

Seattle Journal for Social Justice

Volume 3 | Issue 2

Article 26

December 2004

Reconciling Conflicting Identities: How National Religious Identities Influence the Decision to Marry in Egypt

Courtney P. Erwin

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/sjsj>

Recommended Citation

Erwin, Courtney P. (2004) "Reconciling Conflicting Identities: How National Religious Identities Influence the Decision to Marry in Egypt," *Seattle Journal for Social Justice*: Vol. 3 : Iss. 2 , Article 26.
Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol3/iss2/26>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized editor of Seattle University School of Law Digital Commons. For more information, please contact coteconor@seattleu.edu.

Reconciling Conflicting Identities: How National and Religious Identities Influence the Decision to Marry in Egypt

Courtney P. Erwin¹

Karim and Layla² met at the American University in Cairo (AUC) and dated for three years. During those three years, they experienced the usual ups and downs of a young relationship. Both Karim and Layla also struggled with the implacable problem of falling for the fundamentally “wrong” person: Karim is a Muslim, and Layla is a Copt.³ Karim and Layla knew that their relationship dangerously navigated around hostile boundaries. After too many familial battles, the Coptic boy and the Muslim girl resigned themselves to the inevitable and broke up. After all, a future together was nearly impossible—where would they get married, and who would marry them? No one in Egypt would challenge the explicit religious prohibitions against interfaith marriage,⁴ much less compromise one’s own convictions concerning such an illicit union. Nor would the Egyptian government offer Karim and Layla protection against discriminatory religious postures, the government having implemented legislation relegating family law, including marriage, to one’s individual religion.⁵ Had they decided to stay together and to marry outside Egypt, Karim and Layla would have lost their friends and families and would have faced legal complications within Egypt.⁶

While friendships between the Muslim majority and Coptic minority populations are accepted in Egypt, romantic relations crossing the religious divide are not. Religious identification is a large part of the dynamic between today’s Egyptian Muslims and Copts. This religious identification legitimizes discrimination by each religion against the other in order to protect the religious legacy of both groups. The legal and socioreligious

culture prohibiting interfaith marriage confirms the quandary facing contemporary Egyptians, which is to either defend the survival of one's culture and religion by marrying within the same faith, or to reinterpret one's culture and religion so that it reflects modern ideals of religious freedom and equality, including the right to marry whomever one loves.

Allowing Coptic-Muslim unions could result in homogenization that would cause damage to cultural and religious diversity and lead to the gradual disappearance of centuries-old tradition. Even so, current methods of preserving religious identities are weathering an antagonistic onslaught from the international human rights arena and causing a slow loss of legitimacy among the religions' own adherents. The once incontestable social condemnation against interfaith relationships is slowly beginning to suffer small cracks in its construction. Neither Layla's nor Karim's parents would ever have considered dating someone outside their respective religions, but Layla and Karim developed a romantic relationship despite knowing that they would never marry. This progression is a small but significant step in today's Egyptian society.

In this article, I analyze the conflict between Egypt's Copts and Muslims.⁷ More specifically, I examine the conflict between their religious identities in relation to the national identity of modern Egyptians in a globalized society. Both religious identities promote discrimination based on religion while the national identity of modern Egyptians promotes religious tolerance and freedom from discrimination. In order to reconcile the religious identities of the Copts and Muslims with the national identity of Egypt, the religious identity must reform. Any substantive change in the area of marriage in Egypt must occur through a process of religious introspection. For Egyptian society to accept the marriage of Layla and Karim, Copts and Muslims need to transform their religious identities, but the Egyptian government and the national legal system cannot create this change alone.

In Part I, I present the three identities at issue: Coptic, Muslim, and the Egyptian national identity and examine what happens when they intersect. In Part II, I explore the areas of conflict expressed in the Egyptian legal arena and compare the Egyptian laws pertaining to non-Muslim–Muslim relationships with the international human rights standards protecting freedom of religion and religious minorities. Finally, in Part III, I confront the possibility of reconciling this conflict and propose that religious transformation precede, or guide, legal activism.

I. RELIGIOUS VERSUS NATIONAL IDENTITIES

In Egypt, modern notions of equality, religious tolerance, and non-discrimination collide with the preservation of religious norms and restrictions. This collision occurs at the crossroads of identities. In order to respond to this conflict, it is necessary to understand these identities; specifically, the Coptic and Muslim identities and the national, Egyptian identity. The latter is created by the Egyptian legal and political structure, which is guided by an overarching international configuration advocating a universal human rights model.

A. Religious Identities

The relationship between the Copts and the Muslims in Egypt is built upon centuries of interaction, isolation, comity, and conflict. At times, the relationship has been tenuous and uneasy, but it has also been courteous and calm. The most patent features of the historical interface are the carefully fashioned contours of the respective religious identities and the boundaries erected around those identities. Since the Islamic invasion of Egypt in AD 640, Muslims have enjoyed the status of the Egyptian majority, wielding political, economic, and social dominance.⁸ The Copts, on the other hand, have lived as a religious minority within Egypt since the founding of the Coptic Church in Alexandria in AD 55.⁹ As a religious minority, the Copts have suffered from an assortment of discriminatory practices, committed

both officially by the Egyptian government and informally by Egyptian society.¹⁰

This history of Coptic-Muslim interaction is most commonly studied and discussed with respect to the impact of religious discrimination on political rights,¹¹ minority protection,¹² and religious freedom.¹³ These studies and discussions tend to give clarity to the greater international human rights discourse on discrimination, in which the granting or denying of political power based on one's religion is often unmistakable. However, I am interested in the ambiguous areas of Muslim-Coptic discrimination, in which the lines of demarcation are not so clear and are, in fact, difficult to address. The subject of marriage occupies this realm of ambiguity.

Marriage presents a rich study in the complex and changing disposition of religious identities and how these Muslim and Coptic identities affect national identity and religious discrimination in Egypt. An awareness of the discriminatory practices of Muslims and Copts in the area of marriage will add another, perhaps illuminating, perspective to the human rights discussion around religious discrimination. Additionally, this perspective might be useful to those who are struggling to effectively understand and address the global occurrence of religious discrimination in local societies.

1. Muslim Identity

The religion of Islam occupies a central role in the lives of Muslims, like Karim, in Egypt. The centrality of Islam can be credited, in part, to a genuine belief and adherence to its religious dictates, while part of Islam's influence is attributable to tradition and socioreligious pressure. The former dimension—that of personal and private devotion to religious dictates—is demonstrated by the observance of prayer (five times daily) and the month-long fast (Ramadan).¹⁴ Conversely, the Egyptian law that requires each individual to carry an identity card that clearly declares one's religion¹⁵ illustrates the manifestation of the socioreligious demands. Egyptians

confirm their religious affiliation every time they present their identity card, which is regularly.¹⁶

The relationship between religion and law is one of the most powerful relationships in Islam. Religious identity and legal identity are inextricably bound: religion provides the system of belief, and law, necessarily presupposing this belief, conducts and regulates every movement of the believer.¹⁷ Although Islamic law—*Shari‘a* in Arabic—is not the law in Egypt today,¹⁸ it is a persistent and pervasive presence in the life of modern-day Muslims.¹⁹ Accordingly, the religious identity of Egyptian Muslims cannot be divorced from the authority of the *Shari‘a*.²⁰

Perhaps the most compelling aspect of the legal component of Islam is its unique brand of legitimacy: the *Shari‘a* is dependent upon a transcendental authority.²¹ Both the religious and legal dictates spring forth from the *Qur’an*, which Muslims believe is the literal word of God.²² While the *Qur’an* contains certain explicit dictates that require little or no interpretation, jurists trained in legal methodology must extract much of the law from the text.²³ While there is a vibrant element of human interaction in the mining of divine legal rules, the idea that God reveals the law presents a formidable barrier to any other legal (or belief/value) system wholly created through human effort (i.e., not God-centered) that intends to supercede the *Shari‘a*.

The *Shari‘a* and its legal formulations governing non-Muslim–Muslim affairs are largely responsible for fashioning the Muslim perceptions of minorities. Consequently, this view of minorities is firmly incorporated into the Muslim identity. Arising from this view and its importance in Muslim identity is the role that Muslims assume in the contemporary dynamic between Copts and Muslims. As Sudanese Islamic law and human rights scholar Abdullahi an-Na‘im asserts, “Non-Muslim minorities within an Islamic state do not enjoy rights equal to those of the Muslim majority.”²⁴

While the Shari'a guarantees minorities many rights,²⁵ the minority communities retain those rights only if they submit to Muslim sovereignty.²⁶ A number of restrictions accompany the afforded rights.²⁷ The relationship between Muslims and non-Muslims, which operates under cover of religious legitimacy, results in an inherently discriminatory imbalance. The unequal Muslim-Copt relationship is typified by the dominance of the Muslim majority²⁸ and is maintained because Muslims believe that their own religious law authorizes such dominance.²⁹ To tinker in this area of relational inequities is to compromise an entrenched legal-religious identity.

