

THE HOLY TRINITY: RELIGION, IDENTITY, AND INTERNATIONAL LAW IN  
EGYPT

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## **Abstract**

This thesis investigates the contradiction between Egypt's international legal obligations to protect religious freedom and its state practice. Chapter 1 gives a brief history of the relationship between religious freedom and state authority in the Roman, Islamic, and Holy Roman Empires and the early formations of international legal protections of freedom of religion in the wake of the Thirty Years War and then WWI centuries later. Chapter 2 looks at the formation and content of the current international standards of religious freedom, focusing on the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR). Chapter 3 looks at case studies of possible violations of these standards in Egypt and concludes that the two main avenues which they arise are the public order interpretation of the Egyptian courts and the nature of the regime itself, creating rules and practices that discriminate against and repress the religious expression of religious minorities. Chapter 4 considers possible strategies to bring Egypt under compliance, focusing on these two avenues, emphasizing the need to change both regime behavior and the courts interpretation of public order.

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## **Introduction**

Egypt is home to a diverse array of religious communities such as Sunni, Shia, Coptic, Greek Orthodox, Protestant, Catholic, Bahai, and the irreligious to name a few. 90% of the population are Muslim, with the majority Sunni, and the remaining 10% are Christian, the majority of whom are Copts (CIA World Factbook 2017). Various local and international NGO's and government accuse the Egyptian state of religious discrimination and of violating minority sects' religious rights. Some, like Human Rights Watch, claim that the Egyptian government has violated the obligations to protect religious freedom it agreed to when it ratified the ICCPR, International Covenant on Civil and Political Rights (2016). This thesis sets out to investigate the whether the Egyptian state has failed to upheld the binding standards it helped draft and then signed. These possible state violations discussed in the thesis include regulations prohibiting apostasy, discriminatory church building laws, lack of legal protection for non-Abrahamic religions, Shia censorship and repression, unjust settlements following sectarian attacks on churches, and the Bahai identity card controversy with their lack of recognition. However, when considering international legal religious freedom protections, one should look at their history and background. This is the focus of Chapter 1 and 2.

Chapter 1 looks at some of the early relationships between religious freedom and state authority, ending with the conflicts that led to the drafting of some of the first formal international legal protections for religious freedom. Chapter 2 continues this theme but focusing on the drafting history and content of the two 20<sup>th</sup> century bodies of

law relevant to Egypt, the Universal Declaration of Human Rights (UDHR) and the ICCPR. Chapter 3 will look at Egyptian state practices that conflict with the standards it signed and helped draft. Through case studies, I identify the two places where contradictions between what Egypt signed and what it does in reality, the Egyptian Courts' interpretation of public order and the practices of the regime itself, such as drafting discriminatory laws and using the security justification to repress religious expression. Chapter 4 discusses possible processes that Egypt might come in compliance, emphasizing the need of reform to focus on the two avenues I identified in the previous chapter as well as the importance of domestic actors in implementing and enforcing human rights norms. My original contribution is identifying the two main areas that provide the contradiction between Egyptian state practice and its international legal agreements through the case studies and highlighting that any effective process to fully protect Egyptians' religious freedom must contend with them while providing some possible strategies that do so. I conclude that while there is not much else more contentious than engaging in both politics and religion, in Egypt, protecting religious freedom will involve just that.

## Chapter 1

The conflict between state authority and religious freedom is not unique to any state, Christian, Islamic, or Egyptian. The Roman Empire post-Constantine generally used religion to determine the rights and duties of its citizens, granting certain rights to Christians, created a legal separation between the non-Christian and the Christian citizen, and punished apostates from Christianity. The Islamic dhimmi systems shared similarities with the Roman one as religion was also used to delineate the status and rights of its citizens and create legal separations based on religion. The rights of full citizenship were generally given to only Muslim males while followers of different religions were granted protection and a partial citizenship status in exchange through payment of a tax and a declaration of submission to the Islamic authority. To the princes and emperor of the Holy Roman Empire after the Protestant Reformation, political unity meant religious unity, reflected in religious persecution of principalities' religious dissidents and the outbreak of the 30 Years War. The agreements that ended the conflict, Peace of Augsburg and the Peace of Westphalia, attempted to settle the issues of religious tolerance while creating the foundations of the modern international law and the principles of state sovereignty.

After WWI, states again created international agreements to protect religious freedom, the League of Nation's Minority Treaties. However, they showed the limits of religious liberty protections that are still present today, the concerns for state sovereignty as the treaties were directed only at certain states who felt the treaties infringed on their

authority. This connection between religion and state sovereignty and authority presents challenges to the formation of protections for religious freedom and tolerance.

After the Roman Empire Christianized, it began to use religion more as a marker of a citizen's rights and legal status. The Christian religion and the Roman identity became intermeshed. Imperial practices and its legal codes seemed to try to create a universal religious identity that was synonymous with the Roman one as apostasy was punished and Christians were given privileged status. Religion became an empire-wide practice to enforce a single identity and ensure loyalty. However, pagan Rome also used religion as the imperial identity and gave the later Christian emperors a precedent.

One such example is Emperor Trajan Decius's demand for universal sacrifice in honor of the Roman gods in 249. When the Christians refused, the first empire-wide and sanctioned persecution of Christianity began. Before this declaration, persecution of Christians was generally local to the provinces and not officially sanctioned by the authorities in Rome (Rives 1999, 135). Religion in the Roman Empire changed from a local affair tolerated by imperial authorities in exchange for loyalty to a religious identity of the empire that must be enforced through its institutions. Loyalty to the state became intertwined with the regulation of religious practice.

The Christianization of the Roman Empire emphasized this change when the Christians, now in power, ironically adopted the principles in Decius's command that originally was used against them. From the Theodosian and Justinian codes, Roman citizenship began to be defined in Christian terms. The status of the citizen, the *dignitas*, began to be defined in the terms his religious affiliation. Christians that belonged to the official imperial creed were privileged and given a higher legal status than religious

dissidents and those of a different faith, such as Jews (Nero 2001, 147). Apostates from Christianity lost many of the rights that their citizenship afforded were considered non-Roman citizens. They were considered inferior to even non-Christians (Nero 2001, 160). Religious identity and civil law were blended that gave a new definition of a Roman citizen, a man who follows the religious creed and virtues of the empire. Roman citizenship was not tied to the individual but to the collective in which the individual belonged (Nero 2001, 147).

Roman efforts tried to separate the Christian and the non-Christian since Constantine with his edicts to protect the convert to Christianity from Judaism and his threats of punishment to the person who converts from Christianity to Judaism. His son Constantius II banned pagan sacrifice (Nathanson 1986, 29). Jews were limited in the offices they could hold in imperial government. As the identity of the Roman Empire began to become synonymous with a Christian identity, a legal separation was instituted between the non-Christian citizens and the Christian. Privileges that the Christian enjoyed were not be given to the non-Christian (Nero 1986, 159). Harsh measures against apostasy, renouncing the Roman religion, could be seen as renouncing Rome.

However, while Christians (of the Chalcedonian rite after the schism) were privileged in the 4<sup>th</sup> and 5<sup>th</sup> century Roman Empire, there were measures taken to protect adherents of the other religions. Emperors did issue commands to protect Jewish houses of worship against attacks from Christian mobs. Rome still retained Judaism as a legal and recognized religion. However, this was perhaps partly to protect the public order in the empire and to assert the imperial government's power over the church (Nathanson 1986, 29).

