divorce, but I have included government officials' statements as well, scrutinizing each attitude and testimony.

Other key factors that I kept in mind as I did my research were the double standards of the church, as well as the state. I chose the articles that best conveyed the complete picture of Coptic divorce, with all its different nuances and facets, while I continued to ask major questions: How and where do these individuals or institutions perceive the connection between Coptic divorce and Coptic citizenship? Is there such a thing as a mainstream attitude among the laity? On which nuances of Coptic divorce is concentrated the most – the political, religious or legal nature? What are the undertones in this debate – is it truly about divorce or is it more of a power struggle between the different actors? The third chapter of this thesis is the result of this research, an analysis of the public discourse on Coptic divorce, in which special

attention is paid to main factors and nuances of this issue, such as its political nature in connection to citizenship and the double standards that creep into the debate.

Three main voices in this public discourse are those of Gamal Nkrumah, Sameh Fawzy and Milad Hanna. The latter two are Coptic intellectuals that are often quoted in newspapers, while Fawzy has written numerous articles on Coptic divorce as well as Coptic citizenship. Through their writings, it becomes fairly obvious that all three of them are secularists, or at least of the opinion that the church should not be given the political power it now holds. Nkrumah, whose mother is an Egyptian Copt and father was the first president of Ghana, has written extensively on the issue of Coptic divorces. While he mostly cites in his articles for *Al-Ahram Weekly*, it is whom he cites, such as Hanna, Fawzy or Mageed Tobia, another Coptic activist that makes his own attitude as a secularist quite obvious. However, I have contextualized the voices quoted in these articles, rather than the authors themselves.

I have put the argument of the secularists alongside the clergy's, the government's and the public's, in order to present a balanced picture of all the different undertones and nuances of the debate on Coptic divorces, as each group would focus on different aspects or would have a different stance towards a specific issue, such as citizenship or the church's attitude for example. It is in this way, that I divided the articles up, rather than group them together. I focused mainly on the persons quoted, rather than the author's comments, except in a few cases, such as with Sameh Fawzy who is a prominent Coptic thinker himself, and thus a member of the laity in the public discourse. I have partly included the Muslim public though through Karimah Kamal's study on Coptic divorce. Through her various interviews, with both Coptic as well as Muslim professors of law and lawyers, the Muslim public is given a voice as well in this analysis. I do limit myself to the Muslim intellectuals Kamal has

interviewed, as it would have broken the scope of this research if I had included Muslim public opinion. I also believe that in these power struggles between church, state and laity, the Muslim public does not play a significant role, and thus I have decided not to include that voice in a bigger extent.

In order to present my arguments and provide substantial proof and a framework for them, the above-described method of arranging the public discourse has been much more helpful and efficient, in that it focuses solely on the three main actors – the church, the state and the laity. Contextualizing the articles according to their authors' religion, political attitude, etc. and not by the individuals and institutions that are being quoted, better elucidates my analysis of the public discourse. The discourse on Coptic divorce has a religious, political and legal nature and each struggle is equal in importance and intensity to the others.

By combining the variety of historical studies with the contemporary newspaper articles, many facets and nuances of the discourse on Coptic divorce have become apparent in this exploration. One has been mentioned above, the reality that this discourse has in fact three natures and cannot be understood without either one of them. Another conclusion drawn in course of this research is that the power struggles between the church, which has become a state-like entity within the Egyptian state and the Egyptian state itself, are not as much about divorces as they are about control – control over the Coptic laity, their private affairs and the Coptic PSL. Divorce becomes in fact, the arena of negotiating Coptic citizenship, which is limited by either force, the state as well as the church, even though both claim to demand and defend full citizenship rights for the Coptic citizen, who is put in the middle and has to choose not only between his own agendas, wishes and desires but between his church and his state.

2. DIVORCING IN CHRISTIANITY, ISLAM AND THE EGYPTIAN STATE

Both Islam and the Coptic Church have different histories of dealing with divorce as well as completely different understandings of the concept of marriage. While in Islam it is handled as a contractual matter and thus can be dissolved if necessary or if one of the two parties does not honor this contract, in the Coptic Church it is a sacrament, not to be broken by anything except adultery.¹³ As these two religions, with their own understandings and customs, have lived and developed next to each other for centuries in Egypt, it is quite natural that a meshing of their customs and traditions, such as marriage and divorce for example, has taken place over time. It is also natural and in connection to the mixing of these traditions, that as society develops and changes in certain directions, these customs and, in Egypt's case, laws would have to change with these developments, be these changes rooted in liberalization or in fundamentalism.

I aim to demonstrate in this chapter how religious divorce laws in Egypt have changed and developed from 1938, which was the year the *Majlis al-Milli* (The Coptic Community Council) issued a decree on Coptic family law, which was then applied by the state¹⁴ until today in relation to the history of the Copts in Egypt. I will briefly touch on Islamic divorce laws in order to show the similarities (and differences) between these two legislative systems. In order to put these laws and developments then into a practical perspective, I will further give a description on the views of the Egyptian state on the matter of Coptic divorces and divorce laws and how legislation in general is to be handled in its point of view. When the developments of Coptic divorce laws are told alongside the history of the Copts in Egypt, it becomes clear that

¹³ Afifi 1996: 202 (Christianity), 204 (Islam).

¹⁴ Sulayman 2006: 9.

these laws did develop according and in connection and influence to the social and political history of Egypt.

My main argument of this thesis is that the nationalization of the courts in 1956 forced Coptic citizens to choose between equality before the law and practicing their religion freely, two major citizenship rights that should not be mutually exclusive and that should be granted to every Egyptian citizen. The nationalization of the courts further muddled Egypt's ambiguous status between a secular state and a religious state, as legal dualism has not ceased to exist and the church has become a state within a state, in regards to personal status laws (PSL). While before 1956, Egypt had a dual court system, in which PSL cases were handled in different courts according to one's religion, as we shall see, the nationalization of 1956 thus has centralized the court system and brought it a lot further under the state's control. However, it has neither centralized nor unified the *legal* system of Egypt, as the PSL cases are still handled through various legislations, according to the litigants' religion.

This main point can be proven through the review and comparison I provide in this chapter. Divorce laws changed according to history, whereas the sources – the new testament, decisions of the Holy Synod, sayings of the apostles and books of the fuqaha (the religious scholars) have not, and throughout this history the Coptic Church has called for equal citizenship rights.¹⁵ But through this chapter, it will become apparent that the church is contradicting itself, when it comes to divorce and marriage laws and citizenship rights. Either the state will grant the church control over these laws, as it has done in the past, or it will seize it, which has partly happened in various incidents in recent years, such as in 2006 or 2008 when the Supreme Administrative

¹⁵ Kamal 2006: 112.

Court ordered the Coptic Church to remarry divorcees even though it did not recognize their divorce.

In either case, divorce here becomes an arena where citizenship is not only negotiated but where Copts are actually made second-class citizens, if not by the state then by their own church in the name of protection of the community and the religious values. The developments of the Coptic divorce laws are part and parcel of the modern history of the Copts in Egypt. The struggles of the different legal reforms and citizenship issues as well as the tensions and struggles between church and state and Copts and Muslims all have undoubtedly influenced the development of Coptic divorce and its laws and regulations.

2.1 The semi-colonial period

My overview of the Copts in Egypt begins with the year 1919 because the 1919 revolution represented a significant turning point in Egypt's national history as the anticolonial struggle for independence from the British, followed by a constitution in 1923 opened up the discourse on citizenship.¹⁶ In addition, most Egyptian secular thinkers also consider the 1919 revolution as the highpoint of political and national integration amongst all Egyptians, regardless of religion.¹⁷

After World War I, the Wafd¹⁸ political party established a political climate that was liberal and secular, where the Copts played an important role in Egypt's fight for independence. The Wafd, under Saad Zaghloul, unified Coptic and Muslim Egyptians in the struggle against British occupation with slogans, such as

¹⁶ Hatem 2003: 34.

¹⁷ Philipp 1988: 387.

¹⁸ The Arabic word 'wafd' means delegation.

‘Nationalism is our religion’, that stressed the unity and equality among the citizens.¹⁹ This political unity largely lasted throughout the remainder of Egypt’s period of quasi-independence (1923-1956). In this politically secular environment, the Coptic *Majlis al-Milli* (something akin of a Community Council) issued in 1938 a decree²⁰ of Coptic PSL naming nine reasons for divorce, even though the Holy Bible states that divorce was only permissible in the case of adultery (i.e.: MT 5,32 or LK 16,18).²¹ Articles 50-58 of the 1938 decree stated that divorce is permissible in the following cases:

Adultery, conversion to another religion, absence for a period of five consecutive years with no news of whereabouts, being judged and sentenced to seven years imprisonment, mental illness, a contagious illness, or impotence with no recovery for at least three years, serious domestic violence, debauchery or immoral behavior, separation for at least three years as a result of untenable marital life, joining a monastic order.²²

The potential for divorce was thus widened considerably and, as one can see, in tune with modern society and relationships in a liberal, secular climate. Such a political climate influences the institutions’ views and attitudes towards relationships and family life as we can see. Thus divorce was granted more easily when the Coptic community was not understood to be in danger. The preceding articles 45,46 and 47 describe then the rights and obligations of husband and wife. Article 45 obliges the husband to protect his wife while the following two articles compel the wife to be obedient to her husband (46) as well as to live with him and follow him to whichever place he might go, taking care of the money, the children and to supervise the

¹⁹ Pennington 1982: 161.

²⁰ This decree is actually rooted in 13th century, as Dr. Magdi Guiguis, historian at the American University in Cairo (AUC) asserts.

²¹ Afifi 1996: 203.

²² Guindy 2007: 3.

household (47).²³ It is interesting to note how “relatively modern“ the stipulations of divorce were, but marriage life was still organized in patriarchal terms and these duties and rights, were much the same as in Islamic Law. These laws, that were developed in a time of cooperation between Muslims and Copts, are proof of such a relationship, where interaction and influences had surely taken place.

Marriage in Islam is serving the community by regulating relationships and assigning rights as well as responsibilities, to the husband / father and the wife / mother. Such responsibilities and rights include the concept of *nafaqa* (maintenance) and *nushuz* (disobedience). The husband’s responsibility to maintain his wife and provide her with food, housing and clothing due to her class’s standard of living were met by his wife’s responsibility to be obedient to him.²⁴ The similarities to Coptic laws on family and the rights and responsibilities of wife and husband become quite obvious. Both are decreed to be ‘protecting the wife’, here in Islam meaning maintaining and providing for her and her obedience towards the husband.

Even though the *Majlis al-Milli* had no legislation authority, as the Holy Synod and of course the pope did, the decree was recognized as derived from customs, which is a principal source of lawmaking.²⁵ The 1938 decree continued therefore to be understood as a basis for Coptic canon law in personal status matters and was thus applied in Coptic personal affairs after Law 462 in 1956, by which Nasser nationalized and unified the courts and brought all PSL cases under the National Courts. Before 1956, each religious denomination had its own court and these religious courts were handling PSL cases. This weakened the state while giving the religious institution a lot more influence and power over the laity’s private affairs,

²³ Sulayman 2006: 9.

²⁴ Tucker 2008: 50-51.

²⁵ Sulayman 2006: 9.

as we shall see in the following chapter. Article 6 of Law 462 stipulated that the canon laws of each religious denomination were to be applied in PSL matters, only if both litigants of a case were of the same sect and rite. If this necessary stipulation were not fulfilled, Islamic law would be applied to the case.²⁶

Since the late nineteenth century, the jurisdiction of the Islamic courts has been largely confined to personal status matters. Islamic PSL were not strictly regulated nor state sponsored until their nationwide codification in 1920. While reforms of the Hanafi Islamic laws were opposed by certain segments of the public, Egyptian legislators started to draw from the Maliki and Shafi'i schools of law in their 'nationalization' of the Islamic PSL.²⁷ The 1920 nationwide codification of Egyptian Islamic PSL (and its 1929 amendment) largely influenced and inspired the 1938 Coptic personal status legislation. They widened the scope for female initiated divorces and at the same time limited the husband's right to unilateral divorce, which is called *talaq*. In this form of divorce, the husband does not need a reason for divorce, he does need to go to court, his wife cannot protest or fight it and his financial obligations towards her are temporary and limited.²⁸

In 1920, Law 25 was introduced, through which wives could obtain judicial divorces for various reasons, for example, in case the husband did not provide financially, if the husband was absent or imprisoned and could thus not provide for her or if the husband had a physical or mental illness without any hope for a cure.²⁹ In the face of the struggle for independence from the British Empire, the Egyptian administration put a strong emphasis upon the physical as well as financial health of

²⁶ Sulayman 2006: 14.

²⁷ Kholoussy 2005: 320, 326.

²⁸ Tucker 2008: 86-87.

²⁹ Kholoussy 2005: 326.

marriage which was viewed as the cornerstone of the burgeoning Egyptian nation.³⁰ Thus in 1920, attempts were made to secure marriage much further, which resulted in granting the wives very limited grounds for judicial divorce, such as the husband's inability to financially support her or the an incurable illness, which had to be unknown to the wife before the wedding.³¹

Law 25 of 1929 recognized the wife's right for divorce in case of maltreatment, which had not been established in the 1920 reforms.³² Furthermore, the 1929 law is significant in that it regulated and restricted the men's right to unilateral divorce. It constricted this right of the husband through a number of reasons and circumstances, in which the divorce would not be recognized. These stipulations included for example, if the divorce formula was uttered under intoxication (Art.1), as a threat to the wife (Art.2) or if the divorce oath was uttered three times at once (Art.3).³³

As the Islamic *shari'a* provided men with this right of unilateral divorce, Egyptians in this time called upon the government to restrict these stipulations. This has to be seen in the background of the struggle for independence and thus, the Egyptian family needed to be protected from Egyptian men haphazardly destroying it. It is interesting to note that the same tightening and restricting of divorce laws later happened for the Copts under Pope Shenouda in the 1970s. Both Coptic and Islamic codes of law thus underwent similar changes for similar reasons in the twentieth century, as the protection of the family against an outer enemy can certainly be understood as a basis for reforming these laws on both sides. While for Copts the

³⁰ Kholoussy 2005: 327.

³¹ Kholoussy 2005: 326.

³² Kholoussy 2005: 327.

³³ Kholoussy 2005: 330.

sectarian violence and tensions represented this threat from the 1970s onwards, for the Egyptian Muslims it was the British in colonial times that endangered the Egyptian family. In both instances, the family was understood as the basis of the community and thus for the sake of the community's survival had to be preserved, nourished and protected at any cost, even if these families were unhappy.

2.2 The Copts under Nasser

While after full independence under Gamal Abdel Nasser's era (1955-1970), the Copts' political role became largely marginalized, this period had positive outcomes for the Copts as well. The secular climate was continued and there were little conflict between the state and the church, which was mostly because the pope, Anba Kyrillos, understood himself as a spiritual and not political leader.³⁴ One could wonder if the pope's self-portrayal was in turn connected to Nasser's rather secular politics. For instance, the 1956 constitution established a "legal belief in the horizontal comradeship between Muslims and Copts and men and women."³⁵ Article 3, which granted equality before the law, regardless of sex, religion or race, and Article 43, which granted absolute freedom of belief, are two examples of nurturing equality between Muslims and Copts. But even in such a secular climate, religion did creep into the constitution at some points. Article 5 declared the family as the basis of society, which was to be shaped by religion, ethics, morality and patriotism and Article 3 named Islam the religion of state.³⁶

³⁴ Pennington 1982: 165.

³⁵ Hatem 2003: 48.

³⁶ Hatem 2003: 47-48.

Christian laws as well began to be only somewhat protected as switching one's sect or rite, or even one's religion became a favored strategy for litigants to obtain different judgments. The switching of faiths or denominations became a serious and highly problematic loophole of Law 462 of 1956, which stipulates that Islamic law should be applied if litigants are not of the same sect or rite, as we have seen. Even though this section of the law is interpreted as meaning that the switching of sect or rite has had to happen before the actual dispute in court occurred, and Islamic law was then only to be applied, as well as when one of the litigants converted to Islam (here it does not matter when the conversion occurs)³⁷, but this interpretation was not always followed in the past. It is doubtful that the application of Islamic law is not really justifiable when both litigants are Christians and have existent laws. Clearly, the state's aim was to apply another code of law when two competing Christian codes clashed and thus to mediate between the two. Yet it is understandable that the Coptic Church views this as a serious problem.

These developments among the Coptic laity, as it was finding ways to resist and oppose possible judgments of their own church, must be seen in their specific historical context. The 1950s were, as I have mentioned, coined by a relative unproblematic relationship between church and state as well as Muslims and Christians. Thus, Copts opposing the church's judgments and dogmas could hardly be accused as traitors and splitting the Coptic community, as it is done today, because of the relative harmony amongst the Egyptians. Through the secular climate, the Coptic identity and community was not perceived to be under threat or in danger. The church could not build on this argument in the past, as it can now.

³⁷ Kamal 2006: 123.

A few decades later a split was created in the Coptic laity in 1971, which has not ceased to exist until today: the laymen that defend the church's views as being sacred versus the laypeople who were going against these views in search and pursue of their own benefits. This split was not to be mended but only widened further as time went on and the political and social climate in Egypt changed under a new president, as well as under a new pope of the Coptic Church.

2.3 The Copts under Sadat

Both Nasser and Pope Kyrillos died in the beginning of the 1970s, which led to changes in the relationship between the state and the Coptic Church. The pope's successor, Shenouda III, was both praised and criticized for his uncompromising nature, which critics connected with his authoritarianism.³⁸ Similarly, Nasser's successor Anwar al-Sadat (r. 1970-1981) emphasized Islamic piety strongly in his politics.³⁹ The new president had various reasons for supporting the already developing Islamic trend that was occurring in Egypt since its humiliating defeat to Israel in the 1967 war and the deteriorating economic situation. Through supporting the Islamists, President Sadat's aim was to weaken the Nasserites and to gain political support of the Islamist student organizations, which he in return strongly supported. Both the pope's authoritarianism and the president's mobilization of Islam helped create a lot of conflicts between the two forces.