2. Coptic Identity

The identity of Copts, like Layla for example, is shaped around their minority status. Living as Christians in a country where religion is the determinative feature of life has had a marked impact on Coptic identity. Even though Muslims have always tolerated Copts, Copts perceive their history in Muslim Egypt as one of persecution.³⁰ Even during more placid periods, Copts were never divested of their badge of inferiority and were always subject to the restrictions placed upon them by the Muslim majority. Copts developed a sense of resentment and distrust because of systematic and ingrained discrimination.³¹ This is a resentment that is reinforced today by the fact that many restrictions have never been abandoned³² and that persecution continues by Egyptian officials³³ and individuals.³⁴

Historically, one of the "rights" afforded to minorities—known as *dhimmis*—under the Shari'a was internal autonomy.³⁵ This autonomy was premised upon a separation of the communities by religion. Accordingly, the Copts, who were the *dhimmis* in Egypt, enjoyed a degree of internal community autonomy to conduct their personal and private affairs in accordance with their religious law and customs.³⁶ Because the worldview of Muslims was, and continues to be, premised upon rigid *religious* demarcations, as long as the Copts submitted publicly to Islamic political

rule, the Muslims were not inclined to impose their religion privately upon religious minorities. To the Muslims, it would make little sense to insist upon a Copt's adherence to Islamic direction. In the domain of the purely religious, Muslims were, and are still, content not to interfere.

The desire to separate the religions not only encouraged autonomy but also allowed Muslims to impose restrictions upon Copts. The restrictions were to clearly define the boundaries between the two religious spheres; if the Muslim majority perceived the Christian minority to be publicly encroaching upon their domain, for example, by constructing new churches, the Copts were to desist in such activity.³⁷ Conversely, because the Copts were in no way encroaching upon Muslim territory in the area of marriage, the Copts were free to dictate their own laws in areas untouched by Islamic law.³⁸

[I]n any situation where applicable Islamic law and any other religious law were in conflict, it was always Islamic law that was controlling. The subordinate status of the non-Muslim communities meant that they were subject to Islamic law in matters where the interests of Muslims or the Muslim community were deemed to be affected.³⁹

In essence, Egypt advanced a sociolegal structure of religious separation that was not equal.

This religious autonomy allowed for an insulated Coptic community to fundamentally ground itself in its religious identity. Accordingly, Copts in Egyptian society lived in separate areas and, while they were subject to the above-mentioned restrictions, they were allowed to determine their religious belief system and laws.⁴⁰ As a result, Copts imposed boundaries between themselves and the greater Muslim majority to achieve distance from the oppressive majority whom they distrusted and disliked and to enjoy the freedom granted in their religious lives.⁴¹ What also resulted, however, was a discriminatory attitude initiated by Copts toward Muslims. The Copts, in their preference for isolation from the Muslims, placed restrictions on their

own interaction with the Muslims because as the minority, they were not entitled to place restrictions upon the Muslims.⁴² The social, religious, and legal dividing line for the Copts was also premised upon religious affiliation and affected the Coptic-Muslim relations in a different but still discriminatory manner.

In today's Egypt, Copts cannot escape from the entrenched history of guarded and restricted interaction. The modern era has increased and intensified Muslim-Coptic relations but has not been able to erase the mentality that drove the Copts into self-isolation in the first place. While Copts now work with Muslims and count Muslims amongst their friends, the uneasy whisper of distrust has not completely disappeared.⁴³ Unfortunately, the Coptic hesitation to disengage from their voluntary segregation is enforced by Coptic-Muslim clashes, which are reminiscent of the past.⁴⁴ The opportunities to change and move out of the traditional restraints are not entirely forthcoming.

B. National Identity

Muslims and Copts hold two identities—one rooted in their religious beliefs and another centered on their unified national identity as Egyptians.⁴⁵ This national identity attains its legitimacy through the “common allegiance to the nation as a basis for solidarity.”⁴⁶ National identity erases any lines drawn to preserve the partition of religions. In fact, religion no longer has the authority to regulate social interactions if it, in any way, contradicts the laws of Egypt.⁴⁷ The religious identifiers of “Copt” and “Muslim” defer to the national identifier of “Egyptian.”

By dimming religious identifiers, the national identity presents new challenges to the Coptic-Muslim interaction.⁴⁸ The political organization and the human rights values that the nation-state engenders have shaped a national identity in Egypt that is, in many ways, incompatible with the religious identities of Egypt's Muslim majority and Coptic minority.⁴⁹ For instance, the nation-state construction disrupts the religious bifurcation of

society by assuming control of the law through governments that enact uniform national laws in codified form.⁵⁰ The dislocation of the law from religious control presents a number of problems for Egyptian society and its religiously oriented and ordered populace.

The history of interaction between Copts and Muslims, which was previously governed by religious laws and customs, must now contend with the intrusion of a legal system that presumes to dictate all aspects of their public, and to some extent, private lives but that is not constituted under religious criteria. Through the conjunction of the state and the law, the state becomes the master regulator of society, directing everything from personal status to institutions. Muslims and Copts now face a modern nation-state premised on “a legal system in which citizens have equal rights and obligations.”⁵¹

Similarly, as a nation-state, Egypt is not only part of the international patchwork comprised of other nation-states but is also a willing participant in the evolving formation of a unified and collaborative international community.⁵² As part of its commitment to international participation, Egypt is expected and pressured to comply with the guiding moral authority of international human rights standards.⁵³ Whether the specific directives of these international standards are binding or nonbinding, they “articulate general legal principles and approximate the sentiments of the international community.”⁵⁴ The emergence of the nation of Egypt entitles its citizenry to a corpus of shared international values as well as formalized laws.⁵⁵ Egyptian citizens not only confront their new national identity but also the international influences and effects upon that national identity.

C. The Intersection of Identities

Because national law has supplanted religious law in Egypt, both Muslims and Copts confront a restructuring of the sociolegal organization and intersection of identities, albeit in different ways. Muslims must grapple with the reality of a secular national legal system trumping their

divinely ordained Shari‘a.⁵⁶ Egyptian national law attempts to marginalize religion as a defining norm in politics and society and divests Muslims of their sanctioned legal dominance. Copts, on the other hand, are embroiled in a different predicament. While national law benefits them by disrupting the sociolegal inequities premised upon religious differences, it also threatens to crumble the pocket of seclusion that has become the comfortable home of Copts in Egypt. Egypt’s national laws compromise the religious laws that have ordered Coptic relations with their Muslim neighbors.⁵⁷ What remains for both Copts and Muslims alike is a choice provoked by the change in legal paradigms: nation versus religion.

The influence and evolution of cultural norms further exacerbate the religion versus national dilemma. In Egypt, Copts and Muslims behave according to the tradition that has developed around the religious disposition.⁵⁸ Even in the absence of strict legal regulations, the two groups conform to parameters set by the Coptic and Muslim communities.⁵⁹ Since the beginning of colonization and modernization in the nineteenth century, Egyptians have experienced the massive influence of external forces, including foreign and international principles of equality, religious tolerance, and cross-religious interaction.⁶⁰ Egyptians have traveled beyond their borders and have lived in societies in which national laws and the values that they promote are not plagued by a battle with religion. The burgeoning consciousness that is born out of the amplification of external association is an uneasy blend of tradition and modernity.

II. MARRIAGE—INTERSECTION AND CONFLICT

In Egypt, the legal, national, cultural, and religious spheres all converge at marriage. At its most basic, marriage is a defender of identity, and in Egypt, one’s identity is one’s religion. Those who marry within the religious community promise to abide by the tradition and culture of that community; there are no introductions of foreign beliefs that could influence the next generation to promote unfamiliar ideas about religion.⁶¹

Therefore, in Egypt, where religious identities abut each other, culture and certain laws clearly define marriage for the respective religious groups and protect the religious identities from threat of dilution. Any change to this structure surrounding marriage compromises the religious identities of both commingling groups. If Muslims and Copts redefine their traditional understandings of marriage, they must also reform their religions.