Like the Roman system, the dhimmi systems used religion to delineate a citizen's legal status, determining the courts, laws, and taxes they were subject to. Dhimmi is a religious word used to describe a non-Muslim person of the book who were given protected status under Islamic rule. Muslims were given a higher legal status than Christians and Jews as Muslim males were usually the only people granted full citizenship during the early years of the period of Islamic conquest. Christians, Jews, and Zoroastrians were given partial citizenship status as dhimmis (Kalanges 2012, 91). However, like pre-Christian Rome, as long as the adherents of different religions declared their submission to the Islamic authority (through the payment of the jizya tax) they were generally free to practice their faith (Kalanges 2012, 92). However, this does not mean that it was free of discrimination and persecution. Muslims were held in higher legal status than Christians, and there were several times that the legal separation between them were made apparent. On several occasions Coptic subjects in Egypt were banned from holding certain public offices, owning horses and swords, and forced to wear clothes that differentiated them as Christians (Tadros 2013, 38).

The millet system was the Ottoman empire's form of the dhimmi system where it served more of a political role. Through the Ottoman millet system, Christians were subject to Christian laws and courts, Muslims to Islamic laws and courts, and Jews to Jewish laws and courts. The Ottomans enveloped these religious institutions within its imperial fold to govern its subjects (Kupchan 2012, 50). The Ottoman Empire used religion to organize its legal system. Religion was tied to state authority as it determined the legal codes that Ottoman subjects were beholden to. It was also a way that they

managed religious plurality. Minority sects had to declare loyalty to the state and were generally free to organize their own affairs.

The dhimmi and millet systems were not one of religious equality, but one of religious plurality that was predicated on loyalty to the state in exchange for tolerance and the freedom for sects to manage their own affairs. However, by the late 1850s, the millet system faded out in Egypt as the jizya was abolished, and the Ottoman Humayun decree formally established legal equality between Muslims, Christians, and Jews (Rowe 2001, 335-336).

Religion was tied to state authority and the way it organized its legal codes and society. Interfering in the realm of religion could be seen as interfering on state sovereignty such the 4<sup>th</sup> clause in the Egyptian Declaration of Independence in 1922 that allowed the British to take measures to protect minorities. Coptic leaders, especially in the Wafd party, did not want the religious community be seen as a minority and be guaranteed proportional representation in the Parliament because this would seem to approve the clause and British influence, separating them from the wider Egyptian state (Ibrahim 2011, 73-75).

Both the Roman and the later Islamic empires shared characteristics when it came to the way they handled religious plurality. They both used their citizens' religion to delineate the rights and sometimes the legal code that they were subject to. Through this manner they managed religious plurality and difference among their inhabitants.

Religious affairs were state affairs, whether Islamic or Christian, Ottoman or Roman. Years later, this connection between state authority and religion manifested itself in the European wars of religion where state repression against religious minorities and/or

dissidents evolved into a religious war. Both the formal codification of state sovereignty and the first drafting of international religious freedom protections were developed from the treaties that ended the fighting, namely the Peace of Augsburg and the Peace of Westphalia (Scolnicov 2011, 10).

Europe during the Protestant Reformation was not a place of religious tolerance. As Luther and Calvin developed dissenting religious ideologies from the Roman Catholic creed religious persecution and violence seemed to become the norm. Lutheran nobility in parts of Finland, Estonia, and Scandinavia repressed Catholicism. England went back and forth repressing Catholics and Protestants depending on who sat on the throne. Calvin in Geneva burned heretics at the state as Catholic leaders did elsewhere, not to mention the torture, forced conversion, and exile of Jews and Muslims during the Spanish Inquisition. Political unity meant religious unity, and violence became religious as communities took great measures to punish the heretics and the dissidents (Christenson 2013, 733-734).

The Holy Roman Empire at this time reflected the religious conflict and chaos across Europe. It was not a united state, but an assortment of principalities each governed by a single prince with a Hapsburg emperor and a group of electors that appointed the emperor. The majority of the Princes were either Lutheran or Calvinist while the Hapsburgs and most of the electors were Catholic (Christenson 2013, 733-735). Various Protestant communities formed the Schmalkaldic League as a Protestant alliance. The Emperor Charles V initially tolerated the League as he faced enemies on multiple fronts, the Ottomans and the French, but then turned against them, sending a Hapsburg army to destroy the alliance. However, while he was attempting to reintegrate the

communities back into the Catholic fold after his victory, many Protestants revolted until the Peace of Augsburg a decade later in 1555 (Kupchan 2012, 34).

The Peace of Augsburg was among the first international instruments to protect religious liberty. However, religious freedom meant here not the freedom of the individual to choose his or her religion but the freedom of the leader to choose his region's official religion and compel the population to follow the official creed, *cuius regio eius religio* (Scolnicov 2011, 10). Those who did not follow their principalities official religion were allowed to migrate and settle among co-religionists in a different principality (Kupchan 2012, 35). Through this measure religious and political unity of the principalities were preserved even though it was at the expense at the religious unity of the Empire (Christenson 2013, 736). Religion was tied to the sovereignty of the principality and its political unity. However, the Peace of Augsburg only recognized the Lutheran and Catholic denominations, and while an uneasy peace existed for almost six decades in the Empire, this exclusion and other limits of the agreement did not end the religious conflict (Kupchan 2012, 35).

Despite the Peace of Augsburg not recognizing and including them, Calvinists began to convert as many princes and bishops as possible; these leaders revolted against their exclusion from the agreement. People became more loyal to their dogma and their co-religionists (Christenson 2013, 736). Finally, Emperor Ferdinand's attempt to impose Catholicism on Protestant Bohemia in 1618 caused a revolt which spiraled into one of the most destructive civil and international conflicts, The Thirty Years War, which ended via the treaties that formed Peace of Westphalia (Kupchan 2012, 35).

The Peace of Westphalia, like the Peace of Augsburg, gave each region's leader the right to determine the official religion but also required tolerance for dissenting religions whose adherents must be allowed to practice their religion, including Calvinists (Scolnicov 2011, 10). The Westphalian treaties are considered the beginning of the modern state system. Each state was sovereign in its choosing the official religion and agreed to allow adherents of different religions to freely practice their own faiths (Kupchan 2012, 36). It was a system of independent and sovereign states that agreed to a system of international law that required religious tolerance. Its effect was the "general obligation of non-intervention in the internal affairs of a sovereign state based on religion" with the "sovereign autonomy of each state subject to a budding liberty of religious freedom within" (Christenson 2012, 744- 745). Religious freedom and religion itself was connected to state sovereignty and were an integral part of state authority.

The modern era for international protections for religious freedoms came after the conclusion of First World War with the League of Nations' Minority Treaties (Scolnicov 2011, 10). These treaties framed rights as collective, not individual, and were also targeted to only a few countries. One of the challenges from these treaties' drafting, overcoming issues of state sovereignty, remain a challenge in human rights enforcement today.

After its formation at the end of the First World War, the League of Nations became interested in protecting vulnerable minorities in these newly formed states. One of the two incidents that pushed this thinking to the forefront was the Armenian genocide where Turkish nationalists in the Ottoman Empire killed more than a million Armenians during WWI. The other was the conflict for Polish independence where Polish

nationalists wanted to create an independent Polish state in an area they shared with ethnic Germans, Ukrainians, Lithuanians, and Jews. Violent clashes occurred between Polish and Ukrainians troops while pogroms were committed against the Jewish population (Mazowar 1997, 50-51).

The League of Nations drafted Minority Treaties in response and sometimes used them as a condition for acceptance of state recognition, such as Poland (Mazowar 1997, 50). In returning to the agreement of tolerance of ethnic and religious minorities, namely allowing Jewish religious practices, Poland would be recognized within the League. These minority treaties have several characteristics. First the rights were framed as collective, not individual (Scolnicov 2011, 10). The provisions also were not universal; the treaties were directed only towards certain countries. These countries grew resentful of being singled out and of the intrusion on their sovereignty (Mazowar 1997, 52). The Minority Treaties were in a way a repudiation of the Westphalian system through interfering on the sovereignty of a state to manage its own religious affairs while not making religious and minority tolerance a universal principle. Poland renounced the treaties in 1934 (Mazowar 1997, 54). The failure of the minority treaties was perhaps partly tied to its unequal treatment of state sovereignty that made some states resentful to the provisions. The relationship between state sovereignty and the challenge of forming religious freedom and other human rights protections was present in these treaties. The collective rights minority treaties differ from the next period of human rights instrument drafting, the UN period, with its focus on universal individual human rights where signatory countries were equally obligated to the agreements (Scolnicov 2011, 11).