The 1970s were the starting point for a strong and continuous wave of discriminations against the Copts in the public sector, such as political and educational

³⁸ Pennington 1982: 167-68.

³⁹ Pennington 1982: 168.

disadvantages. The Copts related everything to their religion, which gave them a minority status,⁴⁰ making them increasingly aware of legal discriminations because of the implementation of certain Islamic rules,⁴¹ which added to the tensions between the two communities. The 1971 constitution for example would in Sadat's words "express the true Egyptian way of life and tradition."⁴² Article 2 stated that Islam would be the religion of the state,⁴³ which in itself was not new but just maintained from the 1956 constitution. But it was added that the *shari'a* would be a principal source of legislation.⁴⁴ Thus, one has to always keep in mind that the "confessional troubles of the past ten years or so have been played against the background of this perception of discrimination."⁴⁵

Even though in 1977 Sadat "stressed the importance of 'national unity' (the government's shorthand phrase for peace between Copts and Muslims)"⁴⁶ sectarian incidents happened throughout this year in provinces, such as Minya and Assiut between Coptic and Muslim students as well as villagers,⁴⁷ thus occurring among all classes and segments of society. Copts accused Sadat's government of not caring about these events, as sectarianism worsened in the 1980s, when for example the Muslim fundamentalist group *Hizb al Jihad* tried to leave bombs in two churches in Alexandria.⁴⁸ Rather than attempt to settle these problems, however, the government passed Article 2 of the current constitution in 1980, which states that the Islamic

⁴⁰ Pennington 1982: 169.

⁴¹ Pennington 1982: 170.

⁴² Hatem 2003: 53.

⁴³ Hatem 2003: 53.

⁴⁴ Hatem 2003: 53.

⁴⁵ Pennington 1982: 170.

⁴⁶ Pennington 1982: 172.

⁴⁷ Pennington 1982: 172.

⁴⁸ Pennington 1982: 173.

shari'a would from now on be *the* main source of legislation.⁴⁹ It is not hard to imagine that the Copts' fears of Egypt becoming an Islamic state with them being degraded to second-class citizens intensified.

After further sectarian violence in the 1980s, Sadat criticized both Muslim fundamentalist groups as well as the Coptic pope. He accused the pope of wanting to become a political leader and building a state within the state, which would not do the Coptic citizenry any good. Sadat went as far as to state: "No one has harmed the cause of my Coptic citizens like this man."⁵⁰ Further clashes, which happened in 1981 in Zawyat al-Hamra, caused the president to banish the pope from Alexandria and his position as the Coptic patriarch to a convent in Wadi Natrun, from where he would not return until 1985 under Sadat's successor Hosni Mubarak.⁵¹

It would be plausible to assume that once again the 'cause' that president Sadat was talking about was probably the status of full citizens, with every right, freedom and responsibility that comes with it. That the pope was the person who hindered these attempts was a statement that the Copts utterly resented.⁵² A logical consequence to such an announcement, which was understood as unjust and false, was the strengthening of the clergy's position in the Copts' lives again.⁵³ The threat of Islamism urged the Coptic community to support the church and its clergy, as it was standing up against this force as well as the government, which was not successful in providing protection. The church in turn was reinforced by these political changes and became more conservative over time because the amendments of the constitution intensified the fears and worries of the Copts who then turned to their church that

⁴⁹ Hatem 2003: 54.

⁵⁰ Pennington 1982: 176.

⁵¹ McCallum 2007: 931.

⁵² Pennington 1982: 176.

⁵³ Philipp 1988: 386.

could provide protection. These amendments not only strengthened the church and its conservatism, but they politicized religion and religious institutions in a way that strengthened the church's opposition to the government's actions, simply by the support of its laity.⁵⁴

Under President Sadat and Pope Shenouda, tensions began to rise not only between the church and the state, but between Muslims and Copts as well. It was then that the Coptic Church started to adopt a more rigorous and stricter attitude towards marriage and divorce. In the past, Copts were not obliged to get married in the church. As the wedding prayer in the prayer book of the priest (*daftar salwat al-khidamat*) states two sentences the priest has to say, depending on the place of the wedding. Either in the church, where he refers to them to have come together 'at this blessed hour in front of the holy altar' or when the wedding is at home, where he exchanges the 'in front of the holy altar' with 'in front of this orthodox assembly'. But then the church issued a stipulation, which made the wedding in the church mandatory to be considered valid.⁵⁵ This demonstrates that the church does not want to relinquish any control it has on the family matters of its laity.

Shenouda's papal decrees no. 7 and 8 of 1971 were concerned further with the private lives of the Copts, stating that divorce was from now on only to be granted in case of adultery (7) and a re-marriage was only to be permitted through the issuing of a license to the innocent party of the two litigants (8). If a divorce were to be carried out because of any other reason, the church would not recognize it and thus not grant re-marriage licenses, and any relation that any of the litigants would have after this

⁵⁴ Hatem 2003: 54.

⁵⁵ Kamal 2006: 50. The author does not give a date or even a year of this specific decree. However, Dr. Magdi Guirguis asserts that this happened after 1985, when Pope Shenouda decided to reconstruct and further empower the Coptic Church.

divorce would be considered adultery.⁵⁶ This decree is based entirely on the views on divorce in the Holy Bible, which states, “Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.” (MT19;6) as well as Jesus’ teaching “But I say unto you, That whoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery.” (MT5;32)

Shenouda certainly intended to return to the ‘true’ and fundamental sources of lawmaking in Christianity, which is first and foremost the text of the Bible. He dismissed the other eight reasons that were put down by the *Majlis al-Milli* for granting a divorce as neither having a legal nor religious basis, as laymen put these down without any authority in these two domains.⁵⁷ I suppose another aim of Shenouda’s was strengthening the Coptic family, the basis of Coptic society, as Sadat’s policies posed an ever-growing threat towards it and him. Especially the question of the remarriage license seems to be a tool here to keep control of Coptic society and family, which had to be protected from the force of Islamism and a state that was propagating it.

As mentioned previously, it is worthy of note that Coptic and Islamic divorce laws underwent similar reforms and changes in the twentieth century. The reforms of both were aimed to restrict divorce and ensure marriage as a more permanent bond between the spouses. While they have been drafted in different time periods, I think these laws have influenced each other, as these connections are significant since they stem from the same basis. In a mix of feeling threatened and endangered as a community, both institutions, the church as well as the state, have reacted in similar

⁵⁶ Kamal 2006: 57.

⁵⁷ Kamal 2006: 19.

ways. Both have restricted divorce and ensured that marriages and families, and thus the community, are, at least legally, protected not only from the outer dangers but from threats within as well. Divorce or loose, easy divorce laws can be understood as one of these hazards that the community faces from within.

Needless to say, the decrees issued in the 1970s by Pope Shenouda did probably as much damage to the unity of Coptic society as they aimed to protect it. Through these decrees, all of the divorces that were issued prior to it out of other reasons than adultery were as a consequence not valid anymore. This truly is a major problem of changing the laws in such a manner and until now this has not been sufficiently dealt with. One has to question here, whether the church considers all the couples that had divorced and probably remarried in the span of these years adulterers. If so, the split in the laity, which naturally occurred after these decrees, would deepen further and would become more severe.

The Coptic laity was (and still is) mostly divided on the question of divorce and remarriage. Karimah Kamal gives this division a lot of emphasis in her book, citing a case where truly desperate measures were taken by a woman who had gone as far as accusing herself falsely of committing adultery, just to get out of her marriage.⁵⁸ I think this reaction, how crass it might be, can be described as a natural consequence. After all, it is only logical that members of the laity who suffer in their marriages and marital homes would oppose the church's strict rulings but those who did not have these troubles and burdens to carry would stand behind these decisions, as these were based on the Holy Bible and therefore considered sacred.

⁵⁸ Kamal 2006: 32.

It is interesting to note here that even the Coptic clergy was divided on those ideas.⁵⁹ In practice that is to say, the priests stretched the decree in its meanings and definitions of adultery. Karimah Kamal tells the story of an outrageous case, where a Copt was married to a paralyzed woman and in fear of committing adultery, asked the bishop to marry him to another woman, to which the bishop as well as his first wife agreed. The bishop supported his decision with declaring this man's paralyzed wife as 'dead' and therefore he could marry him to another woman.⁶⁰ It is needless to say, that this Coptic man was in fact living a polygamous marriage with the blessing of the church, something that goes against the *essential* Christian belief of monogamy and that is protected by Muslim judges of the Egyptian state, as well as we shall see.

A divided clergy is logically as much a threat to Coptic unity and the basis of Coptic society, the family, as lax divorce laws and the loopholes that Law 462 of 1956 had offered. To close these doors off to the laity, representatives of all Christian denominations of Egypt agreed to meet and develop a unified Christian law in 1978, which was sent to the ministry of justice for the People's Assembly to review, which until now has never happened.⁶¹ This draft law of 1978 names a few reasons on why a marriage can be annulled, such as one or both parties being forced to this marriage (Art.19) or one spouse having an incurable illness or impotence without the other one knowing before getting married (Art.20). But the only reasons for divorce are considered adultery or one of them leaving the Christian faith.⁶²

Through a unified Christian legal code and the addition of the second reason for divorce, the switching of Christian denominations to obtain a judgment based on

⁵⁹ Kamal 2006: 27,86 etc.

⁶⁰ Kamal 2006: 59-60.

⁶¹ Sulayman 2006: 5.

⁶² Sulayman 2006: 15-16.

Islamic law would thus cease to exist. I imagine that it was a matter of highest priority to the church in the end of the 1970s and the beginning of the 1980s, to regain total control over Coptic families and Christian PSL. Sadat changed Article 2 of the Egyptian constitution (Islamic law being now *the* main source for legislation since 1980) and as the pope got banished from his post in Alexandria, tensions between Muslims and Copts and fears among the latter began to rise and intensify. A return to one's own traditions, and rigidly holding onto those is one of the logical reactions and consequences of feeling constantly threatened. The church here stepped in, where the state did not, assuming responsibility for the Coptic laity, who were still Egyptian citizens and thus probably expecting help from the state. Here another divide then ultimately took place: the one between the state and the church. Ultimately, one of the main points in this split was in the arena of divorce, as the state kept on granting divorces basing these on the decree of 1938, while the church stood by its decision and refused to grant remarriages since Papal decree no 7 of 1971.

2.4 The Copts under Mubarak

Shenouda continued his attitude towards marriage and divorce after his return under President Hosni Mubarak as well. In 1996, the Pope issued a Papal decree in which he stated that only the Coptic PSL (which main principles were monogamy and no divorce except in case of adultery, both of which were based on the Bible) would rule and judge on Coptic family matters.⁶³ The message here is clear: it was directed at all those laity members that were looking for a way out, through switching denominations and thus manipulating the system.

⁶³ Sulayman 2006: 10.

To meet these threats toward the Christian community, Shenouda called the various Christian leaders of each denomination to review and revise the draft law of 1978 again, which resulted in an over-worked version in 1998. This draft also has never been reviewed by state officials.⁶⁴ In this draft law, the reasons for divorce were dealt with in Articles 113-115. Article 113 states that divorce is permissible if one of the spouses abandons the Christian faith and Article 114 allows divorce because of adultery. The new addition is Article 115, where the definition of adultery is considerably widened.⁶⁵ It contained: “The wife running off with a stranger or spending the night(s) away from home; letters sent to a third party indicating marital infidelity; the “suspicious” presence of a stranger inside the family home; a husband inciting his wife to commit adultery or debauchery; pregnancy that could not be attributed to the husband due to absence or illness; homosexuality.”⁶⁶

Thus in this draft law there are two kinds of adultery. Karimah Kamal calls these in her book *al-zina al-fa'aly* (committed adultery) and *al-zina al-hikmy* (judged or decided adultery), the latter connecting here with these wider definitions.⁶⁷ But in my opinion, these widening definitions of adultery bear some serious problems and dangers in them, especially in societies, such as Egypt, where such an act is considered strong shame not only for the perpetrator but also for the whole family.⁶⁸ It is obvious that the church leaders were trying to somehow connect life in modern society with the spirit of the Bible, as Jesus himself widened the definitions of adultery immensely (MT 5;28: “But I say unto you, That whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart.”). But

⁶⁴ Sulayman 2006: 16.

⁶⁵ Sulayman 2006: 26.

⁶⁶ Guindy 2007: 6.

⁶⁷ Kamal 2006: 24.

⁶⁸ Kamal 2006: 34.

here the danger is palpable, the accusations of adultery might truly get out of control through these loose definitions and could truly lead to everyone accusing everyone of this act, which means ‘societal suicide’⁶⁹ for the accused.

It is understandable and the first logical consequence that the definitions of these terms are going to be stretched and widened, as the laity is simply not given a choice in the matter. But it is still important to bear the possible consequences of these adaptations in mind. In the end though, it comes down to the split between court and church rulings, as the state still uses the 1938 decree as a basis, which the church has dismissed since 1971 and thus, two opposing judgments in the same case are the result. This conflict between the state and the church is explored more thoroughly in chapter four. It becomes also quite clear that PSL and family law respond to outside influences and developments as they are created and issued by specific religious institutions, in Egypt those being the Islamic and the Christian, or here Coptic institution and code of law. One has to wonder here, how is this legal dualism treated and understood in and by the Egyptian state? It is evident that Islamic and Coptic family laws in general, and divorce laws in particular, have been influencing each other throughout the years, and can be seen as a further reaction to outside pressures and developments. The attitude on these issues that the Egyptian state has taken on, underlines this point further.

2.5 The Egyptian State: Unified Laws?

As has been described above, PSL and the influence of religious institutions on these matters, as well as their attitude towards them have changed and developed over

⁶⁹ Kamal 2006: 58.

time in accordance to social and political influences. What is interesting is that in both religions the family is considered the basic unit of their communities and thus has to be protected from outside threats. The Egyptian constitution has assumed this attitude, stating in Article 9, that

The family is the basis of the society founded on religion, morality and patriotism. The State is keen to preserve the genuine character of the Egyptian family- with all values and traditions represented by it-while affirming and promoting this character in the interplay of relations within the Egyptian society.

This article adopts moreover the religious basis of the family, and thus granting the religious institutions exceptional control over this institution. One might wonder, why the religious institutions seek to control the private and family matters of their laity more than anything else? Muhammad Nur Farhat, Professor of Law and an interviewee of Karimah Kamal, gives one possible answer. He connects the religious order of the family to the fact that it is in its basic form the relationship between a man and a woman, which is encircled by many taboos that might lead to sins. Therefore a religious leadership to that part of the laymen's lives is in order, and religious institutions are seeking to control these morals and taboos.⁷⁰ Such a speculation is further supported by once again adhering to Egypt's constitution, which calls all Egyptian nationals to protect these morals and traditions in Article 12:

Society shall be committed to safeguarding and protecting morals, promoting the genuine Egyptian traditions and abiding by the high standards of religious education, moral and national values, the historical heritage of the people, scientific facts, socialist conduct and public manners within the limits of the law. The State is committed to abiding by these principles and promoting them.

⁷⁰ Kamal 2006: 116.

Connecting the family to religious morals, the state is supporting the influence of religious institutions on these matters as well as attributing the family and its laws to a divine sphere that is untouchable. As everything else has been placed under the direction of the state, it is not surprising that the religious institutions are trying to keep the only area itself, where its influence is still legitimated. Furthermore, it is not surprising that because the PSL are still based on sacred sources, its jurisdiction continues to be religious and that these laws have not been part of the unification in 1956, putting Egypt with its dual jurisdiction in these matters in a place between secularism and religion.

Law 462 of 1956 thus states that non-Muslim jurisdiction is to be continued in these matters. As we have seen, Article 6 contains the stipulation that this can only be justified if the litigants belong to the same sect and rite. Here, I want to mention another stipulation that has to be present in order to apply non-Muslim laws. This application can only occur when it does not violate Egyptian public policy.⁷¹ In order to understand the position of the state in further chapters of this research, this stipulation is very important. What is contained in Egyptian public policy?

In general, public policy contains the rules, regulations and norms that define a national legal order. In the Egyptian case, public policy is a mixture of a community's law that is considered the prevailing one (Islamic law) and that norms, and regulations are communal, internal affairs,⁷² which then results in legal pluralism. Nevertheless, the Egyptian Court of Cassation declared, "public policy is a secular concept that applies to all Egyptians regardless of their religion."⁷³ Through this secular approach, public policy is here then an apparatus to convey and support national unity and

⁷¹ Berger 2001: 96.

⁷² Berger 2001: 102.

⁷³ Berger 2001: 103.

religious coexistence⁷⁴, which is emphasized by the state as main principles and thus need to be protected at all costs, as we shall see. National unity might be defined here as a public general interest, and the aim of public policy is supposed to be the realization of this interest.⁷⁵

However, this secular approach is somewhat confined by the means of achieving this aim, as the court decrees that public policy in Egypt has its roots in Islam and Islamic law through which this goal can only be realized.⁷⁶ Here public policy receives religious undertones, and does thus not truly conform to national unity and equality before the law as Islamic law is understood to prevail. Yet, public policy here is based largely on Islamic tolerance for non-Muslim jurisdiction. Maurits Berger calls this the *dhimmi function* of Egyptian public policy, as Dhimmis (Christians and Jews) enjoy a privileged and protected status in Muslim society.⁷⁷ While public policy thus results from Islamic legal order, it preserves Christian norms and jurisdiction for its specific community, as this is an Islamic legal order in itself.⁷⁸

A good example of this function and of the way the courts issue judgments on PSL cases is the example of polygamy. Berger recounts how a Christian man argued that, as he was in a mixed Christian marriage, Islamic law would apply and thus, he had the right to a polygamous marriage. But the Court of Cassation ruled against this, with the explanation that polygamy would violate an essential belief of Christian marriage of all denominations.⁷⁹ Thus, public policy here protects the essentials and norms of non-Muslim jurisdiction and it divides between rules, regulations and laws

⁷⁴ Berger 2001: 127.