A. Ambiguities of Tolerance

When there is a call for religious tolerance, which would potentially collapse certain inequitable distinctions, Muslims and Copts alike balk: “[O]ne cannot be expected to tolerate a clearly defined threat to who one is, to one’s identity.”⁶² Discriminatory regulations controlling marriage are vitally important to both the Coptic and Muslim communities precisely because these regulations ensure that religious boundaries are clearly defined and rigorously observed.⁶³ As Adam Seligman observes,

[G]roups have boundaries, and cannot exist without these boundaries. One cannot make claims to any type of identity without that identity being defined, which in some senses involves it being bounded and circumscribed as well. To ask a group to tolerate what threatens that identity is to ask the group to dismantle itself—to make itself cease to be.⁶⁴

Thus, the most fundamental function of marriage in both the Coptic and Muslim communities in Egypt is to assert and to sustain the boundaries that preserve the respective religious identities, using discriminatory measures when necessary.⁶⁵

Conversely, the discussion surrounding modern notions of religious freedom calls for tolerance and condemns discrimination.⁶⁶ The nature of this freedom is very different from the religious freedom afforded by the Muslims to minorities discussed above. The tolerance advocated in the modern era is not premised upon separate spheres of existence but is instead rooted in inclusion and openness. This discussion around religious

freedom, arising from a concern for the rights of religious minorities, attempts to promote their welfare by eradicating discriminatory measures based on religion. In some areas such as political participation, the minority is severely disadvantaged by its exclusion from this domain. Accordingly, the promise of religious freedom coupled with protection from discrimination clearly advances the political position of the minority in its respective society. However, in other areas where religion is implicated, such as marriage, the desire for religious freedom is muted because the benefits are not so apparent.

In relation to marriage in Egypt, the public/private distinction is central to creating and maintaining religious boundaries. Marriage can act as the most effective preserver of religious identity because of its traditional place in the private realm, where it is accountable only to religious laws and not national regulation.⁶⁷ Because of their private position in Egyptian society, marriage laws can be discriminatory in their effort to perpetuate religious heritage.⁶⁸

As I have explained, both Copts and Muslims discriminate against the other to remain distinct and to ensure each group's cohesive continuity over time.⁶⁹ The two religious communities live in a society in which discrimination in the area of marriage is a shared and mutually honored value. If they choose to eradicate discriminatory measures in marriage, each necessarily exposes its respective religious sphere to an "other," signaling the demise of both of the adherents' religious identities as they know them.

A crisis erupts when national law and international values promoting religious tolerance and freedom from discrimination intrude upon the zealously guarded province of religious identity, as they do in the case of marriage in Egypt. This intrusion is complicated and conflicted. Both Muslims and Copts have a strong impulse to erect communal boundaries in order to defend their religious identities. However, they also experience a countervailing and persuasive inclination to transgress their boundaries and redefine their religions according to the changes affecting the world outside

their communities.⁷⁰ The result is that the walls that encase their religious identities can be very tenuous at times.

Generally, these walls constitute the margins of these religious groups. And it is at the walls, rather than at the nucleus, that most struggles occur; Muslims and Copts reconstruct and redraw lines without infringing upon their communities' core values and underpinning beliefs. However, a redefinition of marriage does not transpire at the edge of the religious boundaries but trespasses into the very heart of the religion.

B. Egyptian Law

Marriage laws in Egypt belong to the corpus of personal status laws, or "family law."⁷¹ For the most part, Copts and Muslims have been free to control marriage in accordance with their own laws because family law was left relatively untouched by colonial efforts and was relatively unaffected by subsequent national legislation.⁷²

Historically, conservative Muslims and Muslim religious leaders were keen to see the personal status rules of the Shari'a retained. In fact, they have largely succeeded.⁷³ Because Egypt has crafted its marriage laws around the legacy of the Shari'a, the Egyptian government has refrained from enacting uniform national legislation in matters such as divorce, child custody, and marriage; it has been very clear which personal status laws apply to which religious group.⁷⁴ Because the Shari'a laws affecting these matters require non-Muslim–Muslim distinctions, it makes sense that so long as the Shari'a is upheld, the Copts will be governed by the laws of their own religion in matters of personal status.⁷⁵

With respect to marriage, the Shari'a allows Muslim men to marry non-Muslim women but prohibits Muslim women from marrying non-Muslim men.⁷⁶ Muslims justify this law by pointing to the historical legal inequality between Muslims and non-Muslims. Ann Mayer explains the rationalization of the historical inequality:

The assumption is that, just as Muslims are placed above non-Muslims, so men are placed above women, meaning that wives are necessarily subordinated to their husbands. Therefore, the Muslim man who marries a female *dhimmi* [non-Muslim] does not infringe the hierarchy of status, since by virtue of her sex the non-Muslim wife will be subordinate to her husband, who as a Muslim and a male ranks above her on two counts. In contrast, the Muslim woman who marries a *dhimmi* violates the rules of status, since as a wife she has lower status than the man to whom she is married even though by virtue of her adherence to the Islamic religion she should rank above him.⁷⁷

While the prohibition explicitly outlaws a marriage between a Muslim woman and non-Muslim man, in practice the prohibition is also applied to Muslim men and non-Muslim women.⁷⁸

The corpus of law promulgated by the Coptic Church is the Coptic canon law, which also places restrictions upon its Coptic adherents. A Coptic woman who marries a Muslim man is excommunicated, and a Muslim woman who wishes to marry a Coptic man must convert in order for the marriage to be recognized within the Coptic Church.⁷⁹ In practice, a Muslim man or woman who converts to Christianity could be charged with apostasy (abandonment of Islam) by his or her fellow Muslims and could suffer legal consequences.⁸⁰ In many cases, one's family would abandon such a person. In essence, the Coptic and Muslim restrictions upon marriage work well together to legally and effectively prevent any desire or reality of a Copt-Muslim marriage. In Egypt, the laws of marriage as erected by religion discriminate against Muslim–non-Muslim alliances out of a perceived superiority on the part of Muslims, a coveted insularity on the part of the Copts, and an effort to forestall a completely objectionable mixing of the religions by both sides.

The relegation of family law to Egypt's respective religious communities has not left it entirely independent of state intrusion and influence. Since the late 1920s and more dramatically since the 1970s, the Egyptian state has nominally legislated in certain areas of the family law. For example, Egypt

most recently amended the Personal Status Law on January 27, 2000, to create a minimum age requirement for marriage, marriage guardianship regulations, and to lift certain divorce restrictions.⁸¹

There is also an interesting dynamic between the courts and the legislature in the matter of *hisba* suits. *Hisba* is a doctrine that entitles any Muslim to take legal action against anyone or anything that he or she considers to be harmful to Islam.⁸² On June 14, 1995, a Cairo appeals court for personal status litigation ruled that Dr. Nasr Hamed Abu Zeid, a professor at Cairo University, must be separated from his wife.⁸³ A few individuals accused the professor of writing opinions that rejected some fundamental tenets of Islam and filed suit on the grounds that his Muslim wife could not be married to an apostate.⁸⁴ After the court issued the much-publicized decision, Abu Zeid and his wife were forced to travel with guards at all times because they feared violent attacks on their lives.⁸⁵ Finally, Dr. Abu Zeid and his wife decided to leave “the siege” in Egypt and resettled in the Netherlands.⁸⁶

In the aftermath of the contentious ruling in Abu Zeid’s case, the Egyptian government asked parliament to amend the *hisba* law, allowing only the prosecutor-general to file such cases after receiving complaints from individuals, thereby preventing claims by private individuals. Parliament granted the request and passed Law No. 3/1996.⁸⁷ Despite passage of the law, the *hisba* suits did not stop and another highly publicized trial followed in 2001. A lawyer took the controversial Muslim writer and feminist Nawal el-Saadawi to court claiming that she insulted Islam, was an apostate, and could no longer remain married to her husband.⁸⁸ This time, the Personal Status Court rejected the lawsuit and ruled, in accordance with the amended *hisba* law, that the lawyer had overstepped his legal boundaries in his attempt to divorce Saadawi from her husband and reaffirmed that only the prosecutor-general could file such claims.⁸⁹ While this was a step forward, the *hisba* law still legally exists, albeit in narrowed application.⁹⁰ The intersection between law, society, and

government as it concretely affects the marriage of two people in contemporary Egyptian society is brought to life in these cases.

Finally, the relationship between the family laws of both religions and Egypt's Constitution has its own contradictions and difficulties. The marriage laws promulgated by both Copts and Muslims discriminate against all outside religions while Egypt's Constitution provides for equal public rights and duties without discrimination of religion or creed.⁹¹ The Constitution declares that "the State shall guarantee the freedom of belief and the freedom of practice of religious rights."⁹² Thus, there is an uneasy balance between the nondiscriminatory code in the public domain, which is subject to national legislation, and the discriminatory religious freedom in the private realm.⁹³

C. International Law and the Antidiscrimination Momentum

Today's nations are not only subject to international law but are greatly influenced and necessarily responsive to international declarations, decisions, and the values that underpin the public exhortations of the international law-making community. As a participant in the international community, Egypt is legally accountable to certain international human rights instruments and is also heavily influenced by the general human rights atmosphere.⁹⁴

The protection of religious freedom and religious minorities from persecution and discrimination is a primary and enduring concern for the drafters of international human rights declarations and resolutions.⁹⁵ The ideals of freedom of religion and nondiscrimination based on religion find themselves at an interesting intersection in Egypt.