However, concerns over state sovereignty and authority in religious affairs played a role in their drafting and difficulties in enforcing compliance.

## Chapter 2

After the failure of the League of Nations to protect religious minorities in World War II, its successor, the UN, tried again. Beginning with the Universal Declaration of Human Rights in 1948, UN members, like Egypt, drafted agreements to define and protect religious freedom. The product of heavy debate and compromise, these bodies of law attempt to prevent states from engaging in religious discrimination and make them relinquish their authority over an individual's religious beliefs and practices. The 2 major instruments from this era that deal with religious freedom that this thesis will focus on due to their relevance to Egypt are the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR). The UDHR provides a body of customary law and principles that were codified in the binding (meaning that states are legally obliged to follow its terms) ICCPR. Even though Egypt was a signatory to both instruments, its contradictory behavior and stances at the signing and drafting plays out in its current practices where it prioritizes maintaining state authority over religious life. Even though Egypt says it upholds international religious freedom protections, its actions suggest that the state is loathe to cede power over religious affairs, even when violating the terms that it helped write and agreed to.

Even though it is only a declaration, many legal scholars argue that provisions from the UDHR have come to form a body of international customary law, an authoritative interpretation of the UN Charter, or a "codification of general principles of law... which is a source of international law as indicated by Article 38, paragraph 1, *sub*

c, of the Statute of the International Court of Justice” (Tahzib 1996, 80). The UDHR has multiple provisions regarding religious liberty (Lerner 2000, 9). These include the Preamble, Article 1, 2, 16, 18, and 26. The UDHR’s Preamble calls for the “advent of a world in which human beings shall enjoy freedom of speech and belief” while Article 2 and Article 7 work in conjunction to forbid discrimination, including religious discrimination (Tahzib 1996, 71). While other articles deal with education, parental rights, and marriage, the most contentious article on religious freedom is Article 18 (Scalnicov 2011, 11).

Article 18 states, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” This article consists of two parts; the first one “guarantees everyone’s right to freedom of thought, conscience and religion” (Tahzib 1996, 72). While the words “thought, conscience, religion, and belief” may seem redundant to some, there are some important distinctions. For instance, “freedom of conscience” means here non-religious principles that would be important to an individual such as pacifism (Kalanges 2012, 60). The inclusion of the word “belief” here intended to protect atheism, agnosticism, and other non-religious beliefs alongside religious ones (Lerner 2000, 10). The next part of Article 18 defines what these freedoms means in two-prongs, the “freedom to change his religion or belief” in the internal sphere (the *forum internum*) and the “freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance” in the external sphere (the *forum externum*) (Tahzib 1996, 73). It was the *forum internum*

that caused the most controversy with its guarantee that one has the right to change his or her religion.

Egypt did register an objection to this clause in Article 18, stating that “by proclaiming man’s freedom to change his religion or belief the declaration would be encouraging, even though it might not be intentional, the machinations of certain missions, well known in the Orient, which relentlessly pursued their efforts to convert to their own beliefs the masses of the population of the Orient” (Tahzib 1996, 77). Egypt and other Muslim states were concerned that the inclusion of this clause in Article 18 would expose them to Western Christian proselytization with the memory of how “Christian missionaries throughout history had used religious liberty to foment religious conflict and to facilitate projects of colonial and imperial intervention” (Mahmood 2016, 49). They were concerned that the inclusion of that clause would allow stronger states to impede on their sovereign authority in religious affairs. They were not just hesitant to give up state authority over person’s religious practice and belief, but they feared that doing so would give others power and authority over religious life within their borders. The most persistent country in opposing Article 18’s inclusion of the right to change religion was Saudi Arabia. Saudi Arabia’s representative al-Barudi claimed that the clause violated Islamic law and “would open the door to proselytism, political unrest, and perhaps even war” (Kalanges 2012, 61).

The country that proposed the language protecting the right to change one’s religion was Lebanon (Tahzib 1996, 74). While Lebanon is also a Middle Eastern country like Saudi Arabia and Egypt, its support for the article probably came from the nature of its state and society. Unlike Saudi Arabia and Egypt, it was not a Muslim

majority country. Its political system was and is confessional where each religion is allotted certain number of parliamentary seats and positions in a sort of power-sharing agreement. No religion formed a large majority, unlike in Saudi Arabia and Egypt. Its ambassador to the UN, Charles Malik, claimed that unless the UDHR included language that would “create conditions which [would] allow man to develop ultimate loyalties... over and above his loyalty to the State” then they would “have legislated not for man’s freedom but for his enslavement” (Kalanges 2012, 60). Malik was asserting that a state must give up its authority over a person’s beliefs and loyalty to a higher power and religious institutions.

While some Muslim countries did initially join Egypt and Saudi Arabia in their objection to this inclusion, it would be wrong to assume that this stance was universal among all the Muslim delegates. Pakistan’s representative, Muhammad Zafrullah Khan, passionately supported the Article’s language, saying that it was fully compatible with Islam. Khan said that the “Muslim religion was a missionary religion: it strove to persuade men to change their faith and alter their way of living, so as to follow the faith and way of living it preached, but it recognized the same right of conversion for other religions as for itself” (Tahzib 1996, 75). Eventually, every large Muslim state voted in favor of the UDHR with Article 18’s language of protecting the right to change one’s religion, except Saudi Arabia who abstained (Kalanges 2012, 61).

The UDHR remains one of the most significant human rights legal documents and has created much of human rights customary law (Lerner 2000, 11). It declared the universal human right to choose and practice the religion or belief that one holds. It has formed much of the basis of the understanding and principles of religious freedom under

international law. However, the Declaration was fairly vague regarding religious freedom. The International Covenant on Civil and Political Rights a few decades later in 1966 attempted to better specify what states can and cannot do to protect religious freedom (Kalanges 2012, 62). The ICCPR took the principles from the UDHR and codified them into a binding instrument. It expounded some of the principles of religious freedom, guaranteeing the right to practice a religion of one's choosing and not face government discrimination because of it. However, like the UDHR, the wording some of its provisions proved contentious during the drafting, such as in Article 18 which deals in part with the right to change one's religion. Regarding enforcement, an optional protocol was drafted in tandem to allow individuals to bring complaints to the UN Human Rights Committee for adjudication. However, Egypt did not sign this protocol, preventing Egyptians from taking their complaints to the Human Rights Committee

The ICCPR, codifying the principles and customary law derived from the UDHR, gives a binding standard that Egypt agreed to and is obligated to follow. The Egyptian Constitution reinforces this mandate, declaring in Article 93 that signed international conventions, like the ICCPR, have the force of law. The drafting of these human rights conventions attempted to wrestle with the relationship between state authority and religion. However, these bodies of law that govern international law on religious freedom lack teeth to ensure religious freedom and do not adequately resolve the issues of state authority's relationship to religion, such as in Egypt. The optional protocol to the ICCPR, that allows individuals to have complaints heard and adjudicated by the UN Human Rights, Egypt has not signed.

In addition, Egypt submitted a reservation upon signing that states, “Taking into consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it.” The reservation’s vague wording seems to imply that the Egyptian state’s interpretation of Islamic Sharia supersedes the guarantees within the ICCPR and that these guarantees’ authority are dependent on their compliance with it (Egypt’s legal code is not Sharia, but it does form parts of it and according to the constitution is its “principle source”).