⁷⁵ Berger 2001: 107.

⁷⁶ Berger 2001: 105, 107.

⁷⁷ Berger 2001: 109.

⁷⁸ Berger 2001: 124.

⁷⁹ Berger 2001: 120-121.

for all Egyptians (such as inheritance law for example) and those that adhere to Muslim citizens only.

This legal dualism, while emphasizing religious tolerance, confines at the same time national unity and equality before the law of all Egyptian citizens. Thus, one might wonder if unified PSL would be a possible solution to the problem that the Copts are facing in regards to divorce and remarriage. There are voices that favor such a code of law, such as Professor Muhammad Nur Farhat. Farhat promotes a code of unified PSL for all Egyptians, as it would bring the citizens together and there should only be one code of law for one country.⁸⁰ Furthermore, the need to state the religion of each citizen on their national ID would then become obsolete, as this procedure was only necessary because of the duality of PSL codes.⁸¹

He bases his approach and the possibility of this code on the fact that the ‘pillars of lawmaking’ and the ways that laws are derived from religious sources in the case of PSL resemble each other in Islam and Christianity extensively.⁸² But as Egypt’s majority is of Muslim faith, it is only logical that the Copts fear the application of Islamic law to every aspect of their lives would be the consequence of such a unified code. Farhat acknowledges this fact, but proceeds that such fears can be assuaged by establishing this code of law through dialogue, understanding and tolerance between all parties and institutions. This fear and this apprehensiveness, which can be found on both sides, he continues, is the reason and the basis for the

⁸⁰ Kamal 2006: 108, 110.

⁸¹ Kamal 2006: 109.

⁸² Kamal 2006: 108.

narrow-minded attitudes of religious leaders and the hindrance to dialogue, which would benefit the nation and its general interest.⁸³

The professor concedes that some essentials of the two faiths are impossible to unify, such as polygamy or regulations on divorce and that these principles could then remain specific to each religious community while the rest was unified.⁸⁴ It is impossible not to raise the question here though, what would be different then from today's situation? Farhat does not seem to recognize that, while there certainly are many similarities to Christian and Muslim lawmaking, principles etc., especially when refraining from using religious texts by the letter but more in interpreting the 'soul or intention of the text', which he advocates as well⁸⁵, the true problem lies in the fact, that some principles are impossible to find a consensus on, without betraying the religious beliefs of one faction, which would here be the Christians. I do not think that unification is possible or even sought after in state or in church circles, as the matters that cannot be unified will remain according to each faith and thus it will be the same result as it is today, an ambiguity between unification and pluralism where nothing is really achieved. It is then unified just as an outward appearance, however in reality it remains divided.

2.6 Concluding Remarks

As this chapter has established, divorce is something that is hated both by Islam and Christianity and in Coptic Christianity it is only allowed in special circumstances and stipulations. This in itself is certainly understandable, as society is

⁸³ Kamal 2006: 120-121.

⁸⁴ Kamal 2006: 110.

⁸⁵ Kamal 2006: 115.

in these two religions understood as being largely based on the intact family and thus a destruction of this base through loose and easy measures, would consequently threaten the whole community, including its values, norms and traditions. Yet, if a family is not intact anymore, there need to be measures to dissolve this unit, in order for its members to continue living and participating in their specific community. These measures are then at first mediation, and if all else fails, the specific divorce laws and stipulations.

As these laws in Egypt, be they Coptic or Islamic, are firstly based on religious texts, which are hundreds of years old, it is only natural that there needs to be a distinction between today's situation of society and thus families and these texts, as they might not in all cases fit today's reality anymore. It is the role and responsibility of the religious leaders and institutions then, to understand these realities and their responsibility in responding to them.⁸⁶ Connected to this is consequently the ambivalence and difficulty of calling these laws, which stem from religious texts, sacred or divine. Through these attributions, the discourse or the opposition to these becomes virtually impossible, as this would mean an opposition towards God or the religious institution as a whole, which represents 'God's view'. It is consequently of utmost importance to distinguish between divine law and man-made law. Dr. Samir Tanaghu, Professor of Civil Law at the University of Alexandria, states in an interview with Karimah Kamal that one of the glaring mistakes and strongest dangers is the mixing and meshing of those two types of laws. In his approach, any law that is applied by the state, be it Christian or Islamic, cannot be holy or sacred as it goes through the interpretations, drafting and wording of human beings and thus loses all

⁸⁶ Kamal 2006: 132.

attributes of divinity, even if it is inspired or based on religion or religious principles.⁸⁷

I fully agree with this assertion. A discourse on these laws becomes possible as the whole issue of these laws as being divine is negated and are thus discussable and changeable. I think will be the most helpful in the whole debate of Coptic divorce, on top of the debate Islamic law reform. Both laws are described as being divine and holy, which gives no space for discussing or changing them, even though they underwent changes and developments over time and social realities, such as the Coptic divorce laws for example. PSL in Islam and Christianity do share similarities throughout history, which are displayed most clearly in times of peace between the church and the state and a cooperative social and political climate (such as the 1938 decree). The Egyptian state is careful not to discriminate against the Copts in regards to the laws, emphasizing here the public policy stipulation on Islamic tolerance. Hence, the church is granted control over the PSL of the Coptic citizens.

The dilemma starts here in that the unified law cannot exist properly because either it will not be fully unified (in example of divorce) or it will be and Copts will be living under Islamic law, as this unified law would most probably be based on Islamic rules and laws. It continues with the church most certainly protesting on the grounds of equal citizenship rights and the right of practicing one's religion freely. Copts would be discriminated by these laws and become second-class citizens. Yet, at the same time the church is standing itself in the way through this demand, as the state gives into it because of the discrimination issue (which is today's situation, as there is no unified PSL).

⁸⁷ Kamal 139-140.

Now the church itself discriminates its laity by granting the Coptic Egyptians not the same rights as the Muslim Egyptians have. Thus divorce is an arena where citizenship is not only negotiated in a tug-of-war but where it is also limited from either side. It cannot be just about religion, as the laws have always been based on these texts and traditions, yet have changed over time and tensions (i.e., the 1938 decree was applied and recognized by four popes until Shenouda)⁸⁸ whereas the religious texts did not.

The Coptic citizen is thus made a second-class citizen, if not by the state then involuntarily by its own church through its strict and rigid response to the state's threat. This chapter's aim was to review the theoretical laws in comparison to each other, and the developments in connection to political and social history. But it is obvious, that practice can be and usually is entirely different. How these laws are put into action, the discourse on them, be it in the press, intellectuals or the laity as a whole in the past as well the present, is reviewed in the following chapter.

⁸⁸ Kamal 2006: 57.

3. DIVORCING COPTS TODAY: THE PUBLIC DISCOURSE

Gamal Nkurmah, a journalist for the Egyptian newspaper *al-Ahram Weekly* writes in his article “Church Weddings” in 2008:

The current controversy over divorce and remarriage has emerged as a contentious issue among Copts and is debated endlessly in the media. (...) An increasing number of Coptic Christians are converting to Islam and other Christian denominations where the annulment of marriages is easier. The curiosity, though, is that this has not always been the case.

The obvious question one has to ask here is: how was it then? Or, how does he know? An historical review of the Egyptian personal status court system, as well as the use of these courts is in order to answer this question. Such a review will also show that the nationalization of the courts in 1956 under President Nasser did not end legal dualism in Egypt but rather brought about further problems between the Coptic Church, the Copts and the state. With regards to divorce and marriage, the Coptic citizens of Egypt sometimes need to choose between the two basic rights of freedom of religion and equality before the law. When they are able to divorce like the Muslim citizens, they are consequently equaled to them in questions of family issues.

But then at the same time the Copts would either overstep the boundaries of the church or of practicing their religion in absolute freedom and thus not being able to divorce. This was not the case under Egypt’s family court system before the nationalization, where Copts could choose between their own personal status laws and Islamic laws in different religious courts. The unification of the courts has surely strengthened the government’s influence by centralizing the courts much further. But it has also added some whole new

dimensions to the power struggle between the church and the state, as well as the church and its laity members who are looking to divorce, and thus has caused as many new difficulties as it has solved old ones. To discover, examine and understand these complexities, a historical review of Copts' employment of the Egyptian family courts is of the utmost importance. Thus, this chapter will begin with such a review of the history of the Egyptian personal status courts, as well as the Copts' usage of these courts. This background will set up the public debates among today's Copts, the church and the Egyptian government on Coptic divorce, which in itself has become an arena of struggle and negotiating citizenship rights of the Copts.

The church as well as the laity is divided on this matter and the sectarian tensions, which increased over the last 10 years and seem to be ever-present, play their own part in this tug-of-war between church, state and laity. The Coptic laity seems to be very aware of the fact that divorce is not only a private, family issue but also a very public and very political one. This is achieved through the struggle for equal citizenship rights, which is connected, or rather expressed through the particularity of divorce and re-marriage judgments that differ between Egyptian state courts and decisions made by the Coptic Church.

How is this divide expressed? How do Coptic intellectuals as well as laymen and the clergy argue and about what? When does divorce cease to be a family matter and become a political one? This chapter attempts to answer all these questions, which are connected to the public discourse on Coptic divorce today. But only after setting up the discourse of the past as today's questions, problems and arguments do build on and are developed from the debates on divorce of Copts, as well as the state's and the church's role in these

discussions, as well as the evolution of the Egyptian court system. The following historical review shall broaden and define the understanding of the issues and questions that the public discourse of today reveals and poses.

3.1 Historical Review of the Egyptian Courts and the Copts

In principle, in Islamic law, Christians (and Jews) enjoy a special status of tolerance and protection. These non-Muslims who live in a Muslim society are considered *dhimmis*, which means protected citizens. The *dhimmis* are allowed to have their own judicial and legislative autonomy over their affairs, including personal ones such as family law. In the Ottoman Empire, of which Egypt was a province from 1517 until 1914, the status of these ‘protected’ citizens was abolished in 1856 in order to ensure the concept of equal citizenship, but the dual judicial system remained and was also adopted by the Egyptian state after it achieved independence until Nasser’s incorporation of the courts in the late 1950s.⁸⁹ The dual judicial system housed the *shari‘a* courts for the Muslims and the *milli* courts for the non-Muslims.⁹⁰

Generally before 1937⁹¹ Egypt had developed four different judicial structures and trial depended on nationality, religion and the nature of the case. Those four separate structures consisted of consular criminal courts for foreigners, the Mixed courts for foreigners’ civil interests, the Native (later to be renamed National) courts where Egyptians’ civil disputes as well as criminal charges against them were tried and the aforementioned religious courts where personal status cases were adjudicated.

⁸⁹ Berger 2001: 92.

⁹⁰ Berger 2001: 94.

⁹¹ In 1937 the Montreux conference in Switzerland was held, after which Egypt became independent in “all judicial and legal matters.” (Brown 1997: 61)

In 1949, when the twelve-year modification that was decided in Montreux ended, these courts, with the exception of the family courts, were unified as to further centralize the judicial system and united under the National court system while the mixed and foreign courts were eliminated.⁹²

Scholars agree widely that the dual system of personal status courts was founded in the latter days of the Ottoman Empire.⁹³ For example, through “the Hatti Humayoun of 1856, the Ottoman sultan abolished the status of *dhimmi* and proclaimed the equal treatment of all citizens of the empire. One of the few religion-based differences that were maintained was the judicial and legislative autonomy of most religious communities.”⁹⁴ This means basically, that each religious denomination would still have its own personal court for personal affairs, such as marriage, divorce and custody. Such a decree was surely derived out of the Ottoman tolerance towards other religions’ rules, customs and traditions on personal issues.

Yet, certain criticisms of the *milli* courts appeared as early as the 1890s and grew especially in the 1930s onward. These courts began to be described as “more susceptible to corruption than the National courts.”⁹⁵ Both Afifi and al-Qattan agree with this statement, the latter suggesting that the *shari‘a* courts seemed to be truly non-discriminative and provided legal protection,⁹⁶ while Afifi reports that Copts complained about their corrupt clergy who issued divorces to the rich, who paid large bribes, while the poor’s requests were discarded without consideration.⁹⁷ Signs of the clergy’s influence on the laity’s private lives and matters become obvious here.

⁹² Brown 1997: 62.

⁹³ Al-Qattan 1999: 431.

⁹⁴ Berger 2001: 92.

⁹⁵ Brown 1997: 62.

⁹⁶ Al-Qattan 1999: 436.

⁹⁷ Afifi 1996: 210.

Through their own judicial system, the clergy and religious authorities gained immense power over their community. Thus, even though I argue that the unification of the courts brought about serious difficulties and questions to the Coptic community of Egypt, I do not intend to glorify the dual court system or deem it as a better suited method to handle personal status cases in Egypt.

This influence might be one of the reasons why in the late 1940s and early 1950s both supporters as well as opponents of Coptic divorces voiced demands for state interference in the Coptic community. The campaign against the *milli* courts was led by journals, such as *al-Manar* on the divorce-supporters' side, demanding the state to enforce Islamic divorce laws and reform the *milli* courts to resemble the Islamic *shari'a* courts. Divorce opponents in the Coptic community, on the other hand, voiced their requests in cases where Copts obtained divorces from *shari'a* courts, demanding that the state should intervene in order to protect Coptic traditions and the Coptic family. Yet when the Egyptian state tried in 1946 to reform the Coptic personal status laws strong opposition from the Copts' side met the reforms.⁹⁸

One might wonder if such contradictory demands could be a sign for the lack of unification in the Coptic community of Egypt, especially in the question of Coptic divorces. Another question that could be raised here is the issue of state interference into this matter. A constant fear of preserving community and family as well as individual freedom to control one's private affairs was surely in conflict among the laity and has not been resolved until today. Other criticisms centered more on the political and judicial aspect of the whole system of separate courts, which with their

⁹⁸ Afifi 1996: 209-210. However, I do believe and agree with the author, who continues on to explain that state interference in the Coptic courts is in the eyes of the Coptic community something entirely different than state interference in their actual laws.

own laws and procedures, were not compatible with a “unified, centralized, national judiciary”,⁹⁹ established in 1949 and further pursued by the government, as separate court systems like these were indeed limiting and weakening the government and its legal system.¹⁰⁰ Furthermore, litigants were logically in the search of their own benefits, going back and forth between courts, and thus creating tensions and conflicts between the courts’ rulings, the litigants’ views and their religious affiliations.

But it would be premature to judge this kind of dual legal system as an overly beneficial one for the non-Muslim laity as the new system gave the litigants no choice but to convert to another denomination or faith altogether, to escape their clergy’s influence on a particular issue. These criticisms derive from, as well as name, some of the problems that legal pluralism creates. A weakened state and strong litigants are two of the consequences, as individuals can switch among laws and courts as well as the question of which law is applicable to litigants from different groups,¹⁰¹ such as Copts who request a divorce, which would be granted in Islam but in Coptic Christianity it would not be. Such a system gives way to ‘forum shopping’,¹⁰² a term to refer to these practices. Through the various legal options, litigants decide on which level they settle their disputes. Or rather they could take their conflict up to another judicial level, the national *shari‘a* court when one was not satisfied with the ruling of the local *milli* court, thus manipulating the different legal systems in a way that suits their personal situations best.¹⁰³

⁹⁹ Brown 1997: 63.

¹⁰⁰ Brown 1997: 63.

¹⁰¹ Shaham 2006: 454.

¹⁰² Ron Shaham uses this term in his article “Shopping for Legal Forums: Christians and Family Law in Modern Egypt.” See Shaham 2006.

¹⁰³ Shaham 2006: 467. It should be mentioned here though, that these Copts who turned to the Islamic courts to divorce did not accept the *shari‘a* as a whole but merely used it for their own benefits in this particular questions. These Copts

While all of these criticisms were expressed and acknowledged, the question of why the unification and centralization of the family courts were delayed until 1956 raises itself. One of the most logical reasons is the mere complicated nature of the problem and its potential consequences. Simply put, how should the state undertake the task of unifying the courts and still allow each citizen to be tried and judged according to his or her religion in matters of marriage and divorce for example?¹⁰⁴

Steadfast and fierce opposition from Muslim judges and the Christian communities also met the proposition. Muslim judges considered Muslim jurisdiction, which derived from the *shari'a*, as the only lawful jurisdiction, thus the fear probably existed among them that by unifying the courts, the laws would have to be changed. Nathan Brown suggests as much in his study, although I am not sure I agree with him, as Nasser incorporated Islam in the constitution as well and thus, there should have been no fear among judges that Islamic law would be changed. The Christian clergy protested because, as their judgments would have to be approved by the National courts as the draft law stated, their decisions would thus have been put under the jurisdiction of Muslim judges and Islamic law.¹⁰⁵ I would suspect that it was probably seen from both sides as an intervention of the state to which it had no right, as it was not only a communal but also a *religious* matter, where the government should not have any say.¹⁰⁶

remained Copts and faithful to their religion. Afifi stresses this point as well in his article on page 207. But it should be clear that the church today paints these individuals as traitors as they pose a threat to its influence and power when pursuing their private happiness.

¹⁰⁴ Brown 1997: 67.

¹⁰⁵ Brown 1997: 65.

¹⁰⁶ Brown 1997: 65. Brown suggests that Christian leaders as well as even the Muslim Brotherhood were against unification, their opposition coming down largely to this understanding.

But the government, as Nathan Brown illustrates, suspected as much as well, and was able to appease these fears, by not changing the content of the laws themselves and by transferring, at least, the *shari'a* judges who together with secular judges, were to apply religious family law in the special sections of the National courts that had been created in 1956,¹⁰⁷ when Law 462 had abolished the religious courts.¹⁰⁸ “For the regime, this was the final step in the long-standing policy of creating a unified and centralized national legal system”¹⁰⁹ even though Law 462 upheld non-Muslim jurisdiction in private affairs as long as both litigants shared sect and rite,¹¹⁰ meaning that even though the courts were unified, legal pluralism continued to exist as religious laws were still ruling over family matters. Thus, neither was the legal system truly unified, nor has it become secular.