The international documents advocating for religious freedom promote what Egypt seems to already provide its citizens. For example, Article 18 of the Universal Declaration of Human Rights (UDHR), the foundational document in international human rights law, secures "the right to freedom of thought, conscience and religion."⁹⁶ Article 18 of the International

Covenant on Civil and Political Rights (ICCPR) also protects freedom of religion and explicitly allows for conversion (of one's religion to another) without impairment. The ICCPR also provides for a liberal capacity to publicly manifest one's religion "in worship, observance, practice, and teaching."⁹⁷ Egypt does not deny these guarantees of religious freedom; in fact, Egypt affords Copts their space to practice and believe as they desire—as long as their practices do not infringe upon the Muslim community.⁹⁸ Thus, Egypt respects the religious freedom of both its Muslim and Coptic populations.

International human rights documents move beyond a surface assurance of religious freedom in one's national territory and recognize special rights for religious minorities. In many ways, the nature of these rights accords with Egypt's social divisions and the separation of its religious communities. For example, the UN's Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities (the Declaration) protects and promotes the minority's independent identity, allowing for a generous degree of autonomy from the majority populations.⁹⁹ The Declaration promises religious minorities the "right to enjoy their own culture, to profess and practise their own religion, or to use their own language, in private and in public"¹⁰⁰ as well as "the right to establish and maintain their own associations."¹⁰¹ On its face, Egypt seems to grant the Copts their right to maintain and develop their internal religious identity and culture free from external interference.

The companion principle to freedom of religion, however, is the right to be free from religious discrimination. It is here that the international requirements of religious freedom and Egypt's compliance with them encounter difficulty. As we have seen, both the Copts and Muslims in Egypt practice discriminatory measures premised upon religion and evidenced in their marriage laws by excluding cross-religious unions. In affording both religions their "religious freedom," the religions freely discriminate.

The practice of religious discrimination perpetrated by both the Copts and the Muslims against each other and enforced by national legislation, clearly does not correspond with the international prohibition of religious discrimination. Conversely, the international human rights standards promoting nondiscrimination intrude upon the province of religious freedom. If discrimination is perpetuated in the practice of one's own religious freedom, that feature of the freedom can be circumscribed.¹⁰² The UDHR¹⁰³ and the ICCPR clearly prohibit any discrimination in the law based on religion,¹⁰⁴ and the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief further articulates the principle that "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief."¹⁰⁵

Most of the documents addressing religious discrimination do not specifically speak to marriage. The lack of discussion regarding marriage is the result of the intensely personal nature of the marital interest and the reluctance of the international community to legislate in the personal sphere. Only the UDHR ventures a note about discrimination when it comes to marriage: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."¹⁰⁶ The UDHR deposits the rights surrounding marriage into the hands of the individuals involved rather than their religious communities. The two positions, then, appear irreconcilable.

III. PROSPECTS FOR RECONCILIATION

The arrangement of marriage in Egyptian society poses a barrier to those who no longer believe in discriminating against one's religious neighbors in the most intimate sphere of existence and finds itself precariously navigating between the rights of religious freedom and nondiscrimination. Relegating marriage laws to the private sphere where marriage is regulated

by religious prescriptions and bolstered by an unyielding conviction that religious integration leads to the corruption of the community's religious identity issues a daunting impediment to refashioning the perspective encircling marriage in Egypt. Even so, Egyptian society is slowly but surely inching closer to an inevitable conclusion: the laws prohibiting Copt-Muslim marriage will have to change. The question at this stage is what is the best course for Egypt to assume?

A. Challenges

There are a number of challenges that must be faced and properly resolved in order for all of the necessary parts of Egyptian society to work together in an effort to erase religious discrimination from the marriage table. The overarching issue is that of identity. Effectively, the eradication of all of Egypt's discriminatory marriage regulations asks Copts and Muslims alike to favor national laws that draw upon international values above religious laws that depend upon the tradition and history of the community. The most salient problem of choosing between national and religious identity is the fear that in choosing the former, the latter will be comprised. In other words, it is presumed that the two identities are antithetical to one another and endanger the existence of the other. Personal beliefs, family, history, authority, and familiarity or territorial affiliation, modernization, liberalism, international legitimacy, and change convolute the choice for both the individual and society. Religion will prevail and personal conviction will compel the individual's choice, and if it does not, social and familial pressure will. Marriage carries a heavy implication that to tinker with its formulation is to jeopardize the continuance of the religious community.

Associated with the national-religious choice is an internal/external debate. In the case of Egypt, a national predilection is regarded with some degree of suspicion because it does not spring from either of the indigenous religious communities. The notion of the nation-state is entirely foreign to

the religious ordering that Egypt subscribed to prior to a very bitterly remembered imperialist colonial effort. Religious communities regard the idea of national laws, independent of religious persuasion, as an imposition from the outside. The connection between the nation-state and international legal standards only enhances the indigenous religious community's alienation from those external and entirely unfamiliar laws. Conversely, laws predicated upon religion are internally generated and considered legitimate and authoritative.

In effecting change, it is important to consider the willingness of the parties involved to engage in a social, legal, and religious transformation. Do both Copts and Muslims genuinely want a modification in the laws of marriage in their country? If they do, what is the nature of that desire, and how do they intend to act upon its realization? For example, like Layla and Karim, certain parts of both the Coptic and Muslim communities (the younger generation of the privileged classes) do want the freedom to marry across religious lines. That aspiration, however, is riddled with conflict due in large part to the older generation's condemnation. If the discord is exceptionally (or even less) intimidating, then the prospects for either side to initiate change may be thwarted; it may be easier to avoid a seemingly unassailable, much less unapproachable, dilemma than to bravely weather the penalties of one's daring.

The readiness of individual Copts and Muslims to create change must be assessed by the social climate. The individuals calling for change may not be representative of the larger community, which may also have a greater momentum for stasis than for revolution. The change ordered must not venture too far or too quickly lest it trigger a vehement opposition capable of snuffing the initial spark.¹⁰⁷ Concrete and substantive social, legal, and religious transformation may safely proceed only when built upon a solid foundation. Without an appraisal of the readiness of the society, the effort by willing Copts and Muslims may fail or walk a precipice of uncertainty and instability.

B. Change—Religious or Legal?

Insight and appreciation of the matter itself is indispensable to unraveling the intricacies of marriage laws in Egypt and creating change. The first step is to determine and define the playing field and to query where and how the proposed change will take place. Marriage resides in both the legal and religious provinces and can be affected by substantive alterations in either sphere. Whether to undertake a legal solution or a religious solution is perhaps the most salient decision to be made.

The paths are not entirely disengaged; rather, religion and law must cooperate and collaborate if meaningful evolution of a contentious issue is to occur. In Egypt, where law and religion have been and continue to be so closely aligned and interrelated, to divorce one from the other would be unnatural and debilitating. In order to cultivate the optimal working relationship between the legal and the religious spheres, society must delineate the respective legal and religious roles and responsibilities. Society must also be sensitive to the particular needs of the country involved. Although the larger issue is one of legal reform in discriminatory marriage laws, it is imperative to approach the marriage issue with an Egyptian-oriented solution as the objective.

Even though religion and law are closely interrelated, change must begin with religion rather than law. Immediate legal reform will not move religion to harmonize itself with the law. In fact, if the government was to remove family law from its religious domain and was to strike the discriminatory elements, it is likely that such a step would be entirely cosmetic and largely ignored in practice. Legal reform alone would provide little conviction and no buttressing foundation for change. The inherent problem faced by many Copts and Muslims like Layla and Karim of refraining from marrying the person one wants to be with—regardless of religious affiliation—would still exist because the religious communities would continue to instill the discriminatory principle and would more directly enforce it than the law's newly fashioned matrimonial liberty.