Egypt’s 2001 report that it submitted to the Human Rights Committee as required by Article 40 backs up this interpretation. In the introduction, it states that Egypt submitted this reservation “to the effect that account should be taken of the need to ensure that the Covenant was not incompatible with the provisions of the Islamic Shariah” (3). The UN Human Rights Committee noted the problems with Egypt’s ambiguous stance in the reservation within a 2002 concluding observation on Egypt’s submitted periodic report to the committee. It stated that Egypt should either “clarify the scope of the reservation or withdraw it.” According to the 1966 Vienna Convention on the Law of Treaties, the reservation cannot be incompatible with the object and purpose of the treaty; the UN Human Rights Committee in its General Comment No. 24 in paragraphs 8 and 10 declare that reservations that violate peremptory norms, customary law, and the non-derogable provisions fail the object and purpose test (1994). Egypt’s ambiguous reservation and its definition in the 2001 self-report seems to grant itself wide authority to interpret, enact, and ignore the provisions within the ICCPR based on its own definitions of Sharia’s provisions (a topic to be explored in Chapter 3).

The ICCPR is the only binding and obligatory instrument in international law that articulates religious rights (Kalanges 2012, 62). Articles 2, 4, 8, 18, 20, 24, 26, and 27 have provisions concerning the freedom of religion and belief. The article that directly relates to religious freedom is Article 18 (Tahzib 1996, 82-83). It is also among the rights that states cannot derogate during times of emergency listed in Article 4, paragraph

2. Article 18 states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 18 is characterized by an individual rights approach, continuing the precedent laid out in the UDHR (Scolnicov 2011, 12). However, like the UDHR, the ICCPR does contain some mention of the “community dimension” of religion and

religious freedom in Article 18 with the language that one has the right to “either individually or in community with others [...] manifest his religion or belief” (Bielefeldt 2015, 18). The ICCPR, similar to the UDHR, contains the word “belief” alongside “religion” in Article 18, providing protection for non-religious beliefs, like agnosticism and atheism, and their manifestations (Carpenter 2017, 224).

This is seen during the negotiations over the treaty when many communist countries as well as France and Japan objected to the lack of the term “or belief” in the initial drafts because they felt that without such language non-religious convictions were left unprotected (Carpenter 2017, 227). This interpretation is also backed up in 1993 by the Human Rights Committee, the institution responsible for implementing ICCPR and whose comment “constitutes an authoritative source for the interpretation of the covenant clauses,” with its General Comment 22 where it stated in paragraph 2 that “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief” (Lerner 2000, 38). It also calls for the terms “belief” and “religion” to be broadly construed to prevent any discrimination against any religion or belief system, whether newly established or a minority religion, and to prevent established religions from having greater legal protections than new ones (Lerner 2000, 17).

However, there is a clear difference between the first paragraph of the article and its counterpart Article 18 of the UDHR. The ICCPR states the right to “have or adopt” a religion of one’s choosing, contrasted to the explicit right to “change” one’s religion or belief contained in the UDHR. This milder language “reflects a compromise” (Lerner 2000, 16). The compromise happened when Saudi Arabia objected and proposed the deletion of the provision in the draft article that mentioned the “freedom to maintain or to

change his religion or belief,” giving the reasoning that a powerful state with a proselytizing state religion could use its power to proselytize members of the minority religions within its borders (Tahzib 1996, 84-85).

Brazil and the Philippines in response to Saudi Arabia’s concerns proposed an amendment that would change the wording to “have a religion or belief of his choice.” Still, some felt that this language was not explicit enough to guarantee the right to change one’s religion once a choice had been made, so Great Britain proposed the compromise to include the phrase “to adopt” following the phrase “to have” in paragraph 1 and 2 which allowed the ICCPR to unanimously pass with no reservations to Article 18 (Tahzib 1996, 86). However, despite the milder language the treaty does recognize the right of someone to adopt a religion of his or her choice (Lerner 2000, 15).

This can be seen during the negotiations over the wording where the Saudi delegate who had objected to the original wording in the draft himself admitted that he did recognize that “freedoms to change, maintain and even renounce one’s religion or belief were implicit in the right to freedom of thought, conscience and religion” (Tahzib 1996, 86). The Human Rights Committee also supports this reading in its 1993 General Comment 22 in paragraph 5 where it states that the wording “to have or to adopt” a religion or belief “necessarily entails the freedom to choose a religion or belief, including, *inter alia*, the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.” The debate and concerns over this article reflects the role regarding the concern over state authority and its proper limits over religion. Giving people the right to change their religion would

mean a loss of state authority over religious life or perhaps give authority to a state with a proselytizing state religion and other powerful religious bodies to convert individuals.

Similar to the UDHR, the ICCPR has a two-pronged approach with the distinction in paragraph 1 of Article 18 of the freedom to have or adopt a religion or belief of one's choosing, the *forum internum*, and the freedom to manifest this religion or belief in "worship, observance, practice and teaching," the *forum externum*. General Comment 22 defines worship as "ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest."

Only the *forum externum* may be restricted according to paragraph 3 in the General Comment to "protect public safety, order, health, or morals or the fundamental rights and freedoms of others." Given the purpose and text of the ICCPR, as well as the sensitivity of religion, the restrictions should be interpreted "narrowly" (Carpenter 2017, 223; Lerner 2000, 15). They cannot, in accordance with Article 2 and Article 26 as clarified by General Comment 22 in paragraph 8, be imposed in a discriminatory manner. They "must be based on principles not deriving exclusively from a single tradition," and not "vitiate the rights guaranteed in Article 18." There has been adjudication of issues such as ritual slaughtering, wearing of religious clothing, and religious rites and customs that come in conflict with public norms, health, or morals as they are derived from cultural and historical factors unique to each state or region and establishing international minimum standards in these areas would be difficult (Lerner 2000, 16). The inclusion of this clause is to allow the state to retain some authority over the regulation of religious

affairs in compliance with its own particular morals. This clause is related to Egypt's own principle of public order (which, as will be explained in the following chapter, consists of the Egyptian courts' definitions of public morals and principles) and its interpretation of Article 2 of its Constitution.

Paragraph 2 of Article 18 guarantees the right for people not to face coercion that would impair them from having or adopting a religion of their choice. Coercion is not defined here, but one can infer that it means force, threats, and other "forms of illegitimate influence, such as moral pressure or material enticement" (Lerner 2000, 15). Article 27 protects the rights of members of religious and linguistic minorities to "in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." While recognizing the communal character of religious groups, the article is again framed as an individual right with the original wording in the draft changed from "ethnic and religious minorities shall not be denied the right" to "persons belonging to such minorities" as minorities were not recognized as subjects of law during the drafting (Scolnicov 2011, 12).

The ICCPR contains several provisions prohibiting religious discrimination, starting with Article 2, paragraph 1 where states are obligated to "respect and ensure" that individuals can enjoy the rights protected by the ICCPR without any discrimination, including religious discrimination. Article 26 also prohibits religious discrimination, requiring states treat everyone "equal before the law" and that all people are "entitled without any discrimination to the equal protection of the law." While Article 2 is limited to a prohibition on discrimination regarding rights listed in the ICCPR, Article 26 does not have such a limit (Tahzib 1996, 83). As General Comment 22 clarifies in paragraph

9, having a state religion does not violate this article as long as it does not discriminate against other religions or beliefs, such as “imposing special restrictions” on a specific religion. Article 20 prohibits the “advocacy of...religious hatred that constitutes incitement to discrimination, hostility or violence.” Religions cannot have unique restrictions placed on them, and the state cannot use its authority to discriminate on the grounds of religion. Only the manifestations of the religion or belief, such as rites, rituals, holidays, and construction of places of worship, can be restricted when *necessary* and in an *un-discriminatory* manner to preserve public order, morals, and health. It cannot violate Article 18 of the ICCPR that guarantees the right for individuals to have or adopt a religion or belief of their choosing without any impairment from coercion.