Legal dualism has not been abolished as the judgments on personal and private affairs were still issued based on religion. Proof of this is Law 462 itself, while unifying the court system and including the *milli* as well as the *shari'a* courts into the National courts, religious (or confessional) jurisdiction continued to exist and to be issued. Thus, one cannot truly speak of abolishment, but rather of bringing this jurisdiction under the state. Consequently, many of the problems of the pre-1956 era continued to exist, such as switching between laws, as the judgments were still issued according to the litigants’ religion, since Law 462 establishes: the non-Islamic laws would only be applied when litigants were of the same denomination, conversion was and continued to be a strategy to escape strict rulings of one’s church.

One did not thus have to change one’s religion altogether but could instead just change his denomination to have his case judged by Islamic law. It seems, however,

¹⁰⁷ Brown 1997: 68.

¹⁰⁸ Berger 2001: 54.

¹⁰⁹ Shaham 2006: 453.

¹¹⁰ Berger 2001: 96.

that even when both litigants were of the same denomination, for example two orthodox Copts, and they resorted to a *shari'a* court, the judge still “was responsible to render justice to anyone who asked for it, including minorities.”¹¹¹ Consequently, the courts did not as Brown has noted, “apply Christian law faithfully (...) (while Muslims) found themselves under the jurisdiction of judges familiar at best with the letter of Muslim personal status law.”¹¹²

Al-Qattan also disagrees with Brown because her research found that Christians “specifically [did] seek the court for just this purpose” of obtaining rulings based on Islamic law, especially in family or marriage disputes.¹¹³ The judges generally did not reject the *dhimmi*'s requests and applied the laws as if the litigants were Muslims, if such was demanded. Thus the scholarship suggests that the *shari'a* courts were not “an arena for *dhimmi* oppression. Not only did *dhimmi*s often and voluntarily seek its domain, but it also appears that *sharia* law was consistently and fairly implemented.”¹¹⁴ Historical records of the Ottoman Empire and the beginning of the twentieth century show that Copts were using *shari'a* courts for divorce, especially *talaq*, the men's prerogative of unilateral repudiation, and recording their marriages in the form of a contract just like Islamic marriages are recorded, where various stipulations could be asserted by each party.¹¹⁵ Christian women used these courts as well for the purpose of the wife-instigated divorces, such as *khul'* and financial benefits that were given to them in Islam but not in Christianity.¹¹⁶ It would only be logical to assume that were other reasons why non-Muslims adhered to the

¹¹¹ Afifi 1996: 206.

¹¹² Brown 1997: 69. I do agree with Afifi in this point, as it is a logical consequence that Muslim judges would only consider Muslim law as just and right and thus know it and apply it, if anyone, no matter who, asked for it.

¹¹³ Al-Qattan 1999: 438.

¹¹⁴ Al-Qattan 1999: 438.

¹¹⁵ Afifi 1996: 204.

¹¹⁶ Al-Qattan 1999: 435.

Islamic courts as well, such as financial benefits and of course the option of bigamy or polygamy.

These records are not only proof that Copts were using the *shari'a* courts for their own benefits, they also show that Islamic laws and regulations must have been quite known and accessible to them, men and women alike. There thus occurred cases in the courts of the Ottoman Empire like the one of Mariam bint Saad who went to the *shari'a* court, asking her husband Bolis to divorce her through *ibra'a*¹¹⁷ to which he agreed.¹¹⁸ Furthermore, the spouses are passive in the Coptic divorce, which is administered by the church, and is known as *tatliq* (judicial divorce), an indirect divorce instead of *talaq*, which is based entirely on the couple's actions¹¹⁹, proving once more the church's influence over the Copts' private lives and affairs.¹²⁰

Not everyone though accepted such influence into private matters. In 1915, an Egyptian Coptic wife wanted to sue her husband because of his overspending for legal incompetence. To protect himself from his wife's action, the husband converted to Islam in order to divorce his wife before she could sue him. The case naturally caused a public outcry and backlash in the Coptic press.¹²¹ But one should not forget that even though these conditions came into existence, it was still the church that issued the divorce in this case as well as in general.

While conversion was and is a possible approach to solve private legal matters with more options, it simultaneously ceases to be a private matter, as after the

¹¹⁷ Wife instigated divorce in Islamic law where she gives back her dower and forswears her financial rights while the husband has to give consent. (Kamal 2006: 9).

¹¹⁸ Kamal 2006: 9.

¹¹⁹ Afifi 1996: 203.

¹²⁰ *Tatliq* exists in the Islamic courts as well where it often occurs at the instigation of the wife, and thus proves once more that the codes of law have indeed influenced each other.

¹²¹ Afifi 1996: 209.

conversion, Islamic law will apply to all legal issues of the convert. All the same, the actuality of adhering to this strategy was and continues to be a real challenge to the church's authority. In consequence, the Coptic Church has tried over the years to maintain as much of the control over the Coptic family as possible, showing that while the state has gained authority and influence over the legal system through the unification in 1956, the church has become stricter, holding on to the few things it can still control, such as the PSL and any matters regarding the Coptic family and the laity's personal lives and affairs. One can then conclude that changes in this attitude and as a result in the laws will not be forthcoming in the near future: "after all any attack on these laws has become synonymous to an attack on the Coptic faith in the eyes of the church."¹²²,

3.2 The Discourse of Today

A difficulty in analyzing the public discourse on Coptic divorce is that the Coptic community is not generally partial to discussing church issues in public. This sensitivity is due to many factors that Karimah Kamal refers to as 'Egyptian or Coptic traits', such as negativism and the need for submission to some kind of entity or leader.¹²³ Yet this approach of ascribing such characteristics to a whole of a population or religious community is more destructive than helpful in analyzing why Copts tend to keep these issues private and only in extreme circumstances publicly announce their disagreements and troubles within their community.

¹²² Afifi 1996: 214.

¹²³ Kamal 2006: 76.

Kamal also mentions various other grounds, such as the understanding of the Copts in general that their relationship with their church is a private one and that if one speaks about a dogma or an attitude that the church has taken, it would be considered the same as speaking against the church itself.¹²⁴ Hence, the fear of standing ‘against’ the church and thus becoming an outsider of the community, plus the feeling of the public announcement being basically an invasion to this private relationship are factors that play an important role, not only in the issue of making this discourse a public one. They take also part in the general discourse on the ‘Coptic Question’ as well as the relationship between the church and its laity and the laity’s feeling of isolation that precedes the feeling of unease when discussing such ‘private’ religious issues in public.

Coptic intellectuals that are contributing to the public discourse acknowledge this unease. A prominent example is Sameh Fawzy, managing editor of the Coptic newspaper *Watani*, journalist, as well as political analyst and specialist in governance and citizenship, who takes up this issue when talking about the successor of the pope, a topic that was largely discussed in Egyptian media after Pope Shenouda traveled abroad due to health problems: “Many Copts felt uncomfortable about the media spotlight on change within the church, considering it an intrusion into the pope's life and a sign of the wish to meddle in clerical affairs.”¹²⁵ The government answered such feelings of intrusion quite clearly through President Hosni Mubarak himself, who assured that in his opinion “Copts are capable of solving their own problems without any intervention.”¹²⁶ The Egyptian government consolidates here the attitude, which

¹²⁴ Kamal 2006: 76.

¹²⁵ Fawzi 2006: Change and the Church.

¹²⁶ Nkrumah 2007: The Coptic Conundrum.

basically amounts to leaving the Coptic Church alone in their own affairs, backing up the general discourse that the clergy and the pope publish.

If the government intervenes then it is usually connected to sectarian tensions and the state's way of dealing with those is usually through security forces and rhetoric. Sameh Fawzy here again emphasizes this point and the need for a change of this approach. "Coptic problems are addressed through the church and state security, which should not be the case.' The 'Coptic dossier', (...), is usually dealt with as a security, not political, issue, even though Coptic issues should be put on the political agenda and addressed by the nation's political secular elite."¹²⁷ The state's way of action, or lack of it in regards to sectarian tensions and isolation of the Copts, which have risen and increased since President Sadat who encouraged the establishment of a Coptic state within through his policies and reforms, is the reason "Copts feel that the 'original' state is artificial and complex, one where their interests will not be resolved (...). They feel they can only be citizens of the church, moving on from it to the original state."¹²⁸

It becomes increasingly clear through this analysis that the Coptic Church establishes itself as a state within a state, or rather a body with state-like qualities. This point is emphasized here since it plays a major part in the public debate on Coptic divorces. Dependency and maybe even a certain amount of fear of going against the church are logical consequences of this build-up and the Copts' isolation and understanding of their church as the only entity that protects and pursues their interests. The fact that the church had to assume the role of the state for the Copts in Egypt is grounds for this institution's political engagement and civil activity.

¹²⁷ Shahine 2006: Bad Cards.

¹²⁸ Fawzy 2006: Citizens of the Church.

The church steps in where the state lacks action, thus it cannot be surprising that the Coptic Church (rather than Coptic citizens themselves) more often than not approaches government officials when tensions are running high. Magdi Guirguis, a historian at the American University in Cairo (AUC) proves this point, as he is quoted by Dina Ezzat in her *Al-Ahram* article: “The Church, rather than the state, is perceived by many Copts as their ultimate representative in civil as much as religious matters.”¹²⁹ The author goes on to say, “The state has failed to live up to the expectations of either Copts or Muslims, creating a vacuum that it was inevitable that religious institutions would seek to fill.”¹³⁰ An area where Coptic laity and clergy alike criticize the state’s inattentiveness to their needs and demands is in the arena of full citizenship rights for Copts.

An outstanding point of Copts’ condemnation is Article 2 of the Egyptian constitution, which states that the Islamic *shari’a* is the main source for Egyptian legislation and which then consequently would give Copts a status of second-class citizens. While Bishop Morqos, the official spokesman of the Orthodox Church in Egypt has asked for altering the wording of the article, Nabil Gabriel, a Coptic lawyer and human rights activist, calls for its abolishment altogether.¹³¹ It is problematic that a constitution has such religious undertones and it certainly backs discriminations on a legal and governmental level to a certain degree. Mohamed Hamed El-Gamal, former head of the State Council, however, answers that full citizenship rights are given by the same constitution to Copts and a change of Article 2 is not going to change

¹²⁹ Ezzat 2008.

¹³⁰ Ezzat 2008.

¹³¹ Shahine 2007: More than semantics.

people's minds and put a stop to sectarian incidents.¹³²

The problematic might not lie here in the fact alone that sectarian tensions are a reality in Egypt, but that the governmental outlook on legislature and the state's character is in fact a religious one. If the state were to change this article, it would certainly prove good intentions and a step towards its Coptic citizens but the government has to take Egypt's Muslim population into consideration as well. Nevertheless, citizenship of the Copts becomes an issue here, as this article gives Egypt's constitution and the Egyptian state itself an Islamic character, which makes the Copts' worries and fears, that they become second-class citizens and thus would face discriminations that are backed by the state and its laws, all the more tangible and understandable. Full citizenship would not be granted to the Copts in an Islamic state.

Now the question might be raised of how such demands of full citizenship and fears of being treated unequally connect and build upon the divorce of the Copts. An excellent example to illustrate this vibrant connection with all its complicated political, legal and religious undertones is a divorce case that set off public discussions on both sides, Muslim and Coptic, not only on the issue of Coptic divorce but on Coptic citizenship as well. In 2007, 45 Copts converted to Islam in order to obtain a divorce but the Ministry of Interior, which a Cairo Administrative court ruling supported, did not allow them to convert back to Coptic Christianity after their divorces were finalized.¹³³

Coptic clergy and lay members protested over such a ruling, Gabriel calling it

¹³² Shahine 2007: More than semantics.

¹³³ Shahine 2007: Fraud not Freedom.

a “black day for the Copts”¹³⁴ and Bishop Anba Daniel “argued the ruling ‘contradicts all principles of democracy, human rights and citizenship’.”¹³⁵ Both, Gabriel and Anba Daniel connected this court’s decision with Article 2 of the constitution again, as it is a ruling based on the Islamic dogma. Gabriel was especially determined to link the ruling to Islamic legislation: “All talk of equal citizenship has been rendered meaningless by this ruling which exposes the kind of religious state in which we are living.”¹³⁶ While Gabriel fully acknowledged that these Copts converted to Islam simply to dissolve unhappy marriages, Rafiq Habib, a prominent Coptic thinker, answered this acknowledgement that there should be no reason to become upset over the whole issue as no one should use religions and creeds as easily as this to simply escape unhappy marriages.¹³⁷ The first traces of a split in the Coptic laity become visible here in regards to the discourse on divorce and citizenship. Indeed, it has been noted that the same court under judge Faruk Abdel-Qader has granted several cases of reconversion in 2006, previous to this particular case. Therefore, the argument goes, the ruling has more to do with the particularity of the case instead of the principle of religious freedom or full citizenship rights.¹³⁸

I think it is very interesting to note here that neither clergy nor lay members actually mention that these Copts were granted the divorce that they were seeking, which would not have been granted by the Church as these Copts used conversion as a way out, but are solely focusing on the citizenship issue. It is especially remarkable that the clergy does not even pretend to argue the divorce side of the whole case but only speaks up at the citizenship question, which is concerned with the re-conversion

¹³⁴ Shahine 2007: Fraud not Freedom.

¹³⁵ Shahine 2007: Fraud not Freedom.

¹³⁶ Shahine 2007: Fraud not Freedom.

¹³⁷ Ibid.

¹³⁸ Ibid.

of these Copts and basically their freedom of religion. This observation gains in peculiarity when read alongside the church's reactions on a particular case of 2006, where judge Faruk decided in favor of Atef Kirollous, who sued the Coptic Church to obtain a license of re-marriage after his civil divorce. The ruling stated, that the church was obliged to hand permits out to divorcees, who wanted to marry again.¹³⁹ While the court based its decision on the Egyptian constitution, which granted everyone the same civil rights, such as the right to marriage and to start a family, the church rejected this ruling strongly, understanding it as a state interference into a purely religious domain. Pope Shenouda reacted strongly towards the court, while he conceded that granting divorces fell under the judges' responsibilities, marriage did absolutely not and was only administered and controlled by the church.¹⁴⁰

Such contradictory reactions reveal the double standards of the church and the state in the discourse on Coptic divorce and Coptic citizenship. While, in one case the government did not grant the Copts full citizenship rights and was acting as a religious state would, in the next case it granted the Coptic lay member a full and equal citizenship status but then meddled in religious affairs where it should have no say in the church's opinion. It is unmistakable that the issue here is not divorce alone but stems from a constant threat the Coptic community feels it is under. In both lawsuits, the question of divorce led immediately to the question of influence and the owner of this influence, be it over the family or the religious choices of the perpetrators. In both cases, the court's rulings posed a direct threat to the Coptic community, while in one it lost a relatively big number of members, on the other the church was ordered by the state to do something that was going against its laws and, more importantly, its creed.

¹³⁹ Egypt Today Staff 2006.

¹⁴⁰ Egypt Today Staff 2006.

The implication is clear: the struggle is as much about control as it is about divorce. What is interesting to note here is that the debates over Coptic divorce is put into a largely political framework. Both the spokesmen of the Egyptian administration and the Coptic Church refer to citizenship and the political make-up of Egypt, and thus the issue of Coptic divorce is mostly discussed in political tones. Only seldom does the Coptic Church refer to the religious issues involved, and this only happens in regards to the question of the divorcees' remarriage, as we shall see. These double standards and double meanings in this discourse add a deeper complicatedness to everyone's actions and attitudes. In March 2008 the Supreme Administrative Court issued two court rulings on Coptic divorce. The first ruling obliged the Ministry of Interior to permit the official re-conversion of Christians to Christianity after converting to Islam to obtain a divorce, such as in the case of the 45 Copts in 2007. The second court ruling was directed at the church, though, obliging it to permit remarriage to all Coptic divorcees, regardless of why the divorce was issued by the state in the first place, as the state was still relying on the 1938 decree that Copts themselves had issued. While the church celebrated the first ruling as a victory and connected it to the civil state, it rejected the second vehemently, connecting it to a religious state.¹⁴¹

The court defended itself by stating that it would, with these two rulings protect the citizenship rights of the Copts and the Coptic Church would act unlawfully if it did not allow these marriages to become official. Yet the Pope refused to accept these rulings and referred to the fact that these marriages would not take place in Church and thus would never be recognized, a statement that the judiciary took

¹⁴¹ Fawzy 2008: For Copts it's a matter of choice.

exception to.¹⁴² As Sameh Fawzy concludes in his *Daily News Egypt* article “For Copts, it’s a matter of choice”, these two court rulings have a civil basis and the church is the one with the double standards here. He continues, “The civil state (...) should not have double standards. Christians have to decide whether they want to be treated as equal citizens in a civil state, or as second-class citizens in a religious state. It is unacceptable to swing from ‘civil law’ to ‘religious law’ only to maintain a privileged position.”

Even though this rather bold statement bears some truth in it, the issue of choice is a problematic one to say the least. True, the civil state should not have any double standards as the Coptic Church practices them in respect to PSL. Yet it is also not compatible with a civil state that *some* members would have to choose between different basic freedoms and rights. A civil state grants these to every member, regardless of religion, thus, there should be no choice and hence I cannot agree with Fawzy that these rulings stem from a civil perspective. It rather proves that Egypt is somewhere in between a civil and religious state, and in this debate it seems that even the church cannot make up its mind of what it would prefer Egypt to become.