The fundamental place of religion in Egyptian society necessarily leads to the conclusion that change must occur within the religion. A change in religion will subsequently lead to a call, issued from the religious communities themselves, for legal modification of marriage laws reflecting the religious reformation. Not only will the change be authentic, sincere, and deeply rooted in both the belief and practice of the religious communities, but it will also peacefully accord with national and international legislation. Neither national nor international legislation will be compromised or hindered. The law must encourage and must be open to the transformation of belief. The legal system ought not stifle the restructuring of religious beliefs; instead, it should provide an opportunity for the law to represent the new, religious determination.¹⁰⁸

In Egypt, the national legislation should not prohibit the revision of marriage laws that freely permit Copt-Muslim unions. Likewise, it should not thwart modernity and cultural, social, and religious change. If Muslims, for example, were to move away from discrimination, but the Copts were to refrain from such movement, the government of Egypt should use its resources to enforce the tolerant Muslim posture rather than promote the discriminatory Coptic stance. The national legal system must make it difficult for the religious communities to persist in their discrimination.

C. A Regime of Tolerance

The most crucial step in ending discriminatory marriage practices in Egypt is inviting a regime of tolerance into the belief systems of both religious communities. Assigning the law to its rightful place as a promoter of positive change emanating within the religion, as opposed to viewing the law as a sluggish defender of a negative religious status quo, raises a pressing question: What needs to happen to counsel a reformation in the religious community's values, beliefs, and perceptions? The answer is that Egypt must first determine whether the religious values are out of balance with the practice of the individuals. In Egypt, it appears that both Muslims

and Copts are moving in a direction that is not in peaceful balance with the religious dictates. The younger generation, as evinced by the relationship between Layla and Karim, is timidly questioning what was once the unquestionable. Egypt must also determine whether the religious values in its religious communities are valid in relation to the larger international community. Egypt must recognize that the concerns and fears about losing religious identity do not justify retreating from the issue of discrimination in marriage. If discrimination is removed from their marriage laws, both Copts and Muslims are right to fear that their respective religious identities will not survive in their present form. The loss of insulated and endogamous religious identities does not justify the maintenance of a sociolegal scheme that prevents religious intermarriage. The belief systems of both religious communities must promote a regime of tolerance and understanding.

If marriage were perceived as a positive part of an acceptable reformation of their religious identities, Muslims and Copts could accommodate the prospect of amalgamation rather than decry it as corruption of religious identity. A solid adherence to tolerance would allow for such to happen. In other words, Muslims and Copts would need to accept and tolerate each other at the most intimate level. In order to do this, both groups must conceive of such tolerance of the other and welcome and regard the new possibility of interaction as a positive contribution to the religious identities, a contribution that enriches their lives. Both communities would need to embrace the *value* of tolerance in order to annul the value of discrimination, as it is inherently intolerant.

In order to arrive at and to welcome the value of tolerance, the Copts and Muslims need to reassess the thick boundaries that they have erected throughout the centuries of their coexistence.¹⁰⁹ While the boundaries were vital in a society entirely ordered by religion, they are now anachronistic. The modern world establishes and promotes interaction that crosses all boundaries, barriers, lines, and blockades. It is a reality that engenders a

belief in absolute respect and tolerance for one another. Therefore, while I cannot in this article offer a substantive framework or process by which Muslims and Copts can proactively begin their necessary paths towards tolerance, I do advocate for the continued openness to new ideas and experiences that has already begun. External influences and experiences have encouraged the first tentative line of questioning. Having opened this door, I do not believe that it will be closed.

IV. CONCLUSION

The Muslim-Copt relationship in Egypt today is informed by a long history of religious identification. Both religious communities discriminate against the other as a way of preserving their religious heritage. This is nowhere more apparent and poignant than in the laws of marriage, where cross-religious unions are prohibited by each religion and are fortified through national deference to religion. While the younger individuals of both faiths in Egyptian society rarely challenge this guarded law in a blatant manner, the inability to marry someone of the other religion is no longer comfortably accepted. The story of Layla and Karim attests to this emerging discomfort, if not quiet rebellion, that is slowly bleeding into the Coptic-Muslim romantic relations of today.

In order for these laws to change and to reflect more national and international standards, a genuine reformation in religious thought must precede its legal extinction. Copts and Muslims need to allow their boundaries to fall in favor of shaping their religious identity into a model of overarching tolerance of each other. The society in which Layla and Karim live has not yet arrived at this moment, but their hesitant steps forward certainly indicate that some of Egyptian society may be moving ever closer to embracing the value of tolerance. As this unfolds, more stories like Layla and Karim's will be recounted, but the narrators will tell of different endings.

¹ Courtney P. Erwin received her B.S. in Foreign Service from Georgetown University, her M.A. in Islamic Studies from McGill University, and her J.D. from Seattle University School of Law. She would like to thank the staff and board of the *Seattle Journal for Social Justice* for their work on this article.

² The story of Karim and Layla is based on a relationship between the author's Coptic friend and his Muslim ex-girlfriend.

³ The Copts of Egypt are the country's Christian population. Ethnically, the Copts are neither Semitic nor Hamitic; they are Mediterranean. In fact, they are the direct descendants of the ancient Egyptians. Because of their self-imposed insularity, their bloodline has remained pure and untouched by subsequent invasions. Therefore, it is incorrect to identify them as Arabs. They trace their Christian roots to the time that the Holy Family fled Bethlehem and took refuge in Egypt. According to the Copts, Saint Mark founded their church between AD 55 and AD 61 in Alexandria, Egypt. In the early years of the religion, rifts arose and resulted in a division between the eastern, or "Orthodox," church and the western, or "Catholic," church. Today, the Coptic Church in Egypt belongs to the larger Orthodox Church headquartered in Istanbul; however, it is governed by its own patriarch, the Coptic Pope. Today, most Copts are Orthodox Copts and follow the Coptic Pope, but some are loyal to the Roman Catholic Church and are referred to as Catholic Copts. See Scott Kent Brown II, *The Coptic Church in Egypt: A Comment on Protecting Religious Minorities from Nonstate Discrimination*, 2000 BYU L. REV. 1049, 1051; AZIZ S. ATIYA, *A HISTORY OF EASTERN CHRISTIANITY* 16 (1968).

⁴ See *infra* Part III.

⁵ See Brown, *supra* note 3, at 1051. See also Bureau of Democracy, Human Rights, and Labor, U.S. Dept. of State, *Egypt: International Religious Freedom Report*, Oct. 7, 2002, <http://www.state.gov/g/drl/rls/irf/2002/13994.htm> [hereinafter U.S. Dept. of State 2002].

According to a 1995 law, the application of family law, including marriage, divorce, alimony, child custody, and burial, is based on an individual's religion. . . . Muslim families are subject to the Personal Status Law, which draws on Shari'a. . . . Christian families are subject to Canon law, and Jewish families are subject to Jewish law. In cases of family law disputes involving a marriage between a Christian woman and a Muslim man, the courts apply the Personal Status Law.

Id.; see also *infra* Part II.

⁶ See *infra* Part II.

⁷ Coptic-Muslim interaction is experienced in a number of ways, most acutely differentiated by socioeconomic status. I am limiting my study to the Coptic-Muslim relations of the Westernized, upper class urban (Cairo) populations. I have chosen to do this because most interaction between Copts and Muslims occurs in this social arena. Moreover, the romantic dimension that directly confronts the legal issue of marriage is all but absent among the poorer, more traditional Muslim and Coptic communities, both rural and urban.

⁸ Egypt's population is approximately sixty-eight million, with 90 percent comprised of Sunni Muslims. About 8–10 percent of the population is Christian, the majority of whom belong to the Coptic Orthodox Church (the other Christian communities, such as the

Armenians, Catholics, and Maronites, are very small). See U.S. Dept. of State 2002, *supra* note 5.

⁹ See Brown, *supra* note 3, at 1051.

¹⁰ Y. Masriya, *A Christian Minority: The Coptics in Egypt*, in 4 CASE STUDIES ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: A WORLD SURVEY 78, 90 (Willem A. Veenhoven ed., 1976).

¹¹ U.S. Dept. of State 2002, *supra* note 5.

¹² See Brown, *supra* note 3, at 1051.

¹³ See Abdullahi Ahmed An-Na'im, *Religious Freedom in Egypt: Under the Shadow of the Islamic Dhimma System*, in RELIGIOUS LIBERTY AND HUMAN RIGHTS IN NATIONS AND IN RELIGIONS 43 (Leonard Swidler ed., 1986) [hereinafter An-Na'im, *Religious Freedom in Egypt*].

¹⁴ For an explanation of the five pillars of Islam, see JOHN L. ESPOSITO, ISLAM: THE STRAIGHT PATH 88–93 (3d ed. 1998).

¹⁵ U.S. Dept. of State 2002, *supra* note 5.

¹⁶ The author personally experienced this interesting form of identification checking while she lived, worked, and traveled in Egypt.