The UDHR and its binding successor, the ICCPR, codify the binding international standards of religious freedom. These standards, broadly speaking, include the freedom to adopt a religion or belief of one’s choosing, practice it within a community of others, and not face discrimination based on these beliefs. The signatories, including Egypt, must comply with the ICCPR’s provisions. However, the Egyptian state’s ambivalence in its signing seem to play out in its implementation. It has failed to implement the protections for the freedom of religion and belief, such as the protection against religious discrimination, within the ICCPR and its predecessor, the UDHR. The Egyptian state fails to guarantee religious freedom for its citizens as the state uses its authority to discriminately regulate religious life and prevent its citizens from enjoying the religious freedom guarantees within the ICCPR and its own constitution as the next chapter will discuss. These violations of binding international standards seem to render Egypt’s

signature to the ICCPR and UDHR meaningless and show the limits of modern human rights practices.

### Chapter 3

Egypt has generally had a contradictory attitude towards religious freedom since the 1952 Revolution, with the reality on the ground generally not reflecting the government's statements that it highly values and protects religious freedom. Issues like church building restrictions, apostasy laws, prohibitions against Shia mosques, and parts of its legal code reflect the state's pattern of discrimination and refusal to relinquish authority over its citizens' religious lives. Even at the signing of the treaties it helped draft, this attitude manifests itself. The reservation that Egypt submitted while signing the ICCPR and the introduction to its 2001 self-report show that Egypt holds the provisions within conditional to its definition of Islamic legal principles. The Egyptian courts have defined these religious provisions to form part of its concept of public order. This concept, alongside the justification of security, have given the state authority to discriminate on the grounds of religion, regulate religious practice, and limit Egyptians' religious rights. Though the constitution does mention freedom of religion, it excludes every religion outside of the state's definition of the Abrahamic religions, and it fails to prevent state violations of Egyptians' religious rights that it and the international covenants, constitutionally enshrined as domestic law, protects. These violations include the discrimination against Egyptian Bahais, the regulations against apostasy legislated through the courts, the silencing of Shia Muslims, and the discriminatory restrictions on church building. The Egyptian state engages in religious discrimination mainly through two avenues: the interpretation of public order through the courts (seen in issues like

apostasy and bahai id cards) and the authoritarian practices of the regime and its bureaucracies, sometimes sanctioned by the legislature and characterized by the security justification (seen in issues like the church building regulations and the censorship and detainment of Shias and apostates). These equally important avenues can generally explain the contradictions between the religious freedom guarantees in the ICCPR that Egypt claims it upholds with the force of law and state practice.

While the 2<sup>nd</sup> president, Gamel Abd Nasser, was not hostile to the Coptic minority, his reforms that restricted Egyptian civil society also restricted Coptic civil societies. The state took over Coptic NGOs and sometimes their property, like Cairo's Coptic Hospital. As Coptic civil society was weakened, the political role of the church increased as Pope Kyrollos became the de facto political and social representative of all Copts to President Nasser, and the two formed a personal relationship and church-state entente (Tadros 2009, 270-272). However, as the church became the political spokesperson of the Copts, "religious affiliation became the Copts' main marker, not their citizenship" and religion began to take a more political meaning (Tadros 2009, 271). In contrast, Nasser had a worse relationship with Egypt's other major religious minority, its Jewish population. After the 1956 Suez War against Israel, the UK, and France, Nasser adopted policies hostile to Egyptian Jews, such as "police detention, sequestration of businesses and property, expulsion from the country, and promulgation of a new statute" that was used to deprive some of them of citizenship (Laskier 1995, 579). Egypt began to lose its Jewish minority as they were expelled from the country; by 1970, only 300 Jews remained compared to 80,000 in 1948 (Laskier 1995, 613).

His successor Anwar Sadat became more aligned with the Islamists and is accused of ignoring or even encouraging violence against the Copts. He put the Coptic pope, Shenouda, under house arrest after he began to oppose his policies (Tadros 2009, 273-274). Sadat's government amended Article 2 of the Egyptian Constitution, stating that "Sharia is the primary source of legislation." This has made Egyptian courts responsible for interpreting religious law and integrating religious principles into law (Brown and Lombardi 2006, 393).

Sadat's successor Mubarak changed the government's approach to the largest religious minority, the Copts. He allowed the Coptic pope to return from house arrest, and the two started a working relationship with each other, forming a new church-state entente. The Coptic Church began to become the sole political representative of its laity. Mubarak also began to repress Islamist groups such as the Muslim Brotherhood (Tadros 2009, 275-276). His government also emphasized the concept of *al-mowatana* (roughly defined as citizenship but emphasizing equality in general and the "active social and political participation and exercising of citizenship rights" (Iskander 2014, 181-182). This concept was included in 2007 when it was added to Article 1 of the Egyptian Constitution, saying that the Egyptian state is "based on citizenship." President Mubarak claimed that this was in order to serve national unity, "catch up with the world of the 21<sup>st</sup> century," and "preclude religious discrimination among citizens" (Lavie 2017, 32-34). However, the post-Mubarak government deleted the phrasing when drafting of the 2012 Constitution (Iskander 2014, 182).

While there was large increase in Coptic political activism outside the church during the Arab Spring, these movements later waned in the following years as the

church regained its political role, despite the claim of the new pope, Tawdros, that the church would no longer hold one. The Church tacitly supported the removal of the Muslim Brotherhood-backed president Mohammad Morsi and his replacement, the current president, Abd Fateh Sisi. The transitional government ratified a new (and the current) constitution in 2014 (Iskander 2014, 180-184). The *al-mowatana* phrase in Article 1 that based the foundations of the state on the idea of citizenship returned. The new constitution also retained Article 2's clause that sharia is the primary source of legislation, keeping the legal code's religious basis.

Religion plays another important role in the Egyptian legal code, public order (or in some literature, public policy), which gives the state much authority outside the legislative process. This concept is a European legal doctrine introduced to Egypt around the beginning of the 20<sup>th</sup> century (Berger 2001, 96). It is the right of the state to not follow international or foreign laws that contradict its own legal system, values, and norms (Mahmood 2016, 164). Usually a principle relegated to international law, Egypt uses it to settle interreligious conflicts and as a justification to limit religious practice and manifestations (Berger 2001, 102; Mahmood 2016, 166).

Public order in Egypt has generally only been defined by the courts. The Court of Cassation defined public order as the "principles (qawa'id) that aim at realizing the public interest (al-maslaha al 'amma) of a country, from a political, social and economic perspective...and supersede the interests of individuals" (Case No 16, Year 48, 17 January 1979; translated by Berger 2001, 104). The Court of Cassation in 1979 held that while public order is a secular legal concept, it may be based on religious doctrine "in the case when such a doctrine has become intimately linked with the legal and social order,

deep rooted in the conscience of a society (damir al-mujtama'), in the sense that the general feelings (al-shu'ur al-'amm) are hurt if it is not adhered to" (Case No 26, Year 48, 17 January 1979; quoted by Berger 2001, 104). While the Court of Cassation only implied that public order in Egypt is based in Islamic law in these rulings in 1979, it explicitly declared in 1997 that Islam forms a "part of public [order], due to its strong link to the legal and social foundations which are deep rooted in the conscience of society" (Court of Cassation Case No 85, Year 63, 2 January 1997; translated by Berger 2001, 105).