But it would be wrong to say that the church, or rather the clergy is united on to the issue of when and why divorces and remarriage licences should be granted, or rather on the whole discourse on divorce. Karimah Kamal tells of priests who, for a large sum of money, re-married divorcees even without the pope’s permission. The church then sued these priests on account of forgery and fraud but lost this litigation since the priests were acting by the law, just not the church law.¹⁴³ But as Kamal here does not produce any kinds of dates nor examples, citing actual clergymen might be

¹⁴² El-Karnashawi 2008.

¹⁴³ Kamal 2006: 27.

more productive. Priest Akram Lamaey, a biblical theology professor, was of the opinion that the decree of 1938 actually “better grasped the spirit of the Bible.”¹⁴⁴ He continued that while 1938 was during a liberal period in Egypt’s history, where the Holy Synod could pass decisions and laws on its own, today the pope’s supporters govern it, after he decides who becomes a member and thus only chooses people loyal to him and his outlooks.¹⁴⁵

It is difficult to find clergy voices in the discourse who would speak in public against the pope. Even here, the critique is kept in check and is directed more to the system and the changes and developments that took place over time in general. This fact, that such voices are so hard to find, stems probably again from the fact of the general sensitivity of discussing these church matters in public, especially in regards to clergy members, as they represent that church. Furthermore, the fact that there are no *actual* laws to which the Coptic Church of today adheres, but rather needs in every divorce case the Pope’s opinion on it, is proof that the Copts are actually kept in the dark and that divorce of Copts is an arena for power struggles. This in itself is a power tool of the Church and of course, the Pope as every decision traces back to him. Since there are no written laws, nobody is able to criticize them, and thus unity is propagated and demonstrated to the outside. This outward appearance of unity is of course, a sign of strength and mutual understanding that these attitudes are protected and shared by the whole church and thus cannot be wrong or debated, is a goal that is not only the church’s but the state’s too, as the research will show.

In general though, it is safe to say that two trends have developed in the Coptic Church. The first is resorting to interpretation, recognizing some reasons for divorce

¹⁴⁴ Samaan 2008.

¹⁴⁵ Samaan 2008.

as serious as adultery and thus these should be considered as valid. They base their attitude on the fact that the 1938 decree has been in usage under four popes. The other trend, which developed after 1971, is not as flexible, basing its views on the bible and Shenouda's decrees on divorce. But it does accept impotence and insanity as further possible reasons for divorce, but only if such an illness was concealed to the other spouse before they were married.¹⁴⁶ The disunity on this point in regards to the laity is much more public and openly discussed than is the clergy's. Basically, as soon as Copts are divorcing for reasons other than adultery, one can speak of disunity, as these Copts oppose the Pope's decrees. The divide among the clergy into two trends can be found within the laity as well. While one side is supporting the Pope's decrees and decisions, which are based on the exact verses of the Holy Bible, the other side is looking to unite today's realities with the holy texts as well as with the history of Coptic divorce laws.

Karimah Kamal positions the split of the laity on the realities of life: those who do not support the church's attitude because they are suffering in a broken marriage and those who live a whole family life and thus side with the church. The enemies of divorce will never understand the supporters and cannot fathom what it means to be in a broken marriage if they have not experienced it. Thus they are not even open to discussions as these dogmas and rules are understood as holy.¹⁴⁷ While this is an approach that certainly has a basis and a lot of truth in it, it also disregards a lot of Copts that are open to discussions and re-interpretations of the laws and that are not burdened with an unhappy marriage.

Often these Copts have a public voice, such as intellectuals or human rights

¹⁴⁶ Kamal 2006: 86.

¹⁴⁷ Kamal 2006, i.e. 39, 47, 62.

activists. But the whole of the public discourse makes it obvious that there is a certain number of Copts that do question the divorce and marriage laws of the church, especially in regards to human and citizenship rights.¹⁴⁸ “Increasing numbers of Copts (...) want the church to take human and citizenship rights into account. Many Christians are yearning for the ‘hegemonic control of the Coptic Church over the Coptic laity’ to be curtailed,” says Mariz Tadros, assistant professor of political science at the American University in Cairo.¹⁴⁹ Akram Habib, a member of the Secularist Coptic Trend¹⁵⁰, concedes that Copts are probably afraid that the loosening of the divorce laws would result in huge numbers of divorces. But he continues that forced living in an unhappy marriage would be a bigger problem.¹⁵¹

Lawyer Mervat Abu Tij, who was interviewed by Karimah Kamal, makes an excellent point in connection to Habib’s worries. She rightly observes that a family that is held together by force cannot benefit the society. It will not be committed to religious values towards each other or towards society. In her opinion, the religious leadership needs to keep here the social realities in mind and understand the responsibilities it has towards the laity, which truly longs for the Church’s blessing on their lives’ choices. But if it is not given to them, lay members *must* resign to converting to another sect or even another religion altogether.¹⁵²

It sometimes seems the church would lose much more by clinging to its strictness than by granting divorces and remarriage permits to unhappy spouses. This

¹⁴⁸ Nkrumah 2008: Church weddings.

¹⁴⁹ Nkrumah 2008: Church weddings.

¹⁵⁰ The Secularist Coptic Trend is “an organisation that aims to revive the tradition of active lay participation in church affairs and decision-making processes” (Nkrumah 2008: Church weddings.)

¹⁵¹ Nkrumah 2008: Church weddings.

¹⁵² Kamal 2006: 132-133.

is not to suggest that divorce should be made so easy that it becomes possible with every little problem. But it is understandable, if not obvious, that a Coptic couple will become disillusioned by the church and thus by its dogmas and decisions if they are forced to continue to live in a broken marriage and home. Thus, from a logical perspective this might cost the church more than a divorce would. The question might be raised here of why the Coptic Church does not seem to consider this train of thought. “The problem with clerics is that they have an idealised (sic!) concept of marriage. The leaders of the Coptic Church know nothing about the pitfalls of married life, (says) Coptic novelist and columnist Mageed Tobia. (...) The imposition of further restrictions by the church on the rights of Copts to divorce and marry (...) would be incompatible with full citizenship and universal human rights. It is against human nature. It defies reason and logic.”¹⁵³

Tobia alludes to reason and logic, two characteristics that are brought up in the public discourse by a significant number of intellectuals. Dr. Muhammad Nur Farhat has pointed out that there is a certain separation between today’s realities and religious texts.¹⁵⁴ To overcome this split, he suggests that lawmaking has to be based on the ‘soul of the text and not its letter’, meaning that the intention of the texts has to be taken into account as much as its mere wording in order to arrive at a law that is fitting today’s social realities.¹⁵⁵ Dr. Mikhail, another interviewee of Kamal, elaborates on this point of view. In order to derive at laws, or even certain meanings of religious texts, one has to look at them as well as on ways to interpret them. There needs to be a differentiation between ‘its intent and its letter’, just like Fattah suggested. But Mikhail bases his opinion on the Bible itself; Christ has given men

¹⁵³ Nkrumah 2008: Right to remarry.

¹⁵⁴ Kamal 2006: 121.

¹⁵⁵ Kamal 2006: 115.

reason and the ability to think and interpret.¹⁵⁶ Furthermore, the Bible has the intent to ‘widen the horizons’ of people’s minds and does not allow them to confine and limit themselves to mere words of a text. Christ himself has shown this intent, by saving the adulteress by saying to the Pharisees who were accusing her; “He who is without sin among you, let him throw a stone at her first (JH 8;7).” The Christian faith’s foremost aim is thus the ‘protection of the soul’ and not the condemnation of sins.¹⁵⁷

This approach shows yet another side of the discourse on Coptic divorce, which is not based on citizenship but first and foremost on religion and its texts. It would be wrong to call this a divide in the pro-divorce discourse itself but it is interesting to note here how this Coptic discourse mirrors the Islamic one, in regards to using one’s religion as a basis for demands, such as PSL reforms. While in the Coptic case, both approaches do not necessarily contradict each other, it is important that they find a voice here, as both are integral to the discourse among the laity and as someone, who is pro-divorce reforms is not necessarily unreligious. Milad Hanna, a Coptic intellectual, for example, “conceded that divorce in Christianity is only possible in the case of adultery. But, he expressed the view that, in light of current social realities, those Copts separated from their spouses should be able to divorce them and marry others.”¹⁵⁸

The issue of remarriage has especially sparked a lot of controversy. This issue is elaborated in the next chapter but it serves well to show here the ambivalence and the uncertainty of the Coptic laity in the debates on divorce, as divorce itself is a state matter but remarriage is a church one. Thus, the latter is the point where the whole

¹⁵⁶ Kamal 2006: 82.

¹⁵⁷ Kamal 2006: 83.

¹⁵⁸ Habib 2006.

issue becomes truly complicated and the question of loyalty or resistance towards the church is raised. Saad Zaghlul, a Coptic lawyer, believes that the court ruling of March 2008, which obliges the Coptic Church to remarry divorcees, is proof “that the court is trying to impose its rules and belief on Christian teachings. With this ruling, it is trying to force both Churches (Coptic and Catholic) to abide by the sharia principles. (...) (and) that such rulings prove that extremist thinking dominates both the executive and judicial authorities.”¹⁵⁹ Yet, Albert Mashraky, a Coptic engineer, does not agree. He understands this ruling to be an attempt to deal with the Coptic divorce problem with which the state has been faced. All the same, “he believes no one, including the government, has the right to interfere with the Church's affairs.”¹⁶⁰

The ambivalence becomes apparent here. While concessions are made to the government and clearly, a certain kind of understanding is achieved, the opinion still presides, that church matters should stay inside the church. While it is difficult to find clergy voices in the public discourse who favor the loosening of divorce laws, it is surprisingly difficult to find laity voices that are against that. One theory might be that because *Al-Ahram Weekly* is a state-issued newspaper there is a certain aim and intent in publishing stories of a divide between clergy and laity. As the mouthpiece of the National Democratic Party (NDP), the party of the president, its main focus is to spread a particular viewpoint or even just a feeling or nuance on a topic, such as Coptic divorce, in order to make its position on it more understandable, defensible and of course, more popular amongst the citizenry, and here especially the Copts. Of course, these opinions can also possibly be of the journalists as well. However, while a divide between the clergy would go too far in meddling with church affairs, a

¹⁵⁹ Fahim 2008.

¹⁶⁰ Fahim 2008.

display of enemies of easy divorces in the laity might be counterproductive to the state's aim, which is to bring all family matters under its control, as any centralized state has, while not losing its legitimacy among the Coptic population through such a move of further centralizing family and personal matters.

Only Karimah Kamal has given an example of a Coptic voice, a letter addressed to her by a Sonya Halim that is siding with the Pope and the church in the question of Coptic divorce laws. Halim here proves the point that Kamal made earlier in her study on the 'public sensitivity' of Copts. She addresses the fact that internal church matters should stay internal and that no one other than the pope has the right to decide on them.¹⁶¹ The letter also shows how misinformation has been circulated among the Coptic laity, or at least around this particular lay member, as she condemns the fact that Islamic law has governed family matters of Copts in Egypt for 30 years and that a sympathetic and tolerant government should not put Christians under such an Islamic government.¹⁶² Halim continues in her letter that marriage is a holy bond where two spouses essentially become one and it can only be broken by adultery. This is God's law and no one has the right to change this law. Many principles of the Christian faith play, in her opinion, into marriage life and its laws, such as "Love your enemies, bless them that curse you, do good to them that hate you (...) (MT 5;44)" or "(...) Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's (LK 20;25)."¹⁶³

Her main opinion is here, that one should not be egotistical but humble and bear what God has given them, if only for the sake of the children and a godly life,

¹⁶¹ Kamal 2006: 96.

¹⁶² Kamal 2006: 97.

¹⁶³ Kamal 2006: 98.

mentioning the Coptic dogma that ‘the home is like the church’, thus if Satan enters this home God will consequently leave it.¹⁶⁴ This letter demonstrates a lot of Coptic dogmas and beliefs, and it seems that the writer as raised with Coptic traditions and main principles, such as perseverance, humbleness as well as a certain kind of determinism and submission to what ‘God has given’.

Both sides of the debate use religion and religious texts on which to base their arguments and opinions. Thus, it becomes a question if this is really the best or the most promising approach as a counter argument can be formed and presented so easily. For every verse on opening the human consciousness and mind to interpretation and still living a virtuous life, there is another that speaks of clear rules and strictness on certain matters, such as divorce. Regardless of the divided opinions of the laity though, until now Pope Shenouda remains the sole authority on the issue. “No power on earth can force the Orthodox Church to do anything against the words of the Holy Bible, or against its own conscience. Whoever marries a divorced Copt without license from the clerical council ... I will defrock him whatever his rank might be, the Coptic Pope warned.”¹⁶⁵

Such strong words do not leave room for any doubt on his position on Coptic divorces, remarriage licenses and these laws. It is a fact that the Pope *is* the last authority through which these laws have to go through and thus Pope Shenouda ascribes the courts civil authority but not religious power.¹⁶⁶ Yet on purely religious issues, he remains the last authority and according to him, all debates and discourses of opinions and approaches are nullified, when the issue, such as marriage and

¹⁶⁴ Kamal 2006: 98-99.

¹⁶⁵ Habib 2006.

¹⁶⁶ Nkrumah 2008: Church Weddings.

divorce, is a strictly religious one.¹⁶⁷ Thus it becomes obvious here, that those who manipulate religion and law in Egypt to achieve their goals, are certainly not in the Pope's favour to say the least. In his opinion people, such as these "want to make religion subservient to their personal interests and do not want to submit themselves to the rules of religion."¹⁶⁸

When Islamic law is applied in situations when one of the litigants of a divorce case converts to another Christian sect, Pope Shenouda has asked the government, to apply the unified Christian law that has been drafted by the heads of the main churches in Egypt in 1998.¹⁶⁹ This is truly a serious loophole of the PSL in Egypt and the pope acknowledges this time and again: "(...) (He) argued (in the interview) that while the church has nothing against the Shari'a, he does not see why it should be applied to a Christian couple."¹⁷⁰ The Pope's attitude here is certainly understandable, and a unified Christian draft does seem like a reasonable solution to this problem. But there are critics of this draft as well, calling it incompatible with human rights because of the stipulations on divorce and conversion to another sect.¹⁷¹ But the Pope's answer is "that everyone is free to change his or her denomination or religion provided that this is done out of conviction and not convenience. He added that these allegations were groundless. We respect human rights, (...) and they are fully guaranteed in the new bill -- provided they cause no harm. It is the human right of divorced Christians to remarry, but it is also our right to say that we, as a Church, reject this right because

¹⁶⁷ H. Guindy, Shukrallah & Tadros 1999.

¹⁶⁸ H. Guindy, Shukrallah & Tadros 1999.

¹⁶⁹ i.e. "Marriage, politics and Jerusalem" or "70 years of change of Coptic PSL"

¹⁷⁰ H. Guindy, Shukrallah, Tadros 1999.

¹⁷¹ Conversion to another sect is only allowed when the 'new' sect has agreed to it.

it is not compatible with our teachings.”¹⁷²

While Pope Shenouda’s opinion is understandable, especially in the case of his, observation that if divorce “is made easy, then everyone will want one (and) as a result, people will start choosing their partners in a casual, offhand way, without understanding the seriousness of the commitment they are entering into.”¹⁷³ But it is not helpful, while admitting that divorcees should have the right to remarry, to also acknowledge that it is the church’s right to reject these marriages. The status quo is not going to change or improve with observations, such as these. But Pope Shenouda seems to be aware of that fact.

These conflicts that are raised out of the contradictory judgments between judiciary and church can be solved as well through a unified Christian draft, in the pope’s opinion. It would ease the judges’ work extensively as they could refer to a single authority, the unified law, when issuing court rulings. The draft would thus bring about reconciliation between church and court rulings, nullifying the main conflict between the two actors.¹⁷⁴ Therefore, in regards to discussing solutions to the problem of the diversity of rulings in a divorce case, and no less the predicament the litigants are put into, as they have basically to choose between their church and their state, the pope is convinced of the unified draft’s ability to serve as a compromise between church and state. Thus, the pope is placing the full responsibility to solve this conflict on the state, as the church has done its part by drafting the law: “I hope they

¹⁷² H. Guindy, Shukrallah, Tadros 1999.

¹⁷³ H. Guindy, Shukrallah, Tadros 1999.

¹⁷⁴ H. Guindy, Shukrallah, Tadros 1999.

give the personal status law the attention it needs, because it will synchronize judicial and church rulings. Even Islam calls for this.”¹⁷⁵

“Until then (when the unified Christian law will be applied), the Church will remain steadfast against the legal system’s orders with regard to remarriage. The court interfered in what is not under its realm of jurisdiction, because religion does not fall under the administration of the state, says Ramsis Naguib, a Copt who has spent almost 30 years working as a lawyer (...). This decision belongs to the people who are practicing the religion, not to the state. The state’s mission here is only to bless the decision, not to make one. So it is inappropriate for the court to force the Ecclesiastical Council to do anything.”¹⁷⁶

While again this is certainly the church’s right, it also establishes the church as a state within the Egyptian state again, in regards to PSL and especially divorce here. This fact is attributed to the fact that the church, and thus Pope Shenouda, has come to exclusively represent the Coptic community in front of the state. “This is the problem of a government that lacks the capacity to implement public policies in the area of religious tolerance in Egypt. To fill the vacuum, the government turns to religious leaders, including Pope Shenouda, for support. As a result, the political spectrum has become more complicated and divided along religious lines.”¹⁷⁷

The consequences are grave, not only in regards to divorce. The Egyptian government becomes of second-grade importance to the Coptic citizen, as he turns to the church first, which then addresses the government for him. Thus, no real interaction can take place and the Coptic community is further isolated from public

¹⁷⁵ Samaan 2008.

¹⁷⁶ El Bahnasawy: 2008.

¹⁷⁷ Fawzy 2008: Pope Shenouda...

life. The main result, especially in regards to the peculiarity of divorce, is a vicious cycle: While the church can be understood as a state within the state, with as much legitimacy, political power and communication to the laity, it will be able to issue or reject divorces and re-marriage permits, regardless of what the Egyptian courts decide. The status of its own 'state' is thus even more testified and enshrined in these judgments. Added to these issues is the question of citizenship and full citizenship rights of the Copts, which will either be limited by the Egyptian government, or the Coptic Church itself, both acting on the intention not to lose influence and control over the Coptic citizens / laity.