¹⁷ The birth of Islam, wherein Muhammad himself envisaged the law as inseparable from divine revelation, established the symbiosis between religion and law. See S.D. Goitein, *The Birth-Hour of Muslim Law? An Essay in Exegesis*, 50 MUSLIM WORLD 23, 29 (1960). Goitein's article contends that "the idea of the Shari'a was not the result of post-Quranic developments, but was formulated by Muhammad himself." *Id.*

¹⁸ For a history of why Islamic law was dismantled in Islamic countries and the subsequent attempts by Muslims to modernize and reform it for contemporary implementation, see NORMAN ANDERSON, LAW REFORM IN THE MUSLIM WORLD (1976); J.N.D. Anderson, *Law as a Social Force in Islamic Culture and History*, 20 BULL. SCH. ORIENTAL & AFR. STUD. 13 (1957); J.N.D. Anderson, *Modern Trends in Islam: Legal Reform and Modernisation in the Middle East*, 20 INT'L & COMP. L. Q. 1 (1971).

¹⁹ See generally Ann Elizabeth Mayer, *Islam and the State*, 12 CARDOZO L. REV. 1015 (1991) [hereinafter Mayer, *Islam and the State*] (discussing the problem of reconciling Islamic doctrine with the character of the modern nation-state in today's Muslim societies). In the discussion of Egyptian municipal law, addressed in Part III, I will show the influence of Islamic law today in both the constitution of the country as well as in the marriage laws.

²⁰ My subsequent discussion of Islamic law and its legal methodology describes a legal system that is largely dormant today (Saudi Arabia proclaims to have never abandoned the Shari'a, areas of Nigeria claim to have revived it, and other countries such as Sudan and Pakistan have retained certain parts of the system and have attempted to incorporate those parts into their larger legal system). See Mayer, *Islam and the State*, *supra* note 19, at 1026–47. What I describe is the classical or traditional form of Shari'a and its place in pre-colonial Muslim societies. Even though the legal infrastructure is no longer intact in Egypt, the legacy of the Shari'a system continues to influence and inform the present.

²¹ Fazlur Rahman addresses the consequences that can arise out of a legal system that is so closely associated with the Divine: "The fact that no real and effective boundaries

were drawn between the moral and the strictly legal in Islamic law . . . must have also contributed to the fact that law was regarded as immutable.” FAZLUR RAHMAN, *ISLAM* 116 (2d ed. 1979).

²² *See id.*

²³ For an explanation of this complex methodological process, *usul al-fiqh*, see WAEL B. HALLAQ, *A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNI USUL AL-FIQH* (1997).

²⁴ Abdullahi A. An-Na'im, *Religious Minorities Under Islamic Law and the Limits of Cultural Relativism*, 9 *HUM. RTS. Q.* 1 (1987) [hereinafter An-Na'im, *Religious Minorities Under Islamic Law*].

²⁵ Some of these rights include security of person and property, freedom to practice one's own religion, and internal autonomy. *Id.* at 11.

²⁶ *See id.* Historically, the most marked feature of submission was the payment of a tax, the *jizya*, by any and all non-Muslims. *Id.*

²⁷ Some of these restrictions involve the exclusion of minorities from politically participating in state affairs, a prohibition to proselytize in public, and impediments on testifying at trial. For example, non-Muslims cannot testify against Muslims. *See id.* at 11.

²⁸ *See generally* An-Na'im, *Religious Freedom in Egypt*, *supra* note 13. For examples of court cases as well as societal instances of Muslim dominance, see *Egypt: Muslims Throw Stones at Church Building Site; Riot Ensues*, Dec. 31, 2004, <http://www.jihadwatch.org/dhimmiwatch/archives/004490.php>.

²⁹ An-Na'im, *Religious Minorities Under Islamic Law*, *supra* note 24, at 11.

³⁰ *See, e.g.*, Masriya, *supra* note 10.

³¹ “There are no Christians serving as governors, presidents of public universities, or deans. There are few Christians in the upper ranks of the security services and [the] armed forces . . . government discriminatory practices include: discrimination against Christians in staff appointments to public universities; payment of Muslim imams through public funds (Christian clergy are paid by private church funds); and refusal to admit Christians to Al-Azhar University (which is publicly funded). In general, public university training programs for Arabic-language teachers refuse to admit non-Muslims because the curriculum involves the study of the Koran.”

U.S. Dept. of State 2002, *supra* note 5.

³² For example, an 1856 Ottoman decree, which is still in force, requires non-Muslims to obtain a presidential decree to build a place of worship. The Ottoman decree also requires the President to approve permits for the repair of church facilities. *See* U.S. Dept. of State 2002, *supra* note 5.

³³ In 1972, the Egyptian Ministry of Religious Affairs publicly announced planned provocations against the Copts. In 1981, then-President Sadat exiled the Coptic pope (President Mubarak rescinded the exile in 1985), censored the Coptic press, and held Coptic bishops and priests under house arrest. Furthermore, Copts have been harassed and tortured by state security forces without any remedial action instituted on their behalf. *See* Donna E. Arzt, *Religious Human Rights in Muslim States of the Middle East and North Africa*, 10 *EMORY INT'L L. REV.* 139, 155–56 (1996).

³⁴ For example, on February 10, 2002, Muslim villagers firebombed a newly reconstructed church in Bani Walimss, in the southern province of Minya, during the consecration ceremony, allegedly in reaction to prolonged tolling of the church bells. On July 26, 2000, Muslim gunmen killed a Christian farmer and wounded five other persons in Giza province because of objections to a church the farmer had built. On December 11, 2000, a 75-year-old Coptic Orthodox priest was stabbed and seriously wounded in the village of Bardis. See U.S. Dept. of State 2002, *supra* note 5.

³⁵ See FREDERICK MATHEWSON DENNY, AN INTRODUCTION TO ISLAM 85 (1994); see An-Na'im, *Religious Minorities Under Islamic Law*, *supra* note 24, at 11.

³⁶ See An-Na'im, *Religious Minorities Under Islamic Law*, *supra* note 24, at 11.

³⁷ See DENNY, *supra* note 35.

³⁸ See *id.*

³⁹ Mayer, *Islam and the State*, *supra* note 19, at 1024.

⁴⁰ See Masriya, *supra* note 10, at 81; An-Na'im, *Religious Minorities Under Islamic Law*, *supra* note 24, at 11; Mayer, *Islam and the State*, *supra* note 19, at 1024. Today, Copts reside in various parts of Cairo but much of the social activity congregates around the church. However, one can visit the old Coptic quarter of Cairo, a physical section in the oldest part of the city and a reminder of the community's history of insularity.

⁴¹ The desire to preserve ethnic heritage is another reason for Coptic isolationism from the greater Muslim society; the Copts are proud of their pure, Pharaonic bloodline. As Arzt notes, "[T]he Copts are extremely endogamous, insisting on a separate existence in order to maintain their pre-Muslim, non-Arab, ancient Egyptian lineage." Arzt, *supra* note 33, at 155.

⁴² See Masriya, *supra* note 10, at 81; Mayer, *Islam and the State*, *supra* note 19, at 1024; An-Na'im, *Religious Minorities Under Islamic Law*, *supra* note 24, at 11; Arzt, *supra* note 33, at 155.

⁴³ The author engaged in a number of conversations with Copts during her time in Egypt and was very aware of this resilient and resigned caution about the Muslims.

⁴⁴ For example, in January 2005, Muslims and Copts clashed over a Coptic proposal to convert a private home into a church. See Reem Nafie, *Echoes of Tension*, AL-AHRAM, Jan. 6–12, 2005, available at <http://weekly.ahram.org.eg/2005/724/eg4.htm> (last visited Mar. 25, 2005).

⁴⁵ Another, even newer, identity is that of "citizen of the world." This identity, however, transcends national boundaries and unifies all persons at the international level and is more outward looking from national boundaries than inward looking. As this article is concerned with external influences (international) upon the internal influences (national), I do not explore the emerging character of "CivWorld." Instead, I focus upon the impact of international activity within the national frontier rather than the expression and inclusion of the national identity in an international identity. For an investigation into the theme of "CivWorld," see BENJAMIN R. BARBER, FEAR'S EMPIRE: WAR, TERRORISM, AND DEMOCRACY 200–14 (2003).

⁴⁶ Mayer, *Islam and the State*, *supra* note 19, at 1016.

⁴⁷ See Ann Elizabeth Mayer, *The Shari'a: A Methodology or a Body of Substantive Rules?*, in ISLAMIC LAW AND JURISPRUDENCE: STUDIES IN HONOR OF FARHAT J. ZIADEH 180 (Nicholas J. Heer ed., 1990).