Islamic rules and norms form a prevalence of Egyptian public policy; however, most Egyptian legal scholars say that public policy is only based on the "essential principles of Islamic law," the rules that are "considered fixed and indisputable" (Berger 2001, 107). All of the responsibility is given to the courts to interpret and define Egyptian public policy; however, the norms and principles the court defines as public policy is not fixed as the courts may change them according to changes within society. This inherently gives a lot of power to the courts to write social policy and laws. Because the Egyptian courts hold that the public policy applies to all Egyptians regardless of religion and that the essential principles of Islam help form it, it has allowed "certain principles of Islamic law prevail over the laws of non-Muslims," whose religious laws govern their own personal status according to Article 3 of the constitution (Berger 2001, 103). Within Egyptian public policy there is also times when the rules are only obligatory to Muslims only, such as the right of universal divorce (Berger 2001, 108).

The Court of Cassation have used the concept of public policy to adjudicate several issues in either a positive way (where public policy is used to stop parties from

deviating from laws that are considered of essential importance) or a negative way (where public policy stops the application of outside laws) (Berger 2001, 108). Positive public policy is usually used to legally separate Muslim and non-Muslim communities based on the maxim that “Islam supersedes and cannot be superseded” meaning that a non-Muslim cannot have power over a Muslim and that a Muslim cannot be subject to non-Islamic laws (Berger 2001 110). Case law and legal literature have used public policy to determine “inheritance law, prohibition of party autonomy in choosing the applicable law (not letting two non-Muslims of different sects or rites choose the religious law that they prefer), prohibition of a marriage between a Muslim woman and a non-Muslim man, prohibition of a non-Muslim testifying against, or ruling in case of, a Muslim, the rules of conversion to Islam, and the prohibition of apostasy from Islam, prohibition for non-Muslims to testify against, or administer justice over, a Muslim” (Berger 2001, 125). Egypt also uses the principles of public policy to settle cases of interreligious conflicts in personal status law (like a marriage or divorce between a Copt and a Greek Orthodox) where it utilizes Islamic law in the proceedings (Court of Cassation Case 60 Judicial Year 48 1979, 277).

The courts interpretation of public policy makes the state enforce different rules and rights for Muslims and non-Muslims. This use of public policy seems to conflict with the international agreements, such as the ICCPR, that Egypt has signed. However, Egypt holds that international agreements are conditional to principles of sharia and that this gives it the “authority to limit the expression of religious beliefs that flout the social and moral order of a given polity” (Mahmood 2016, 165). The ICCPR does allow religious manifestations to be restricted in accordance to public morals and order, but as

clarified in general comment No. 22, the freedom to manifest belief is far-reaching and profound. It also clarifies that the public morals and order cannot be derived from a sole tradition and used in a discriminatory manner. While it is not clear from the legal literature whether Islamic principles form the totality of the definition of Egyptian public policy, the concept of public policy is a legal tool that the Egyptian state uses to justify its authority in engaging discriminatory practices such as its prohibitions against the manifestations of the Bahai faith (to be explained later on). In these cases, it invoked a single religious tradition in forming the public policy that restricted the public manifestations. The Egyptian Constitution is another instrument that grants the state power to restrict religious practice, for while seemingly guaranteeing religious freedom, it lacks equal protection for members of minority faiths, giving the state authority to exercise control over religious life.

The Egyptian Constitution and the precedents since 1971 gives the courts a power that complements the authority to define public policy, the power to define the principles of Sharia that all legislation must abide by. This comes from Article 2, which has remained in the constitution despite all the regime and constitution changes, stating: “Islam is the religion of the State and Arabic is its official language. The principles of Islamic Sharia are the main source of legislation.” The Egyptian Supreme Court has interpreted this that this means that the state can only write laws that satisfy two requirements: “(1) they must be consistent with universally applicable scriptural rules of Islamic *shari’a*, and (2) they must advance the goals of the *shari’a*” (Brown and Lombardi 2006, 418). In defining the scriptural rules of sharia, the justices use rules that they claim are absolute in their authenticity and meaning. However, deciding which texts

and rules as authentic beyond the Quran (which they hold as an authentic source), the court looks to see which rules and precepts that a “critical mass” of Islamic jurists have consistently applied across time; resulting in “precepts that it deems absolutely clear with respect to both authenticity and meaning” (Brown and Lombardi 2006, 419-420).

Regarding the goals of sharia that the court has determined a law must comply with, the justices concluded that they comprise of a balance between “(i) the classical idea that *shari'a* seeks to promote five necessary human interests above all others with (ii) the apparent policy priorities of the texts...and of the early jurists and (iii) a Rida-esque commitment to promoting legal outcomes that reason suggests are just and socially beneficial” (Brown and Lombardi 2006, 423). These five necessary human interests are religion, life, reason, property, and honor/modesty (Brown and Lombardi 2006, 428). Legislation must comply with Islamic norms that the court has understood to be authentic and result in an outcome that fits within a “rational derived conceptions of “justice” and/or social utility” (Brown and Lombardi 2006, 423). The justices have decided that these Islamic principles that legislation must adhere to can be newly interpreted every day and must fit within the changing ideas of human welfare. This has allowed the court to intrude on policy-making with decisions based on subjective reasoning on utility and its own definition of Islamic principles (Brown and Lombardi 2006, 423). While some have argued that the courts defining of principles and goals of sharia and its subsequent rulings have created a commitment “to liberal economic philosophy and to the protection of certain civil and political rights” others have argued that Article 2 has “increased the power of the secular courts to interpret Islamic principles in a way that buttresses the authority of the sovereign state and its exceptional powers” (Brown and Lombardi 2006,

424; Mahmood 2014, 154). While there certainly have been cases that support the former, I find the latter argument more convincing as Article 2, the courts definition of it, and public order has allowed them to give the state wide authority to intervene in the religious and social life of Egyptians, especially those of religious minorities, and engage in discrimination without legislation through judicial fiat.

However, the Egyptian Constitution of 2014 does contain protections for freedom of belief, but like in the ICCPR, makes a distinction between the *forum internum* and *forum externum*. The article relevant to the freedom of belief and religion is Article 64 as stated in the Egyptian State Information Service's English translation:

“Freedom of belief is absolute.

The freedom of practicing religious rituals and establishing worship places for the followers of Abrahamic religions is a right regulated by Law.”

The state guarantees the freedom of belief in the *forum internum* in the first clause and makes it absolute similar to the guarantee of the freedom of belief in the ICCPR. However, this simply means that Egyptians are free to believe what they want to. This protection is pointless as it is physically impossible for any state to regulate and prohibit what goes on in a person's head. It is the manifestations of religion that the state claims the authority to regulate.

However, the only religions guaranteed the right to manifest their beliefs and build houses of worship are the three Abrahamic religions, Islam, Christianity, and Judaism. Any other religious minorities are not guaranteed the right to practice their religion according to the Egyptian Constitution. Egypt has refused to include Shia Muslims within the definition of Islam (Ezzat 2014, 81). The state has used this language

to justify denying Bahai and Shia Egyptians from building houses of worship. This exclusionary language of this article violates the anti-discrimination clauses in the ICCPR, specifically in Article 2 where it calls for the equal protection of the rights guaranteed by the ICCPR, including religious rights, as well as Article 26 which calls for equal protection from discrimination. People who hold religious beliefs outside the state definition of the Abrahamic religions, such as Shias and Bahais, do not enjoy the same constitutional rights and protections as those who the Egyptian state recognize as followers of the Abrahamic religions.