The issue of citizenship is then brought back to the Coptic Church, which is understood widely to be the representative of the Coptic community and thus, is the one who demands, grants and ensures these rights, even though this would be the task of the Egyptian government in a civil state. Thus, this would be here once more a proof of Egypt, neither being a truly civil nor a true religious state, where a religious institution represent a considerable number of citizens and thus is granted authority by the state, which in turn is exercised over the laity, which looks up to it.

3.3 Concluding Remarks

As the personal status laws still follow sectarian lines on both sides, Egypt's ambiguous status between religion and secularism creates the church as a state within a state at least in regards to personal status and family law issues. Two different and competing judgments can be issued and valid at the same time and in the exact same case, for example when applying the Muslim canon law, a divorce could be issued on the grounds brought forward by the litigants but when applying Coptic canon law it could not. Thus even after nationalization and unification in 1956, legal dualism has

not ceased to exist but has developed further problems for Coptic citizens: What is more important, equality before the law or freedom of religion? Are they a traitor to the state or to their church?

It becomes clear that the Coptic laity as well as the clergy is divided on the question of divorce and how this particular matter should be handled best. Divorce itself becomes a field of negotiation between state, church and laity here and raises the questions of citizenship rights, a civil state and a code of civil laws. The state usually tries to stay out of church matters (such as the pope's succession) and thus, it becomes only a matter of negotiation through the laity that is standing up against the church's dogma, asking for divorce or re-marriage permits that the church refuses to grant but the government officials do not.

The question of negotiation becomes even more complicated through the fact that sectarian tensions are running high and seem to be more prominent than ever for about the last 10 years. For example the *Al-Ahram Weekly* Newsreel of the first week of March 2010 includes out of three articles, two on tensions of various kinds between Muslims and Copts. A further difficulty bears the fact that Copts do not support the notion of discussing church matters in public. They are thus contributing to their isolation as well as supporting the state in only discussing 'Coptic' matters as questions of security and not on the political agenda. The public discourse proves though that the Coptic laity seems to be very aware of the fact that divorce is here not only a private, family issue but becomes a very public and very political one.

This is the case when lay members stand up against this feeling of isolation / privacy and draw these issues out in the open. The problematic of the tug-of-war between church and government is ever-present in the struggle of divorce and

remarriage licenses and once again, it becomes clear here that divorce is an arena not only for negotiating citizenship rights but rather for control over these rights and the choice is before the Coptic citizen: equality before the law or practicing religion freely? Civil or Islamic state? This is the problematic itself in its core: there should be no choice as every citizen in a civil state should be the same. And divorce makes this problematic, through the issuing of two different judgments all the more clear.

The Coptic Church, as Karimah Kamal notes, has always had a strong presence in the lives of the Copts and strives to uphold its influence and its traditions, but before the unification of the courts, the Copts had at least the choice of adhering to the Coptic or the Muslim courts to settle their disputes.¹⁷⁸ I think it can be safely assumed that the enemies of divorce in the Coptic Church always tried to ensure the perpetuation of these traditions and condemned the members of the laity that have gone against those rules. But I also think the strictness the laity members encounter today in regards to the matters of divorce is also the church's reaction to the sectarian tensions that have risen especially in the 1970s and 1980s. Thus, one always has to put the actions of the different actors in their historical contexts. But I think that the unification of the courts has played a role in worsening the situation for the Copts as well, as this process has not ended legal dualism but has just brought different forms of laws into one court.

While before unification, the application of the laws and the personal status courts were a purely religious matter, handled by each religious institution, and thus neither a secular nor a state matter really, which it has now partly become. The struggle of divorce and personal status laws has thus developed into a power struggle between state and church, which in itself bears state-like qualities for the Copts as it

¹⁷⁸ Kamal 2006: 11.

becomes the sole civil representative of them as a community: There are now *secular* judges, appointed by the state, to apply *religious* law, consequently I think the unification has brought about a double threat in the eyes of the church, which only reaction can be rigidity: not only is the Coptic family in danger, it is threatened by a state apparatus who declares itself as being Islamic.

Therein lies basically the conflict that Copts are faced with ever since the unification of 1956 and the increasing strictness of the church in contemporary times: rebelling against these motives and views of the church would basically mean to threaten and maybe even destroy the Coptic identity and community, or at least the Coptic Church and its devote followers portray it this way. On the other hand, everyone is looking for their own benefits and the easiest way out of complicated and unfortunate situations, such as an unhappy marriage. The problematic of this aspect today lies in the fact, that every Copt who faces such a struggle, like obtaining a divorce for other reasons than adultery for example, will ultimately be confronted with this basic question: are you *for* or *against* the church in these *difficult* times?

4. THE STATE AND THE CHURCH

While the legal as well as the religious level of the debates on Coptic divorce has been illustrated and examined, this chapter shall deal with the political nuances of this highly controversial topic. As it is, the discourse on Coptic divorces in Egypt can be used as an example to illustrate the state-like qualities the Coptic Church has in Egypt. In order to analyze this position of the church in connection to the struggle on Coptic divorce and its laws, it is necessary to demonstrate how this status of the Coptic Church came to be, which is basically the result of a reciprocal relationship between the state and the church that developed under President Nasser and Pope Kyrillos. Furthermore, it is once more necessary to illustrate, how sectarian tensions and the threat of those, deepen the church's feeling of responsibility for the Coptic laity and the Coptic family, which has to be protected from this kind of violence at all costs. These tensions thus, play again a significant role in the struggle over the control of Coptic personal status laws (PSL), the Coptic family and the Coptic community, as a whole and thus need to be connected to the power struggle between the Coptic Church and the Egyptian state.

The choice then of being for or against the church, the Coptic community faces is connected to the understanding of citizenship in Middle East and North African (MENA) countries. As the church represents the Coptic community in front of the state, the natural consequences are a feeling of responsibility of the church towards the community, in exchange for loyalty and support. One might wonder though, why the church has not accepted the influence of the civil state in questions of Coptic affairs, especially when these affairs are private.

Karimah Kamal explains that in the past the priest of a community knew every single member of this community individually, as well as his or her family, work and private affairs and problems. Consequently, the priest of each commune assumed the role of the mediator and had a lot of influence in the private affairs of the Copts, as he personally knew the issues and parties involved.¹⁷⁹ However now, the author goes on to say, this power and influence becomes highly questionable as the clergy does not and cannot fully grasp the individual private affairs, issues and problems of each community member, as this community has grown and the personal knowledge of priests about their community members and their personal lives and problems has become close to non-existent.¹⁸⁰ Many factors, such as the growth of the Coptic community, urbanization and migration to other countries, have contributed to the loss of this influence.

Kamal favors the citizenship model of the West where each citizen is individually and directly connected to the state and not through a second mediator or representative. It is doubtful, though, that the Egyptian government itself favors this model as well. The state's first and foremost principle and aim is the protection and propagation of 'national unity', which is naturally endangered and threatened by sectarian tensions. An outcome of the establishment of this 'national unity' is of course the goal and intention of remaining in power. Thus, the Egyptian government does not call the incidents examined below sectarian but rather individual cases of violence. The state takes on an ambivalent attitude. While it prefers to deal with these cases through the Coptic Church instead of with the issue directly, when it comes to

¹⁷⁹ Kamal 2006: 45.

¹⁸⁰ Kamal 2006: 46.

divorce the state seeks to ‘defend the individual’s right’ of the Egyptian citizen to divorce and remarry.

Such ambivalence bears a clear foreshadowing of a power struggle or clash of wills between the state and the church. This power struggle is connected to the fact that the PSL in Egypt are based on religion. It also indicates, that the struggle between the church and the state in political terms, is not so much about Coptic divorces as it is about control over the Coptic laity and their private and family affairs. This conflict becomes all the more complicated and deep as the church has practically the right to demand such influence and control as it is propagated and recognized as the Copts’ political and civil representative.

The Coptic laity is thus put in the middle of the tug-of-war between the church and the government over the control of the Coptic citizen’s private affairs, being disappointed in the state’s lack of action and thus turning to the church for representation as well as protection. It is clear that this comes at the price of giving up the control over their decisions regarding their personal lives. The pressure to submit to the church’s dogmas in loyalty and preserving of this holy entity is included in this ‘agreement’ between church and laity as well. Divorce and remarriage is thus the arena for negotiating the citizenship of and the control over the Coptic community as a whole, and not just about the individual cases of broken families.

But it would be wrong to assume that this loyalty to the Pope and the church is given involuntarily. This only happens in the case of disagreements between individual members of the community and a certain doctrine, like the granting and recognizing of divorces, but not in a general sense. In Coptic Orthodox dogma, though, the patriarch is understood and honored as “the father of the flock, symbol of

the faith and figurehead of the community.”¹⁸¹ Of course one cannot generalize here and the community as a whole is especially divided on the Pope’s decisions on the PSL. But what is meant here is that the average Copt presumably feels connected to his church precisely because it is the institution—one of a holy faith and dogma—that protects and represents him or her.

As the church fills the gaps that the state cannot or is unwilling to fill, for Copts there is a predicament of state. When such a crisis occurs, Fiona McCallum concludes, religion takes on a political character as the “state tends to be bureaucratic, inefficient and unable to respond to these problems (that the community faces).”¹⁸² The role of the church as a representative of the Copts becomes once more understandable and tangible, which connects to the Copts’ ebbing between church and state. While the latter gives the Copts a national identity, one, which is strong as we have seen, the religious institution provides these citizens with an authentic identity¹⁸³ that only through the power struggles and the see-saw in affairs of PSL between the two entities becomes excluding to the national one, as the church takes over the role of the state for the Coptic citizens.

Thus, the Pope of the Coptic Church has responded to the Copts’ fears, problems and dilemmas in three ways: spiritually, socially and politically. By providing social, or even civil, services the church has responded to the gaps left by the government with educational courses as well as organized leisure time for the youth and literacy programs.¹⁸⁴ By becoming the representative of the Coptic community, Pope Shenouda has additionally filled a political space left open by the

¹⁸¹ McCallum 2007: 926.

¹⁸² McCallum 2007: 924.

¹⁸³ McCallum 2007: 925.

¹⁸⁴ McCallum 2007: 932.

Egyptian government.¹⁸⁵ As the Pope has become the spokesman of the Copts and provided them with social as well as spiritual services, an authentic and strong identity, protection and the knowledge that there is an institution people can turn to in need, it is only logical and quite reasonable to understand that the Pope and with him the church strive for an amount of control over the community for which they are responsible. It is also comprehensible that the Coptic laity will be put under pressure, whether by himself and his own conscience, or from amongst the community or from the church itself, to submit to the church's rules, as it is the one entity that does provide for them. From this position of the church, as well as in connection to the sectarian tensions, derive the accusations of being traitors against those laity members, who will go against the 'father of the flock' that knows what is best for them, to pursue their own desires and agendas, such as obtaining a divorce for other reasons than adultery. It is at this point that the two institutions that understand themselves to be responsible for the citizens would necessarily clash with each other at some point.

4.1 National Unity

With regards to divorce and remarriage, the question of who is the 'true' representative of the Coptic citizens, or rather whose judgment is valid and needs to be followed, remains especially in light of the fact that the Coptic Church seems to be the provider for the Copts even though they are nationals of the state of Egypt. It is only natural that clashes will occur in the event of two contradicting judgments and it is even more obvious that the Coptic citizen will be torn not only between his or her various agendas and desires but also his or her two loyalties.

¹⁸⁵ McCallum 2007: 933.

It is my belief, that the question of national unity is important for the discourse on Coptic divorce, especially when researched through the lens of citizenship. If Egypt achieved true national unity, that is a centralized government and equal rights and responsibilities for all its citizens, regardless of their religion with the state as their only and true representative, than many, if not to say most or all, of the issues and problematics of Coptic divorce in Egypt would be rendered of their validity and of their impact. Thus, there would be no choice for the Coptic citizen between the freedom of practicing one's religion and equality before the law, which today's discourse and the nationalization of the courts in 1956 have made it a reality in every Copt's life who is looking to divorce and remarry.

The duality of church and state as the two representatives of the Copts, and which are thus the entities the Coptic citizen has to turn to when he is looking to divorce, has been established and nourished since the era of President Nasser, particularly since his abolition of the religious personal status courts. Mariz Tadros illustrates in her article about the history of the state's relationship with the Coptic Church that through Nasser's abolition of the *milli* courts, Nasser supported the Coptic Church in its struggle with the *Majlis al-Milli* over power and control over the Coptic laity.¹⁸⁶ It is my contention that only through this move did Nasser give the church the sole authority over the personal affairs of the Coptic citizens and over the Coptic PSL. The power struggle of today over these laws between government and church stem largely from this abolition, as the Coptic laity previously had considerably more influence over their own private affairs and these laws. Furthermore, Nasser's authoritarian regime "inhibited virtually all forms of civic life, including Coptic civic

¹⁸⁶ Tadros 2009: 270-71.

engagement, whether with respect to church reform or to national politics.”¹⁸⁷ Through political and civil isolation, the church started to become the *only* representative of the Coptic community, resulting quite logically in the Copts identification with their religion more than with their citizenship and the church’s hegemony over their laity’s personal and family matters and choices.

Tadros describes the relationship between the government and the Coptic Church as an entente, an agreement between the two entities. The regime granted the church leadership of their community, and the church in turn granted the state political support and propagation of the government among the laity.¹⁸⁸ While the good relationship between President Nasser and Pope Kyrillos VI has certainly had a positive effect on this kind of contract, the relationship between their successors President Sadat and Pope Shenouda began to be strained. This deterioration is largely attributed to two main factors, the Islamization of politics and civil society, which occurred under President Sadat and was largely encouraged by him, the “believer president”¹⁸⁹ and Pope Shenouda’s political activity in reaction to this course of religious awakening.¹⁹⁰

The Coptic Pope and the Egyptian president were highly at odds with each other. Pope Shenouda attacked President Sadat openly in his speeches and at public appearances for his religiously influenced regime and for making Islam the new nationalism, in response for example to the amendment of Article 2 of the constitution in 1980, naming the Islamic *shari‘a* the instead of a source of legislation.¹⁹¹ The latter was deeply provoked by the Pope’s political activity, a provocation, which culminated

¹⁸⁷ Tadros 2009: 271.

¹⁸⁸ Tadros 2009: 272.

¹⁸⁹ Tadros 2009: 273.

¹⁹⁰ Tadros 2009: 273.

¹⁹¹ Tadros 2009: 274.

in Sadat's termination of the 1971 presidential decree that had selected Shenouda and the banishment and house arrest of the Coptic Pope to a convent in Wadi al-Natrun.¹⁹²

Pope Shenouda's political activity, as well as the tightening of the divorce laws in the 1970s for Copts as we have seen, was more a response to the ever-rising threat of Islamization and sectarian tensions than anything else. It is a natural consequence when the state gives another entity, such as the church, power and leadership over a part of the national community, that the church will take over the responsibility and protection of this community, especially when the state itself fails to do so. However, the breakdown resulted through the provocation and disappointment of both leaders in each other. While Pope Shenouda was threatened by Sadat's policies, Sadat probably assumed he would receive the Pope's support of his policies in exchange for granting him leadership and control over the Coptic community, just as his predecessor had.

Today's relationship between the Egyptian government under Hosni Mubarak and the Coptic Church under Pope Shenouda is largely coined by a continuance of the above-described entente, but this reciprocal relationship is not free of clashes between the two entities. The ambivalence of the state towards the church's hegemony over the Coptic laity shines through especially in cases of divorce. This has been illustrated through cases in the years of 2006 and 2008, where the Supreme Administrative Court tried to 'force' the Coptic Church to grant divorcees the permit to remarry, even if the divorce had not been recognized in Coptic canon law. Here it seems the government cannot decide which stance, civil or religious, it should take.

Yet as we have seen, the Coptic Church as well does not seem to be certain of what it deems best for its control in regards to personal status matters. Needless to say,

¹⁹² Tadros 2009: 273.

the relationship between the two actors improved immensely at first when President Mubarak ended the Pope's house arrest in 1985. Consequently, Shenouda returned to a non-confrontational stance with the government, granting it political support in exchange for his leadership.¹⁹³ But ever since the 2004 conversion of a Coptic priest's wife, Wafaa Constantine, to Islam, the entente between church and state has become rather strained again.¹⁹⁴ Many intellectuals, such as Tariq al-Bishry have used this case to demonstrate the Coptic Church as a state within the Egyptian state as it took on powers and responsibilities towards Constantine only the state should practice as the civil representative of the citizen.

Thus, where should the authority of the church be limited and actually end and where does the authority and responsibilities of the state begin, especially when the PSL of Egypt are supposed to be religious and thus divorces and remarriages have to be recognized by religious institutions? Even though there are many disagreements on this issue, both the church and the state agree on the fact that national unity is of utmost importance. They both also agree on the fact that sectarian tensions and violence are one of the greatest dangers to this unity, and thus must be condemned and prevented although both entities surely have their own agendas and reasons for propagating such a concept and the dangers of sectarian violence.

The state for its part is denying such violence in order not to lose the little legitimacy and control it still has. Acknowledging the reality of sectarian tensions would be equal to admitting to loss of control and loss of 'national unity', which then would delegitimize the government in place. But its main aim is to stay in place, and thus it will not acknowledge the fact that these incidents are indeed sectarian and not individual acts of crime. The Coptic Church, on the other hand, is naturally afraid of

¹⁹³ Tadros 2009: 275.