⁴⁸ An important aspect to consider is that modernity arrived in the Muslim world through a confrontation with Western powers. The West's political, economic, and military supremacy dictated the course of modernization, influencing an intellectual and societal reorientation among Muslims, and the Copts who inhabited the Muslim domain, that was decidedly not on their terms or even inclusive of their voice. See Fazlur Rahman, *The Impact of Modernity on Islam*, 5 ISLAMIC STUD. 114 (1966).

⁴⁹ Further complicating this issue is the very recent history and painful memory of Western colonialism, a pursuit that has left deep and ragged scars upon both Muslims and Copts, who were the oppressed subjects of the Western imperialist effort. The nation-state itself is a concept and ideal that emanates from the West and has been nurtured and developed within that socio-historical and cultural context which was later imposed upon non-Western societies through the colonialist project or post-colonial adoption and enactment. See Abdullahi A. An-Na'im, *The Contingent Universality of Human Rights: The Case of Freedom of Expression in African and Islamic Contexts*, 11 EMORY INT'L L. REV. 29 (1997). Furthermore, recall that the institutions of international organization and enforcement were being formulated while a vast majority of nations could not contribute to this process. They were suffering under repressive colonialist rule by the very same European powers that were proclaiming the Universal Declaration of Human Rights at the United Nations.

⁵⁰ Mayer, *Islam and the State*, *supra* note 19, at 1026–27.

⁵¹ *Id.* at 1016.

⁵² For example, Egypt is a party to a number of international instruments. See Status of Ratifications of the Principal International Human Rights Treaties as of 09 June 2004, <http://www.unhcr.ch/pdf/report.pdf> (last visited Mar. 25, 2005) [hereinafter Status of Ratifications]. Egypt has also often taken the lead in Middle Eastern peace talks, acting as a mediator between divisive factions as well as between the Middle East and the West. See Re-Popularising Peace, AL-AHRAM, Dec. 2–8, 2004, available at <http://weekly.ahram.org.eg/2004/719/eg6.htm> (last visited Mar. 25, 2005).

⁵³ These human rights standards have weathered storms of criticism over their purported universality. However, a common argument for their preservation is that they are universally valid because they reflect the normative framework of a common human experience reflected in the realities of globalization and expanding state power occurring in every part of the world today. See Abdullahi An-Na'im, *Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives*, 3 HARV. HUM. RTS. J. 13 (1990).

⁵⁴ Tanya Kramer, Note, *The Controversy of a Palestinian "Right of Return" to Israel*, 18 ARIZ. J. INT'L & COMP. L. 979, 1002 (2001). In discussing the Universal Declaration of Human Rights, Kramer notes that while the document as a United Nations General Assembly resolution has no legally binding effect, it represents "principles reflective of customary international law" and has, therefore, become binding upon all countries. *Id.* at 1007.

⁵⁵ Egypt is one of the oldest members of the United Nations (since Oct. 24, 1945) and has either signed and/or ratified a rather significant number of the many treaties, resolutions, and other international legal documents. See Status of Ratifications, *supra*

note 52. This is a strong indication of Egypt's active and agreeable presence in the international community.

⁵⁶ This issue is particularly poignant for Muslims because of the utterly alien nature of such a proposition. As Ann Mayer asserts, "Indeed, at the risk of some overgeneralization, one might assert that in the premodern Muslim world there was no concept of a secular law in the sense of a law produced by human agency that could conflict with, much less override, the precepts of Islam." Mayer, *Islam and the State*, *supra* note 19, at 1023.

⁵⁷ The existence of a national constitution and nationally legislated laws applicable to all citizens of Egypt obviates a separate Coptic legal system outside of the purely religious (i.e. church business).

⁵⁸ This is experienced through the maintenance of a degree of separateness (communities, schools, social interactions, marriage), the reluctance to include Copts in positions of authority, and the continued violence between the two groups. *See supra* Part I.A.2.

⁵⁹ *Id.*

⁶⁰ I specifically note the nineteenth century because of the role colonization played in imposing foreign influences upon indigenous cultures. In reference to proselytism, Tad Stahnke remarks, "Religious change has historically gone hand in hand with international exploration, conquest and colonization, and the resulting political re-alignments." *See* Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, 1999 BYU L. REV. 251, 300 (1999).

⁶¹ The obvious association with marriage is procreation. As women bear the future adherents of a religion, they are disproportionately burdened by religious laws/traditions surrounding marriage. As Ayelet Shachar notes, "First, religious traditions often encode within their legal traditions various formal and informal mechanisms for controlling the personal status and sexuality of women, primarily because women play a central and potentially powerful role in symbolically reproducing the collective." Ayelet Shachar, *The Puzzle of Interlocking Power Hierarchies: Sharing the Pieces of Jurisdictional Authority*, 35 HARV. C.R.-C.L. L. REV. 385, 397 (2000).

⁶² Adam B. Seligman, *Tolerance, Tradition, and Modernity*, 24 CARDOZO L. REV. 1645, 1652 (2003).

⁶³ Shachar states that

[t]raditionally, various religious (and national) communities have used marriage and divorce regulation in the same way that modern states have used citizenship law: to delineate clearly who is inside and who is outside of the collective. Family law fulfills this demarcating function by legally defining only certain kinds of marriage and sexual reproduction as legitimate, while labeling all others as illegitimate. By punishing individuals who engage in "illegitimate" marriage and childbirth, certain minority groups (as well as various states) use marriage and divorce regulations as a sociopolitical tool for policing a given collective's membership boundaries.

Shachar, *supra* note 61, at 394.

⁶⁴ Seligman, *supra* note 62, at 1652; *see also* Shachar, *supra* note 61, at 395.

⁶⁵ Shachar posits that the arena of family law is so volatile because of the underlying philosophical questions that it brings to the surface. One of these issues, the degree to which the state may define the family, directly confronts minority communities' increasing demand for legal recognition of family law traditions "as necessary to preserve the group's collective identities." Shachar, *supra* note 61, at 394.

⁶⁶ There is a rich body of international instruments that are of this persuasion, including the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. *See infra* notes 96–99, 105.

⁶⁷ *See* Mayer, *Islam and the State*, *supra* note 19, at 1027.

⁶⁸ Seligman comments about the power of the public/private distinction in discussions surrounding tolerance. If beliefs and/or practices are deemed private, they are "beyond the realm of what even enters a calculus of tolerance. . . . For one has no right to intervene in private matters, or even to judge them." Seligman, *supra* note 62, at 1649.

⁶⁹ *See supra* Part I.A.2.

⁷⁰ Madhavi Sunder proposes that religious communities are constantly evolving over time through internal debate and interaction with outsiders. And this has never been so true as in the twenty-first century. Individuals in the modern world increasingly demand change within their religious communities in order to bring their faith in line with democratic norms and practices. . . . Today, individuals seek reason, equality, and liberty not just in the public sphere, but in the private spheres of religion, culture, and family.

Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399, 1403 (2003).

⁷¹ *See* Bureau of Democracy, Human Rights, and Labor, U.S. Dept. of State,

Egypt: International Religious Freedom Report, Sept. 15, 2004, <http://www.state.gov/g/drl/rls/irf/2004/35496.htm> [hereinafter U.S. Dept. of State 2004].

⁷² *See* RON SHAHAM, FAMILY AND THE COURTS IN MODERN EGYPT: A STUDY BASED ON DECISIONS BY THE SHARI'A COURTS 1900–1955, at 1–23 (1997); ISLAMIC FAMILY LAW IN A CHANGING WORLD: A GLOBAL RESOURCE BOOK 171 (Abdullahi A. An-Na'im ed., 2002) [hereinafter GLOBAL RESOURCE BOOK]; Mayer, *Islam and the State*, *supra* note 19, at 1027.

⁷³ There are three possible explanations for their success: (1) the Qur'an devotes much more space to questions of family law than other legal issues, making these laws closely tied with the Divine Revelation; (2) perhaps as a result of the surplus of revelation in this area, these rules were most highly elaborated by the Muslim jurists; and (3) the personal status rules support the institutions of a patriarchal family, preserving a central, if endangered, institution in traditional Muslim societies. Mayer, *Islam and the State*, *supra* note 19, at 1027.

⁷⁴ *See* U.S. Dept. of State 2004, *supra* note 71; GLOBAL RESOURCE BOOK, *supra* note 72, at 171.

⁷⁵ Mayer, *Islam and the State*, *supra* note 19, at 1027.

⁷⁶ ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 176 (1990).

⁷⁷ ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS 139 (3d ed. 1991).