This can be seen in the first Egyptian Supreme Court case that reviewed the legality of Law no. 263, a 1960 presidential decree by then President Nasser that disbanded all Bahai institutions, banned their practices, and seized Bahai communal property (Pink 2003, 412). In this 1975 case, the Egyptian Supreme court ruled that this law was constitutional and did not violate Article 64. It held that this decree did not prohibit anyone from adopting the Bahai faith; it only prevented its practice, a right only Christians, Muslims, and Jews enjoy. The justices also reasoned that the law did not violate any principle of equality as “this principle does not refer to the equal treatment of all individuals, but only to the equal treatment of those individuals who are comparable to each other with respect to their legal status,” meaning that the law treats Muslims as equal to other Muslims, but not to Christians, who are equal to other Christians and to Jews but not equal to Bahais (Pink 2003, 431). The justices used their interpretation of Article 64 of the Egyptian Constitution and public order to regulate the constitutional rights and its principles of legal equality to the point of insignificance.

This case was among the first court cases centered around the issue of religious and civil rights of the Egyptian Bahais, the most recent being involving the controversy of listing their religion on government mandated identity cards. These cases began in 2006 after the government began to electronically organize the system of national identity cards. Before then, the cards were usually issued by local officials unaware of the prohibition. However, after the system became digitized, it would not allow the input of Bahai under the line for the holder's religion. Multiple Bahai families who had their identity and legal documentation confiscated went to court after this presented a legal barrier in their daily life (Mahmood 2014, 158).

One of these families was the family of Husam Musa and Ranya Rushdy who challenged the decision of the Egyptian Department of Passports and Immigration to confiscate their passports and ID cards. The court ruled in favor of the family but used language that considers the Bahais unequal status under the law. The court reasoned that it did not violate Islamic tenets to list an unrecognized religion, but it was in fact necessary to "so that the status of its bearer is known and thus he does not enjoy a legal status to which his belief does not entitle him in a Muslim society," and affirmed the 1975 decision that "that the open practice of religious rites was confined to only those recognized under Islamic rule" (Administrative Court, No. 24044 Year 45, 2006).

However, this ruling did not end the controversy as some in Egypt, including the governing National Democratic Party and their opponent, Muslim Brotherhood, opposed it. The court reversed its decision in an appeal, making the Bahai religion "unlistable" again (Mahmood 2014, 160). The court based its new ruling on an interpretation of the public order doctrine. It held that all government-issued documents cannot "conflict or

disagree” with public order through including data that would contravene it. Therefore, listing a religion outside of and that dissents from the Abrahamic religions is not allowed. The court also again reaffirmed the 1975 decision that the only legal religious practices are Islam, Christianity, and Judaism. (Administrative Court, Case no. 16834 and 18971 Year 52, 2006, 8-9).

This ruling was widely condemned from Egyptian human-rights organizations, international Bahai networks, and prominent Islamic lawyers who argued that the ruling forced Bahais to lie in order to receive official documentation, equal to making them give up their religion and breaking the Quranic principle of “Let there be no compulsion in religion.” The courts again took up the issue in 2008 and ruled that it was acceptable to let the Bahais not list any religion on their identity cards. This let them resume the parts of life that required the identity card. However, this ruling still affirmed the 1975 decision, the lack of religious rights to those outside the three recognized religions, the legal inequality of the Bahais, and the principle that allowing the practice of their religion would violate the public order (Mahmood 2014, 162). These rulings violate the Article 26 of the ICCPR which calls for the citizens to be treated equally under the law as the language of the rulings explicitly declares the different legal status of Egyptians depending on their religion. They also violate Article 18 and Article 27 as they do not allow the Bahai minority to legally practice their faith in the community of others like members of any other faiths outside the three recognized religions.

The courts conception of public order also decides the fate of Egyptians who commit apostasy, which in Egypt is the act of leaving Islam. Regarding the legal rules of apostasy, they are limited to Egypt’s personal status; however, there are no prohibitions

against it in the statutory law. Instead the rules and consequences of apostasy have only been created through Egyptian case law, the majority of which were tried in the Court of Cassation while the legal consequences have generally related to marriage and inheritance (Berger 2003, 723). The Court of Cassation has generally looked unfavorably on apostasy. Its ruling on case no. 162 in Judicial Year 62 considered that apostasy's meaning is death regarding the apostate's legal status. This prevents him or her from marrying either a Muslim or non-Muslim, as the court writes that the dead cannot marry. It also declares that apostasy also takes away the right to inheritance (1995, 1). Other legal consequences are that the apostate's marriage is made null and void and the "blood ties with his or her children will be considered non-existent" (Berger 2003, 723-724). These rules only apply to Muslims who leave Islam, not to non-Muslims (Court of Cassation case nos. 475, 478, and 471 Judicial Year 65 1996, 1149). In Egypt though, children born to a Muslim father are considered Muslim and lack a choice in religion (Berger 2003, 728). However, Christians who convert to Islam in order to get a divorce (as the Coptic Orthodox Church has far stricter rules against divorce than the Islamic personal status laws in Egypt) are allowed to formally return to Christianity as seen in a 2008 court case (Audi 2008, A11).

Egyptian courts have regarded that prohibitions against apostasy are part of Egyptian public order and that not enforcing these rules would equal to violating public policy even though there are no statutory laws prohibiting apostasy. This is because the justices consider the prohibition against apostasy an indisputable rule in Islam (Berger 2003, 725-727). This legal reasoning contradicts Article 18 of the ICCPR that states that people have the right to "adopt the religion or belief of his choice" which as seen in the

debate during its drafting and in General Comment 22 includes the right to change one's religion. The apostasy rules also contradict Article 26 of the ICCPR which requires equal treatment under the law as it only applies to Muslims, discriminating against Muslims who wish to leave their religion but not against non-Muslims who wish to adopt Islam. The state and the courts have used the apostasy rules to repress those who they claim violate their definition of public order as well as security, such as in the case of Mohamed Hegazy.

Mohamed Hegazy, in his court case in 2007, was the first Egyptian born a Muslim that tried to change his religion on the national identity card. However, he lost, and his appeal in 2010 became suspended indefinitely when Egypt drafted a new constitution (Christianity Today 2016). In 2013 he was arrested for what the government claimed was "disturbing the peace by broadcasting false information" when he documented political unrest (Christianity Today 2014). 18 international and Egyptian human rights organizations claimed that his arrest was related to his conversion in an official complaint that was sent to the Egyptian government (Morning Star News 2016). It did not work. A year later he was convicted for giving information to an American TV station "in order to depict Egyptian Christians as victims of discrimination" in order to "instigate sectarianism" and sentenced to five years in prison (El-Husseiny 2014, A8).

He appealed, and a month later a judge ordered him release on bail while the appeal was processed. However, the authorities did not comply and kept him in jail for interrogation in relation to a resurrected 2009 blasphemy lawsuit that was based on the grounds that his conversion by its nature defamed Islam. The appeal judge did eventually reduce his original sentence to only a year, and he should have been released for time

served. He was not and was kept without charges. According to his attorney, Karam Ghobrial, he faced beatings and harassment during his imprisonment and was promised with release if he converted back to Islam. He was eventually released in July 2016 under the conditions that he would return to live with his family (who first turned Hegazy in for his conversion and said that they wanted to see him dead for it) (Morning Star News 2016). A month later he made a video announcing his conversion back into Islam and that it was not made under pressure, but his lawyer states otherwise, saying that he believes that Hegazy made the statement to end his ordeal (Christianity Today 2016).

Apostates in Egypt not only face legal discrimination regarding the laws of personal status (such as the loss of inheritance, annulment of their marriage, and the ability to marry again, whether a Muslim or non-Muslim spouse) but can also face substantial pressure and coercion from the state to recant their conversion, violating Article's 18 prohibition against state coercion against an individual adopting a religion of his or her choice. The implications in the personal status law are also an act of coercion of the state. The state regards apostasy as death in the case law and proscribes legal consequences for it, such as annulment of the apostate's marriage, the lack of ability to marry again, and the loss of the right to inheritance. These seem to form acts of coercion to prevent Egyptian Muslims from adopting beliefs or a religion other than the state's definition of Islam.