¹⁹⁴ Tadros 2009: 279.

sectarian tensions and violence, to which Copts are falling victims. Pope Shenouda spoke in an *al-Ahram Weekly* interview of the importance of national unity and policies that foster as such: “I would like to emphasise (sic!) the importance of interaction among Christians and Muslims in all areas, not just on the political level, but on all levels... Even as children, they must play together.”¹⁹⁵

National unity thus cannot just be understood on a bureaucratic and political level, but societal and cultural as well. It becomes a concept here that incorporates tolerance and peaceful coexistence of the different communities, which live in and make up the society. As a consequence to such an understanding or definition of national unity, sectarian violence and tensions are thus a great danger to it. Ever since the beginning of the twenty-first century, a rise in sectarian tensions and incidents has been observed in Egypt to the extent that these incidents have become an almost regular occurrence in today’s papers and newsreels. The government has attributed such attacks and violence to individual perpetrators as well as traditions of country life, rather than sectarian backgrounds. The “Speaker of the (People’s) Assembly Fathi Sorour said the attack (of Nag Hammadi, which happened on Orthodox Christmas Eve 2010) ‘not only wounded the Coptic community but all of Egypt. Let me stress (...) that this was an individual criminal act, like a clash between two brothers living in one home’.”¹⁹⁶

While the Egyptian government continued on its official discourse here, which includes denying sectarian violence as not to lose its legitimacy and spread further panic and resentment, even though one might wonder if this approach does not actually increase such feelings, at least of the Coptic community against the state, Coptic officials as well as human rights groups and intellectuals have held against this

¹⁹⁵ H. Guindy, Shukrallah & Tadros 1999.

¹⁹⁶ Essam El-Din 2010.

attitude in the public discourse. For example, Amr Hamzawy, the senior associate at the Carnegie Endowment for International Peace, accuses the government of not acknowledging the fact, and not even worrying about the rise of sectarian tensions and violence between Muslims and Copts in Egypt. “(...) on occasion it parades Muslim and Christian clerics together, to show us that everything is under control. Often such shows of religious coexistence are mounted right after a horrendous sectarian attack has been committed.”¹⁹⁷

But instead of placing the blame only on the government, the media as well as the citizenry of Egypt and its way of treating each other solely based on their religion find mentioning in his article as well. In Hamzawy’s opinion “an indecisive state, an incendiary media, and a failure of civil institutions to stand up for the equal rights of all. Under such circumstances, sectarian violence finds justification and religious hatred finds a cause.”¹⁹⁸ From this violence, it becomes simple to trace the Copts’ isolation and feelings of being threatened in Egypt. The church naturally responds to such risks by not only tightening its control over the laity in general, but over their private lives and affairs in particular, partly because it is allowed to do as such, as the Coptic PSL are based on Coptic canon law and partly because the Coptic family’s disruption through divorce would weaken the community and isolate its members even further.

Sameh Fawzy analyzes sectarian tensions according to citizenship issues and problems in Egypt. He writes that some “support a different agenda (instead of integrating Copts) and would like Copts to remain marginalized (sic!), culturally and politically, for the sake of their political project. In sum, not all who speak about national unity have an interest in Coptic integration in society. But if we want to

¹⁹⁷ Hamzawy 2010.

¹⁹⁸ Hamzawy 2010.

sustain citizenship rights for all, representation for all must be achieved.”¹⁹⁹ One might wonder here, who Fawzy is actually talking about, the church or the government or maybe both. The Egyptian government has reason to prefer the status quo rather than the true integration of the Coptic citizen, as it does not have to deal with the individual Coptic citizen and his problems and demands, but rather can refer to the religious institution, which will then regulate and control this part of the Egyptian community.

It is not my intention here to insinuate that the Coptic Church is content with the status quo, but one has to keep in mind that full political and social integration will be only achieved by the loss of the church’s political power as the Coptic representative in front of the state as well as its justification for making divorces virtually impossible, as these strict laws are traced back to the rise of sectarian violence and isolation of the Copts. However, under the threat and danger of sectarian tensions, it is only a natural reaction of the church to try and protect its laity, whether it is its political representative or not. The Coptic Church’s rigidity and strictness, as well as its gripping onto the control of the Coptic family, has thus to be understood and viewed under these circumstances. This is not intended to be an apologetic discourse on the church’s rigidity, but in order to comprehend and judge on such attitudes, it is of utmost importance to take the full picture and all its components, be they religious, legal or political into account. Here sectarian tensions do play a role in the discourse on Coptic divorce and the developments of these laws and the church’s attitude as we have seen in previous chapters and illustrations.

The one on the losing end here is indeed the Coptic citizen, whether in political or personal affairs, such as divorce or remarriage. While his representative,

¹⁹⁹ Fawzi 2010: Going positive.

the church, gives him a sense of security and authenticity and thus he naturally feels a certain connection and loyalty towards it, at the same time it restricts his life choices in a way, that the state does not. Thus, in search of his own benefits and desires, he will necessarily be torn between these two entities, which in the end both claim responsibility and representation of him, the state on the national level and the church on the religious, as well as social and cultural level.

This necessary diremption of the Coptic citizen is again not only proof of Egypt's in-between status of civil and religious state, as such a feeling would not come up in either, as well as the political and social make-up of Egypt, which has resulted in two states within one: the government itself on the one side and the Coptic Church on the other. To this status, sectarian tensions as well as the political make-up of Egypt and the church-state relationship are all contributing factors, which result in the occurrence of divorce and remarriage in many cases, in two different valid judgments between which the Coptic citizen has to choose again and through which the diremption is not only renewed but further established, deepened and proven to be existent in the most personal affairs of the Coptic citizen.

4.2 Two States in Egypt

It has been illustrated that Copts feel more connected to the church than to the Egyptian state since the latter has not provided them with adequate security. Another consequence to the surge in tensions and violence amongst the Egyptians has been a proportional increase in the rigidity, strictness and conservatism of the Coptic Church, especially in regards to personal and family affairs, as the family is understood as the basis of the community and thus has to be preserved and protected. Hence, Pope Shenouda conceded that the rising religious conservatism in Egypt, resulted in Copts'

feelings of un-acceptance in society and thus, they turn to their religion as well. When asked what brought this change about, the Pope acknowledged, “the general atmosphere is different now. (...) (And that a) general atmosphere (is needed) in which the other is accepted.”²⁰⁰ Tariq al-Bishry takes this whole argument a step further by citing Milad Hanna, who reasons that not only Copts have been oppressed in Egypt, but Muslims as well, thus their oppression is connected to the oppression of all Egyptians.²⁰¹ Improvement can only be achieved through implementing the main points of citizenship, in al-Bishry’s opinion, which are participation and equality.²⁰² It shines through in his writing and reasoning that the author believes that the implementation of the Islamic *shari‘a* would lead to a realization of these values for all of Egypt’s citizens, as damming Islam has never guaranteed the church safety. It has always preserved itself, be it in the threat of Western influences and forces or by sectarian violence in Egypt.²⁰³

While one can certainly agree with the author’s first line of reasoning, the way on how to implement these values is certainly disputable. It is highly doubtful, that implementing the Islamic *shari‘a* in its fullest would lead to political and social equality between Christians and Muslims and thus, Coptic laity and clergy alike worry about and oppose such an idea strongly, as we have seen. But as it has also been illustrated, an Islamic state would give the Coptic community, or rather the Coptic Church, unlimited freedom and hegemony over the Coptic PSL. Herein lies the basis of the church’s double standards in the discourse on divorce and remarriage and the choice the Coptic community faces as a consequence – Islamic or civil state. As it is,

²⁰⁰ H. Guindy, Shukrallah & Tadros 1999.

²⁰¹ al-Bishry 1981: 869.

²⁰² al-Bishry 1981: 876.

²⁰³ i.e. Ibid. 873,875.

the debate on divorce combined with the fact that the church is able to practice hegemonic power over its laity, proves once more Egypt's ambiguous status between civil and religious and that the church has become, through its status of 'representative' and 'spokesman' a state within the Egyptian state.

Sameh Fawzy addresses this dynamic between the government and the church. In an article he wrote for *Daily News Egypt*, he examines this, reasoning that Pope Shenouda becoming the spokesman of the Copts is connected to the lack of legitimacy of the Egyptian government, while he acknowledges the entente Tadros examines: "As far as the state is concerned, Pope Shenouda has become the only representative of the Coptic community. If a Copt has a problem, he has to turn to the church, simply because the government does that when it wants Christian support for the ruling National Democratic Party in public elections."²⁰⁴ It is interesting to note here though that if a Copt has a problem concerning his family or marriage, he inevitably turns to the government instead of the church, for help. In this case, the state is the one that is willing to work with and help the citizen. In regards to family and personal matters, it is thus the other way around and the exact opposite to every other possible situation, which might urge the Copt to turn to his representative for help. And this is even though the PSL are the only thing in the Egyptian constitution that are supposed to be based on religion.

Fawzy implies political activity of the church in regards to national politics as he connects the government's acknowledgement of the Pope's power and legitimacy as the 'leader of the Copts' when it needs 'Coptic support' in elections. But Pope Shenouda himself distinguishes between political and civic activity, describing himself as only active in the latter as he, or rather that the "church is not involved in

²⁰⁴ Fawzy 2008: Pope Shenouda...

politics. (...) It has other responsibilities. But, at the same time, it has a national and civic duty.”²⁰⁵ This national and civic duty is propagated and acknowledged not only by the Egyptian government at least at times, but also by the concept of power sharing that is predominant in Egypt’s internal politics.

Thus, Egypt could be described as a pluralistic state, where power sharing is applied, especially in regards to Coptic PSL and citizenship. In a pluralistic state, “Internal peace is based on mutual respect, a general sense loyalty toward established procedures and rules of conduct, as well as a shared interest in protecting the political architecture of the system.”²⁰⁶ A couple of obvious consequences result from this concept and the approach to Coptic citizenship, as it is in an indirect relationship between citizen and state, while the citizen is at first and foremost connected with his religious institution, which then mediates between citizen and state. First and foremost, “Christians have practically become citizens in church rather than a state.”²⁰⁷ This outcome is partially connected to the concept of power-sharing as well as the fact, that the church has provided duties and concepts, the government has either been unwilling or unable to make available to the Coptic community of Egypt.

The most important one of those is the guaranteeing of what McCallum calls ‘human security’, which is a “key achievement of the state (...) (and which contributes to the) general correlation between the removal of immediate risks and the decline of religiosity.”²⁰⁸ Another is the providing of an authentic identity, which became especially important in the case of Egypt at the rise of Islamization under President Sadat. It is a natural result that a religious minority would cling to its own

²⁰⁵ H. Guindy, Shukrallah & Tadros 1999.

²⁰⁶ Butenschon 2000: 23.

²⁰⁷ Fawzy 2008: Pope Shenouda representative...

²⁰⁸ McCallum 2007: 24.

heritage and religious identity when feeling threatened inter-communally and politically by the majority. Only then could the church as a religious institution gain more influence over people's lives again, as the state could or would simply not provide for them while the church did everything in its powers to counter the state. This lack of action by the government, as well the concept of power-sharing and the entente, which has been kept alive between the church and the state, all contribute to the weakening of the state in its centrality and the strengthening of the Coptic Church, as not only the representative of the Copts and in maintaining the control over Copts' family and personal affairs, but as a state-like entity in Egypt.

This reality, which is a combination of the church's self-understanding as well as propagation and recognition by the government, becomes extremely important in regards to the struggles over PSL, including the drafting, application and control over those, as well as divorce and remarriage of Copts. As the PSL are still derived from religious sources in Egypt and are thus contributing to its dual legalism, it is a reasonable result that the Coptic Church understands itself as having the first and foremost control over these laws and issues as well as the last say in regards to divorce and remarriage of member of their community. The conflict between the church and the state starts right here, at this point. While superficially, the debate seems to be about divorce and remarriage, it is my belief that these discourses and conflicts are actually about control over the Coptic laity and their personal affairs. The Pope has here only the right to ask for such a control, unlike for example the Mufti on Muslim's private lives, because he is recognized by the state as the Copts' spokesman and representative in every other affair and area, while the government itself and not a religious institution, such as al-Azhar, which as well is under the Egyptian state, represents the Muslim citizenry. The church is hence demanding the control over the

one thing that is still considered religious in Egypt's legal affairs and constitution, and at the same time this is the one area where the state does interfere with court rulings, such as ordering the church to let divorcees remarry.

The crux of the whole matter is here the issuing of two different judgments. While the state grants the divorce and thus a permit for remarriage, it does not have the authority to grant the latter. This authority lies strictly with the church and while the state may grant the divorce of a Copt, as it rules this on the basis of the 1938 decree as we have seen, the church might not recognize this divorce as valid and according to its dogma, and thus does not grant the remarriage permit, which it is allowed to do. Karimah Kamal focuses on this point - the two contradicting rulings of the two forces, church and the state – and asks one of her interviewees, Dr. Samir Tanaghu, a doctor of civil law at Alexandria University, whose judgment should prevail in such a case of contradiction. In his opinion, there should be no conflict as the will of the state does prevail in questions of law. The state is the entity that applies these laws, even though they might have a religious basis and thus, while the state gave the church authority to draft laws, it has no authority of legislation.²⁰⁹

While Tanaghu acknowledges the Copts' dilemma in this situation, as their loyalty has to be divided on this point, he at the same time dismisses it, as he concludes that there is no true struggle over the control and power over the PSL in Egypt, as the church understands that its competence is authorized and granted by the state²¹⁰ and thus, when one takes this a step further, can be taken away by it again. Whereas in theory his conclusions and arguments might be logical and true, it is very different in regards to reality and practice. The struggle between the church and the

²⁰⁹ Kamal 2006: 150-151.

²¹⁰ Kamal 2006: 151, 153.

Egyptian government over the influence and control over the Coptic PSL and out of these derived judgments and rulings becomes obvious in court rulings, such as the one in 2006, which has been examined in a previous chapter, ordering the church to allow divorcees to marry again and the clergy's as well as the laity's divided reactions to these decisions. Such a court ruling has been understood as an interference by the state, where it should have no say. This viewpoint is partially understandable, as the government backs the church as the legitimate representative of the Copts on the one hand, and on the other hand because the PSL in Egypt are supposed to be religious and thus the state cannot meddle with these, as the Coptic Church is naturally the religious authority over Coptic Christianity and its laity.

While the church's double standards in the debate on Coptic divorces and a civil state were highly obvious, the state's double standards shine through right here. It cannot support and recognize the Coptic Church, and more specifically the Coptic Pope, as the spokesman for the Coptic community and then take away his authority over the one area, the PSL, which is supposed to be based on religion in the Egyptian state. Neither the church nor the state are willing to step down from its position of authority and influence over the Coptic community, which results not only in the disruption of the Coptic community in general, and more specifically of those members who try to obtain a divorce, but also in the construction and reality of the Coptic Church as a state within the Egyptian state.

The question of remarriage becomes central and especially important to prove the church's state-like qualities, as only through the issuing of this permit does the implication of the Coptic Church being a state become explicit and obvious. Since the state is the entity, which issues and grants the divorce, even though the church might not recognize it, the Copts in question are legally divorced until it comes to the

question of remarriage. Only then does the power of the church play the role, which proves its state-like qualities. As the Coptic Church does not recognize the divorce, it will not grant a remarriage and thus will not issue the permit a divorcee needs to remarry in church again. Here, two contradicting judgments of the exact same case are issued and only here does the power, influence and authority of the church actually imply consequences for the Coptic divorcee and for the government as well. While the Coptic divorcee(s) is hindered from continuing on with life in a 'normal' fashion, the state is exceptionally weakened by the church's position and authority, which cannot be taken away as 2006 or 2008 has shown.

Tanaghu, Kamal's interviewee, acknowledges this point as well. While he is of the opinion that the church should recognize these rulings, he also concedes that nobody can force it to do so and consequently to issue a re-marriage permit.²¹¹ Bishop Pola, the head of the ecclesiastical council, which is the authority in the Coptic Church over family affairs, voices his thoughts on the matter very clearly: "If someone gets a divorce order from the court and he or she wants to marry in the Coptic Church, then they should marry according to the Coptic Church's rule (...). How can we take orders to do something against the Holy Book? I don't blame the judge; he is a judge with a Muslim mentality who is ruling Coptic affairs, which he knows nothing about."²¹²

However, the Egyptian public as we have seen is divided on this matter and has not been afraid to speak up in this issue. It seems that many implicitly recognize the fact that the church has indeed established itself as a state within the state and that it is the government's duty now, to counteract those developments. There is no

²¹¹ Kamal 2006: 155.

²¹² El Bahnasawy 2008.

acknowledgment though that the government has undeniably fostered these developments. Hossam Bahgat, the director of the human rights organization The Egyptian Initiative for Personal Rights (EIPR) is one example of those who do call on the Egyptian state to intervene: “The Coptic Orthodox Church is entitled to its interpretation of religious texts, but the state has the right -- indeed, the duty-- to provide an alternative to those Copts who disagree with the interpretation.”²¹³ Karimah Kamal recognizes the power struggles behind the divorce debate as well, summing these struggles up in a very insightful way: “We are faced with two major challenges: the church and the state. Let me start with the state. Far from being secular, the state increasingly poses as being religious. It is against this backdrop that the church is adopting an evermore-defensive posture. It is very difficult for Copts to oppose the church and in the current climate to openly oppose the church is seen as little short of treachery.”²¹⁴

It is this recognition that Kamal develops in her own study on Coptic divorce, where she subscribes the church’s feeling of being responsible and able to be a mediator in Coptic family affairs, to the past. And it is with this background, that she questions this power today, asking why the church will not realize that a civil power, the state, is today stronger and more able to be in such a position, than it is.²¹⁵ This point that she makes here, is highly disputable as the government does recognize the church, as the Coptic representative in every possible way, be it explicitly or implicitly by not responding to this community’s civil and political needs. One could argue here, that the government neither does so for its Muslim community and thus, the Copts should not feel discriminated or oppressed. However this is not the point the

²¹³ Nkrumah 2008: Right to remarry.

²¹⁴ Nkrumah 2008: Church Weddings.