⁷⁸ This practice finds both textual and historical legal support. The Qur'anic verse 2:221 advises against *both* men and women marrying non-Muslims. El Alami qualifies the permission for a Muslim man to marry a non-Muslim woman by citing three of the four Islamic jurisprudential schools: the Hanifis, the Malikis, and the Shafi'is all validate the contract but consider it reprehensible and inadvisable, while the Hanbalis regard it as permissible. DAWOUD SUDQUI EL ALAMI, *THE MARRIAGE CONTRACT IN ISLAMIC LAW IN THE SHARI'AH AND PERSONAL STATUS LAWS OF EGYPT AND MOROCCO* 41–42 (1992). Finally, Judith Tucker explains that the Muslim jurists

were very conscious of the rules of *kafa'a*, the legal concept of the suitability of the match in terms of lineage, legal status, social class, and moral standards, and they chose to enforce them. If a marriage were to reinforce social harmony, it was important to avoid the instability attendant upon misalliance Clearly, the interests of the community would not be served by marriages that appeared to be inherently unstable because of the disparate backgrounds of the bride and groom.

JUDITH TUCKER, *IN THE HOUSE OF THE LAW: GENDER AND ISLAMIC LAW IN OTTOMAN SYRIA AND PALESTINE* 41 (1998).

⁷⁹ U.S. Dept. of State 2002, *supra* note 5.

⁸⁰ *See infra* p. 687 (discussing *hisba* lawsuits).

⁸¹ More explicitly, Egypt has established a legal marriage age (eighteen for males, sixteen for females), legislated in the area of marriage guardianship regulations (a person's legal guardian cannot prevent his ward from marrying for reasons of status, amount of dower, etc.), lifted the divorce restrictions for women, and changed laws in the area of inheritance. *See* GLOBAL RESOURCE BOOK, *supra* note 72, at 171.

⁸² *See* Nadia Abou el-Magd, *When the Professor Can't Teach*, AL-AHRAM WKLY., June 15–21, available at <http://weekly.ahram.org.eg/2000/486/eg6.htm> (last visited Mar. 25, 2005).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ In an article in al-Ahram, Abu Zeid said, "When some of our neighbours asked our guards why they were with us, they responded, 'because of the *kafir* [the infidel].'" *Id.*

⁸⁶ *Id.*

⁸⁷ *See* GLOBAL RESOURCE BOOK, *supra* note 72, at 171.

⁸⁸ *See* Dalia Dabbous, *I Pronounce You Still Man and Wife: Nawal el-Saadawi's Involuntary Divorce Proceedings Come to an End*, 5 CAIRO TIMES 22 (Aug. 2–8, 2001), <http://www.nawalsaadawi.net/press/CT-8August.htm> (last visited Mar. 25, 2005).

⁸⁹ *Id.*

⁹⁰ Saadawi intends to work for the eradication of the *hisba* law altogether. Conversely, the lawyer who brought suit against her is working to have the 1996 amendment cancelled, calling it unconstitutional because it contravenes the Shari'a, which according to the Egyptian Constitution is the main source of legislation. *See id.*

⁹¹ EGYPTIAN CONST., pt. III, art. 40.

⁹² Matthew L. Sandgren, Comment, *Extending Religious Freedoms Abroad: Difficulties Experienced by Minority Religions*, 9 TULSA J. COMP. & INT'L L. 251, 275 (2001) (quoting EGYPTIAN CONST., pt. III, art. 40 (1980)).

⁹³ This is further complicated by the 1980 amendment to the Constitution that reads that “the principles of Islamic Shari’a will be *the* [prior to the amendment it read “a”] main source of legislation.” EGYPTIAN CONST., pt. III, art. 40 (1980). This national nod to Islamic law calls into question principles of equality on a much broader scale in Egyptian law and society. See An-Na’im, *Religious Freedom in Egypt*, *supra* note 13.

⁹⁴ Generally, Egypt has had a long history of very favorable relations with the international human rights community and a positive association with the United Nations. Moreover, Egypt is a signatory to the International Bill of Rights (the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights). Therefore, not only is Egypt legally bound by these documents, but Egypt also accedes to the weight of their moral authority on the subject. See Brown, *supra* note 3, at 1063–68.

⁹⁵ International law currently recognizes the right to freedom of religion and prohibition of religious discrimination as two of the twelve core rights that cannot be violated under any circumstances and are binding upon all states, whether the states are signatories to a particular convention or not (they are considered principles of customary international law). See Tayyab Mahmud, *Freedom of Religion and Religious Minorities in Pakistan: A Study of Judicial Practice*, 19 FORDHAM INT’L L.J. 40, 91 (1995).

⁹⁶ Universal Declaration of Human Rights, G.A. Res. 217(a)(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) [hereinafter UDHR].

⁹⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 18, 999 U.N.T.S. 171, 178 S. Exec. Doc. E, 95-2 [hereinafter ICCPR].

⁹⁸ *Id.*

⁹⁹ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. Res. 47/135, U.N. GAOR, 48th Sess., Supp. No. 49, at 210, U.N. Doc. A/47/49 (1993) [hereinafter Declaration on the Rights of Persons].

¹⁰⁰ *Id.* at art. 2. Article 27 of the ICCPR contains a similar guarantee. However, it is generally agreed that the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities has superseded it. See Nathan Lerner, *The Nature and Minimum Standards of Freedom of Religion or Belief*, 2000 BYU L. REV. 905, 917 (2000).

¹⁰¹ Declaration on the Rights of Persons, *supra* note 99, at art. 2.

¹⁰² Lerner postulates that, according to the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, not all preference based on religion or belief is discriminatory: “For example, comparative legislation on religious rights sometimes prefers religions, treats religions differently, and draws distinctions between religions that respond to social and historic realities. . . . Common sense is the key.” Lerner, *supra* note 100, at 920. I suggest that because the discrimination in the case of Egypt is premised upon notions of superiority, distrust, and unequal separation, it is not a valid exercise of discriminatory laws.

¹⁰³ UDHR, *supra* note 96, at art. 7.

¹⁰⁴ ICCPR, *supra* note 97, at art. 26.

¹⁰⁵ Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, art. 2, G.A. Res. 36/55, U.N. GAOR 36th Sess., Agenda

Item 75, U.N. Doc. A/RES/36/55 (1981) [hereinafter Declaration of the Elimination of All Forms of Intolerance]. Article 3 is even stronger in its denunciation:

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Finally, Article 4 calls upon states to “make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.”

¹⁰⁶ UDHR, *supra* note 96, at art. 16.

¹⁰⁷ In the United States, Supreme Court Justice Ruth Bader Ginsburg considered the question of society’s readiness for change in the case of abortion. Justice Ginsburg posited that the Court’s decision to legalize abortion sparked a public opposition that still rages today because the Court “ventured too far in the change it ordered and presented an incomplete justification for its action.” See Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375, 376 (1985). There was no solid foundation on which the Court rested its decision and because of its insensitivity to the social climate, the nature of the *Roe v. Wade* decision divided the country, rather than quieted it. Today, a similar socio-legal debate is happening in the United States over same-sex marriage and some are concerned that the legal system is moving too far too fast. For an appraisal of the “fits and starts” of progression toward the legalization of same-sex marriage, see *Inching Down the Aisle: Differing Paths Toward the Legalization of Same-Sex Marriage in the United States and Europe*, 116 HARV. L. REV. 2004 (2003).

¹⁰⁸ This view of the law accommodating religious change is the other side of the notion that law ought to regard religion as completely separate and untouchable. The latter, a discourse where law conceives of religion as “the other,” can actually function to preserve distasteful aspects of religion. In this discourse, law defers to religion and regards it as natural, irrational, incontestable, and imposed. As Sunder explains,

In short, religion’s conceptualization as law’s other not only helps to confine religion but also to defend it. The Enlightenment rendered religion immutable and without need for justification or legitimacy—religion cannot be defended against irrationality because irrationality is thought to be its essence. Heterogeneity and critical discourses within religion are subverted in favor of the imposed views of religious leaders. Religion is studied and preserved as a fixed, unchanging object rather than as an ever-shifting, subjective construct.

Sunder, *supra* note 70, at 1424.

¹⁰⁹ In his discussion of a liberal foundation of tolerance, Seligman advances the idea that modern societies . . . do not so much make societies more tolerant, but rather do away with group boundaries Within the public sphere, boundaries are, in these societies, parsed into razor thin edges; individuals interact not as

members of groups, but as bearers of rights. . . . In the public sphere, group identities have been replaced by the legal recognition and entitlement of rights. Seligman, *supra* note 62, at 1653. However, he later notes that while modern societies within the confines of the nation-state seem to elide the problem of tolerance, he believes that this is not sufficient and that “we will have to reinvent the language of tolerance To do so, I believe we will need to have recourse to religious foundations for tolerance” *Id.* at 1656.