²¹⁵ Kamal 2006: 45-46.

chapter is trying to make. Rather it proves that these conditions helped the church to become an entity with at least state-like qualities, which thus strives for explicit and absolute control over its laity's private legal affairs.

Yet, as a state apparatus for regulating these affairs already exists, the struggle between church and state becomes inevitable, especially when issuing the re-marriage permit is the only control the Coptic Church has left over the Copts' family and personal status affairs and laws after the abolition of the religious courts under Nasser in 1956.²¹⁶ Thus, it is not only sectarian tensions, which urge the Coptic Church to hold rigidly unto this authority, but letting go of this authority would mean a total loss of control over the Coptic community, which as its base has the Coptic family. While this is truly a coherent concept, in regards to power relations as well as to the genuine feeling of being threatened by one's fellow citizens and bureaucracy, one can on the other hand quite easily understand Kamal's frustration, when she describes the Copts' striving and need for their church's blessing on their life choices and the church's refusal to give it to them.²¹⁷

4.3 Concluding Remarks

One could argue that while Kamal's dissatisfaction is certainly understandable, the Coptic Church does not act in strictness and rigidity, but rather *reacts* towards the state, which on the one hand officially recognizes its authority in 'leadership' of the Coptic community but on the other hand criticizes and refuses to help the church,

²¹⁶ Kamal 2006: 78.

²¹⁷ Kamal 2006: 133.

which adds to its feelings and perceptions of being attacked and threatened by sectarian violence.

This perceived threat along with the above mentioned position of representative of the Coptic community gives the church the logical consequential feelings of responsibility and authority over Coptic affairs, be they religious, political or legal interference of the state is thus perceived as a threat to the authenticity of the Coptic community, and moreover to the church's control over it. This whole conflict's basis lies in the fact that the government usually accepts and recognizes the role of the church, or the Pope, as the civil representative of the Coptic community, as long as this representative does not threaten the state's unity.²¹⁸ It is highly doubtful though in my opinion, that the state can actually be unified, if there are two civil representatives. Egypt's case indeed proves that the experiment has backfired quite logically, as the church, pope or the Coptic community as a whole stands in the threat of being called and accused of disloyalty towards the state.²¹⁹

Through such an understanding of citizenship, where one community is directly connected to a religious institution as a mediator or link between them and the state, it is only logical that these religious institutions become political. In Egypt's case, the church has especially grown in importance and centrality in Copts' lives, due to the rise of sectarian tensions, violence and Islamic fundamentalism. A civil leader, such as Pope Shenouda here, sooner or later necessarily needs to become politically active, as the government neglects then all its duties and relationships it has towards the Coptic community. One has to also remember that "any religious leader who becomes involved in political affairs has to walk a tightrope in order to satisfy the

²¹⁸ McCallum 2007: 937.

²¹⁹ McCallum 2007: 936.

demands of a community without causing strife either internally or with the authorities or wider society.’²²⁰

It is highly probable that Pope Shenouda is very aware of this fact, as well as his responsibilities towards his community. But one should also not forget that the Copts are not supposed to be citizens of the church, as Sameh Fawzy has called it, but citizens of the Egyptian state. Thus, the entity of the state does have responsibilities towards its citizens, be they Muslim or Christian. This is where the conflict in the question of the remarriage license appears. Divorce and remarriage are thus not just that, private family issues that need to be discussed and handled on a legal platform, but they become an arena of negotiation of citizenship as well as control.

The church refuses to issue the permit of remarriage, even though the state has granted the divorce, which the church thus does not recognize as being valid. The church, instead of granting these lay members what they want, answers in strictness, because of the danger and challenge of sectarian violence and its threats towards the community, which basis, the family, has to be protected at all costs, as well as to prevent the loss of control over this community and the aforementioned basis. The state does not help in the matter; it lacks in legitimacy in the Copts’ eyes and cannot go far enough against the church, as the state itself granted this control. The Coptic citizen is in the middle, where the two forces negotiate the further continuance of his personal life. Real citizenship cannot be granted here, because either force stops the granting of it short as they negotiate on it in the arena of divorce and remarriage, two things that should only concern the citizen in the end.

²²⁰ McCallum 2007: 936.

Both the state and the church, and their double standards use the rhetoric of equality and citizenship and their quest to reach these goals. But through examining the dynamics of the discourse on divorce, as well as the concept of citizenship in Egypt and the church's relationship with the state, it becomes obvious that while the discourse might be partly about divorce and remarriage as these are in Egypt religious issues as well, the debate and struggles are much more about the control of these issues. Thus, the conflict between husband and wife has deteriorated and instead has become a conflict between the two entities, with the Coptic citizens in the middle, being pulled in different directions of his state and his church.

5. CONCLUSION

After all these illustrations and examinations of different aspects of Coptic divorces in Egypt, the question arises of what does actually remain. Indeed, the more one thinks about and delves into this topic and its different aspects and point of views, the more deeper and complicated it becomes. The struggles and debates on Coptic divorce in Egypt are not just legal in nature, but do have other components and include other aspects and levels as well. The discourse is as much a legal as it is a religious one, as the PSL in Egypt are supposed to be based on and applied according to one's religion, as stated in Law 462 of 1956.

This law is the basis of not only Egypt's legal dualism in regards to PSL but also to Egypt's ambivalent status between a civil and an Islamic state. Egypt's odd position is the basis of the church's control and power not only over the Coptic PSL and their private affairs, but also over the laity as a whole as its political, civil and religious representative. Through these power relations between the Egyptian state and the Coptic Church, the Coptic divorce debate takes on a political nature, the moment the will and decisions of the church on these laws and judgments in these cases clashes with those of the state. The discourse on Coptic divorce in Egypt does thus not only have a legal level, but a religious and a political one as well.

These other notions are connected to the fact that the divorce of Copts becomes an arena, in which power struggles are fought out. These struggles are inside the church itself, as well as between church and laity, the laity and the state and last but certainly not least, the state and the church – the two main political actors in this scene. The Coptic citizen is here the one that is put in the middle and the one who has to choose between two major citizenship rights – the freedom of practicing religion

freely and the basic right of equality before the law. This choice only truly came about through Nasser's nationalization and unification of the courts in 1956, where the laity's influence over personal status laws and courts then completely diminished. In these multilayered power struggles and discourses, it is needless to say that each side has their, though not homogenous, own agenda, intentions and motivations for their attitude and each of those become understandable and logical when examined in their own point of view.

Damming Sectarianism

Thus, a solution to the controversies of Coptic divorce, such as two valid contradicting judgments in the question of a divorcee's remarriage or the citizen's choice between two basic rights, becomes difficult to find, and it seems impossible to find a solution to these controversies and choices of the Coptic citizens' lives, with which every side will be content. Even though it is my opinion that the two entities, state as well as church, should actually strive to help and support their citizens or laity and not act out of desire for power and maintaining control, one certain way and big step to open up the discussion on citizenship as well as divorce and divorce laws again, would be in condemning sectarian violence and tensions and *truly* working towards unity and tolerance.

As the government is responsible for the citizens' security, it is this institution that needs to pick up its slack here and seriously start working towards policies that promote as such. The current approach and attitude that is adapted by the government, which includes the denial of sectarian violence and dealing with these incidents through the church, weakens the state in its centrality and legitimacy, while

simultaneously strengthening the church, and keeps it from addressing a true and vibrant problem in Egyptian society.

It is also not useful to cite and remember history as proof of Egyptians' coexistence and tolerance towards each other.²²¹ Such an approach revives nothing but nostalgia and mystification of the past, which does not attribute to solving the problems of the present. Ammar Ali Hassan, the director of Centre for Middle Eastern Studies and Research, names in his *Al-Ahram Weekly* piece secularism as essential to securing the (Coptic) citizens' rights. "It is also essential to separate religion from politics. The church should not attempt to play a political role, and Islamic organisations (sic!) and groups should not continue to politicize (sic!) religion."²²²

Rather than propagating through its own policies willingly or unwillingly, the polarization of religion and their institutions, the state should enlist these institutions in propagating unity and tolerance. However, as it is of now, to both the church and the state, the maintenance of the control they do still have seems to be more important than actually improving the citizens' situation of living. Emad Gad, the secretary general of the Arabs Against Discrimination, that the "current regime hasn't made any effort to eliminate sectarian tension (and that) there were many opportunities for the Church and the regime to start a dialogue addressing Coptic concerns, but that both parties did not pursue such a dialogue as if they were happy with the status quo."²²³ But such a dialogue and cooperation would truly help in fostering tolerance and unity among the Egyptians and thus open up to debates, be they on citizenship or divorce. It

²²¹ Hassan 2006.

²²² Hassan 2006.

²²³ Samaan 2007.

would diminish the isolation of an essential part of Egypt's citizenry, but both the state and the church would have to work together to achieve this aim.

However, it is questionable after illustrating the struggles on PSL and Coptic divorce between these two entities that such an cooperation would benefit and contribute to the aims of each institution, which both come down to the control over the PSL and these cases, each of course having its own agenda and motivation for maintaining this control. While the state aims here for greater centrality and influence over the part of the Egyptian population it has essentially lost, the church acts on the accord that these laws are based on religion and thus cannot be meddled with by the state and that the family is the basic unit of the community and thus must not be threatened in order for the community to survive. Here these threats culminate in the sectarian violence and tensions, which have seen a revival since the 1970s under President Sadat and his relationship to Pope Shenouda.

To eliminate such a feeling of being threatened and its result of religious rigidity and conservatism, the "Egyptian government must eliminate all factors that threaten the idea of co-existence and end all discrimination on the basis of religion, (...). It must be courageous in dealing with misinterpreted religious teachings that fuel religious extremism."²²⁴ While the Coptic citizen here is certainly the victim of these discriminations and tensions, it is my opinion that he / she too needs to cooperate with the state on these policies and endeavors. The Copts as well need to take part in these projects and work against their isolation and the limiting of their choices in private affairs, both from church and the state. But still, as the Copts are the numerical

²²⁴ Hassan 2006.

minority in Egypt, it is my belief that the Muslim majority has to take the first step in realizing these aims.

Amr Hamzawy insists on the need of the Muslim majority to begin the Coptic community's re-integration in the Egyptian society, making a strong case for civil society to take action; "(...) the Muslims need to revive the country's old tradition of enlightened civil and religious rights. The Muslims need to encourage civil society, educational organisations (sic!) and the media to stay on track. What we have now is a societal environment in which sectarian exclusion and tensions have become the norm. Unless we want the Copts to live in fear or leave the country, we need to change things."²²⁵ These things, which he talks about, include the approaches of the media, the government and the religious institutions as well as of the citizens themselves. He accuses the Egyptian citizenry of a "deplorable tendency, across the sectarian divide, to place religious affiliation above the bonds of citizenry. It is through this narrow perspective that people regard others, whether Muslims or Christians, in an exclusivist manner. (...) It is this phenomenon that empties civil citizenry of all meaning."²²⁶

Undoubtedly to change such attitudes across the country, major reforms of education, the media as well as in government and church circles are needed and these reforms and changes are certainly not achieved and realized easily. Nevertheless, they are of greatest importance to curb and prevent sectarian tensions and violence, prejudices and intolerance, to grant equal citizenship rights to all and to open up the debates on religious PSL and the rights of Copts in comparison to Muslims. Sectarian

²²⁵ Hamzawy 2010.

²²⁶ Hamzawy 2010.

violence plays a significant role in the debate of Coptic divorce and remarriage and the church's attitude. Thus it becomes of utmost importance to curb such tensions in order for the church's ability to open up on this subject.

Civil or Islamic State?

It is clear that Coptic divorces and the debates and discourses on them become a power struggle, and not as one would expect between the two affected spouses but between two entities, the church and the state and the Coptic citizen, who is striving to divorce, is put in the middle. While according to the Coptic Church, it refuses to loosen its attitude on the matter because of the religiosity of the PSL and because of what Coptic Christianity mentions of divorce, it becomes clear that the matter is not only about religion but also about maintaining the control over this particular law. While the church and the state, both conceptualize their stance and outlook on this matter, as on every other, through rhetorics of citizenship, equality and religion, these rhetorics cannot be taken at face value, as this thesis has shown. They are utilized to mystify and as a result complicate the matter of divorce and remarriage that is for the affected parties already complicated and difficult enough.

In regards to citizenship, either force, the state or the church through their own agendas and motivations, albeit unwillingly, limits it. Either the state grants the divorce and remarriage of the Coptic citizen, which then would not be compatible with the fact that each religious denomination should have their own code of PSL and be judged according to them (a system which can only be found in an Islamic state, based on 'Islamic tolerance' and the *dhimmi* contract), or the church limits the Coptic citizen's right of equality before the law by its refusal to grant the remarriage permit

to the Coptic divorcee, which is the church's full right in Egypt's ambivalent status between civil and religious state.

Thus, the government cannot force the church to issue these permits as long as it remains an in-between Islamic and civil state. It cannot call itself civil and maintain two sets of PSL and then forcing the church to partly give these codes and the control over them up. Here lie the double standards of the church's stance as well. While it condemns an Islamic state and urges the civil state of Egypt to aid the Copts in the case of sectarian tensions, a civil state would not grant the Coptic Church an own PSL code and control over it. Here the church seems to be quite content with the fact, that the state of Egypt has Islamic nuances as well. In consequence, neither church nor state can truly decide what it wants Egypt to become and thus, the nation will have to remain in the middle of the two governmental forms. Thus, citizenship is here limited by either force, church as well as state, through their own agendas and motivations and the Coptic citizen who already lost the marriage, be that in the church's eyes or not, is the true loser in this tug-of-war because he will ultimately lose rights that should be granted to everyone. Adding to that is the fact that these rights are taken away from him by institutions that allegedly demand these rights and which should strive to support and protect the citizen of violations made against him or his rights.

In spite of these double standards, I do not intent to insinuate here or in the thesis as a whole that every clergyman acts out of this accord. I do believe that the church knows well of its responsibility towards its laity and does its best to stand up to those. It is only a natural consequence that it would expect from its laity loyalty in return, which it mostly gets as well. It is indeed problematic that the church coins the ones that go against it and its policies traitors and as being against the Coptic faith,

church and community, when obtaining a divorce for example that goes against the rules and dogmas of the Coptic faith. But this rhetoric will neither subside nor vanish until the Coptic Church deems its laity safe in Egypt. It is in this context, that the position of the church needs to be analyzed and understood. “Talk of modernizing the church (...) (leads to) discussions about sectarian strife.”²²⁷ Until the reining in of sectarian tensions and violence, it will not be possible for the church to change its position on the matter of divorce. These incidents propagate the fear about the existence and survival of the Coptic community too much to loosen up the laws of dissolving marriages and families. However, it is naturally questionable if a community, in which the families are held together by force has a better chance of survival as one where its member live in happy marriages, and thus build a healthy basis for the community as a whole.

Yet despite all of these contemplations, much would be done in the case of Coptic divorce, as well as citizenship issues overall, through going against sectarianism and propagating unity and tolerance. When analyzing the power struggles of church and state, it would actually be more beneficial to the state than the church to curb these tensions, as it would provide more legitimacy and centrality, while it would weaken the church’s position and control if the Coptic community were truly integrated in society. Thus, it becomes rather incomprehensible why the Egyptian government resumes the position it has taken on these matters, instead of changing its approach and cooperating with the church on these matters. Such a change of attitude would certainly demonstrate goodwill and thus might open the church up to reconsider its attitude towards Coptic divorces as well, which would be

²²⁷ Samaan 2007.

beneficial both to the state as well as the Coptic citizen, who is in the end the most affected party of the three.

Solutions?

But until these changes occur, maybe the solution truly lies in the opposite approach, not granting easy divorces but rather making the citizenry understand that marriage should not be taken lightly and no religion has intended for people to marry anybody, just to be married, as Pope Shenouda has suggested in an *Al-Ahram Weekly* interview; “For Pope Shenouda, the whole debate about divorce tends to put the cart before the horse. He believes that one of the main reasons many couples end up seeking a divorce is because people fail to choose their partner wisely in the first place. This is where the Church can be of most use, in preventing such mismatches, not in effecting a singularly destructive and painful form of cure. (...) Thus the Coptic Church is presently considering a project for a marriage school, where young single men and women can learn (...) how to behave after marriage and how to solve problems (...). We (the church) haven't established this school yet, but we have organised (sic!) seminars. Priests are supposed to visit families regularly, as well, and they have a role to play in conflict resolution.”²²⁸

Such a project and approach would go hand in hand with changing understandings in society on unmarried women especially, but maybe this could be an approach to solve these issues and controversies, at least for now, with which all forces: church, state, laity could live with. Changing religious laws, on either side, does not seem possible in the near future and so it might be smart to look for other

²²⁸ H. Guindy, Shukrallah & Tadros 1999: Marriage, politics...

ways around in the meantime. Of course, this approach and attitude does not solve the controversial issues and choices the Coptic citizen faces in the case of divorce and Coptic PSL and their application. The double standards in the debate of citizenship remain and divorces will continue to be issued, with the effect of contradicting, valid judgments of the exact same case. There is the possibility of the unified Christian PSL code, which could truly solve some of the issues of the present situation, especially the converting and reconvertng and the contradicting judgments. Pope Shenouda himself has propagated this law repeatedly and he actually does have a point in doing so, as it would close key loopholes of today's system.

However, it is my belief, that without a dialogue between the church and the state, the issues and controversies of Coptic citizenship in general and Coptic divorce in particular, will remain. In order to solve these issues and difficulties the Coptic citizen faces because of the power struggles between the two entities that call themselves responsible for him, cooperation and dialogue must be once again taken up by both, to ensure a peaceful "Co-existence (which) depends on balanced dialogue between all concerned parties, whether as individuals or groups."²²⁹ It would only then be believable that both church and state truly grasp their responsibilities, and that they are not acting out of the desire to remain in power but to prove that they are deserving of this power. This again is connected to their responsibilities the party about whom the struggle is in the end regarding, the Coptic citizen.

²²⁹ Hassan 2006.

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