Muslims who diverge from the state's own doctrine of Islam also face discrimination. The Egyptian state assumes control of all mosques (although how effective this control is remains contested) through the Ministry of Endowments. It operates these mosques under the "assumption of religious unity," meaning that "the

mosque is a public place for all Muslims, as all Muslims are supposed to share the same religious beliefs” (Ezzat 2014, 39).

Operating under this assumption, the Egyptian state has criminalized unauthorized preaching which effectively bans the establishment of a mosque, such as Shia or certain Salafi mosques, not belonging to the religious doctrine of the government (Ezzat 2014, 43). As admitted in an interview with Mahmoud Hamdi Zaqzouq, the then Minister of Religious Endowment, with *Al-Masry Al-Youm*, any request to build a Shiite mosque would be refused. He also denied the existence of “Shia tide” in Egypt, saying “we will not allow one,” an admittance of the threat that the Egyptian state sees in the spread of the Shia religion (2009). The state engages in persecution of Shias who express and practice their religious beliefs, usually through utilizing Article 98(f) of the Penal code that outlaws blasphemy, such as the 2014 case of three Egyptian men convicted of intent to blaspheme a revealed religion when they were caught carrying books of Shia theology. The court gave them maximum sentence of five years in prison (Ezzat and Barakat 2016, 21-23). The refusal to allow the legal construction of Shia mosques and the criminalization of their beliefs under the justification of blasphemy violate Article 18 and Article 27 as they prevent Egyptian Shias from practicing their religious beliefs. It is also evidence of the state’s authority over religion that it uses to discriminate and repress certain religious practices.

Another example of Egyptian state authority over religion, is the regulation and control over the construction of churches, a power that the Egyptian Constitution gives the government in Article 64 where it says that “establishing worship places...is a right regulated by law.” The Egyptian Constitution in Article 235 even mandates state

regulation of church construction. The church-building and repair regulations are one of the largest indications that Coptic activists give of state discrimination against Egypt's largest religious minority (Soliman 2006, 141).

State restrictions and control over church building have precedents that go back to the time of the Ottomans with the issuing of the Hatti Humayun Decree in the 1850s. This decree declared the legal equality between Christians, Jews, and Muslims in the empire, freedom of worship, and a procedure for church building. Christians who wanted a church built would send a request to the sultan or his representative for a license. This was supposed to allow Christians to evade the control of local leaders of establishing churches and to end arbitrary discrimination (Rowe 2007, 335-336). Even though at the time of the decree Egypt enough statutory independence from the Ottoman government that the official Egyptian gazette did not even publish the proclamation, it became part of Egyptian state law. It established the precedent for the Egyptian head of state to grant licenses for Christians wanting to build new churches (Ibrahim 2017, 7).

The Humayun Decree became understood as a set of restrictions rather than a set of fundamental rights, and in the 1930s the nationalist government increased state control over the construction of churches (Rowe 2007, 337). Minister of the Interior Al-Azabi Pacha issued ten restrictions over church building, making church construction more complicated and adding bureaucratic obstacles that gave the state more power to delay church construction. While some of these regulations resemble simple zoning laws, others are notable for the control granted to the state to regulate religious life such as the restriction that churches and mosques must be separated (how separated was not specified) and a limit on same-denomination churches in the same area (Ibrahim 2017, 7-

8). In 1949, the State Council clarified that even place where Copts meet to study the Bible or partake in religious lessons are considered to be the same status as churches which meant that they too required royal approval (Ibrahim 2017, 8). These new restrictions mainly served to delay and prevent church construction; sometimes Copts would apply for a permit only to be told no by the authorities ten years later. Churches even required permits for simple repairs, seen in a Coptic joke that somebody even needs to get government permission to fix a broken toilet seat (Rowe 2007, 338). However, starting in 1998 the president delegated the power to issue construction and repair permits from the presidency to the local governates leading to a large increase in legal church construction and repair (Rowe 2007, 341). In 2013, the Administrative Court ruled that the churches did not need special approval for the renovation and reconstruction of churches that received approval when they were initially built. Instead, the only requirement was that they comply by the general building codes and are licensed by the local administration like any other building, house of worship or not (Ibrahim 2017, 9).

In August 2016, the Egyptian Parliament passed a Law 80 which regulates the construction of churches. Some church officials and Christian MPs regarded as a positive change, but a number of human rights activists said it was a prejudiced sectarian law and lamented the lack of a universal building code for all houses of worship, mosque or church (Aboulenein and Abdellah 2016). Several Christian MPs concurred and called the law “restrictive” and a “political farce,” but it passed after approval from the Coptic, Catholic, and Anglican churches in Egypt (El-Din 2016).

Article 1 consists of describing and defining the structure and contents of a church as a building with one dome or more where Christians pray and practice their religious rites as well as other requirements for what constitutes a church such as an altar, nave, baptismal chamber, and a bell tower. These definitions give the state the power to “interfere in the form and composition of a church” instead of letting each church to build according to its own needs and desires of its particular congregation (Ibrahim 2017, 23-24). Article 2 requires that the church requesting permission for construction must be proportionate to the number and need of that particular Christian sect in the area. However, there is no specific number or standard of proportion given, which implies that it will be up to the standard of the particular approving authority (the local governor) instead of a universal one. Need is also not defined, and the person who determines the need is not identified. Article 4, stating that churches must “apply to the competent governor to obtain the necessary legal approvals to demolish and rebuild a church constructed with a license or brought into compliance,” contradicts the Administrative court ruling that allowed churches to renovate and practice demolition and reconstruction without special permits (Quoted in Ibrahim 2017, 24). Articles 8, 9, and 10 regard the process for approving existing unapproved churches, calling for the formation of committee made up of government ministers, unidentified competent bodies, and church representatives to decide on the status and the process to legalize the unlicensed churches. Churches have only a year from the law’s activation to apply to the committee, but there are no timetables for the formation and the operation of the committee. The law gives multiple requirements for the new churches to be approved such as proof of structural integrity and fitting the requirements of approved construction codes. However, this

creates an obstacle to the hundreds of churches with structural problems that were built without licenses but with the tacit approval of the state authorities. They have applied for permits for demolition and reconstruction to the required bodies but were refused which prevents them from complying. These requirements also put rural “house churches” in violation as they are usually built with mud brick (Ibrahim 2017, 26).

Article 5, which grants the governor the right to deny the application, continues the authority of the state in preventing church construction under the justification of security. As clarified in the explanatory memorandum attached to the bill, if the governor believes that a church’s construction could cause civil unrest, then he can deny approval (Ibrahim 2017, 25). This continues the tradition of the state preventing and stopping church construction in the face of sectarian unrest and violence. From 2011 to 2016, the EIPR recorded 74 incidents of sectarian violence and attacks that were related to the construction and renovation of churches. In many cases the security authorities forced the church to suspend construction or renovation or submit to reconciliation sessions with the same result or special conditions on the church building like a prohibition of outside crosses (Ibrahim 2017, 15-21). A large number of sectarian attacks end in reconciliatory sessions to implement justice in what is supposed to be neutral arbitration between the two involved parties, but many Copts see them as a “form of legal manipulation that allows suspects to evade punishment and consolidate religious discrimination” (Ibrahim 2015, 15). From 2011 to 2015 the EIPR recorded 45 incidents of sectarian violence that were adjudicated through these reconciliatory sessions, the largest cause, at 14 incidents, related to church construction, renovation, or worship inside the church (Ibrahim 2015, 17-20). Of these incidents, only one was settled in favor of the Christians where the

others ended in halting of construction, preventing worship, stopping outside worshippers from attending services, keeping a closed church closed, or moving the church somewhere else (Ibrahim 2015, 25-28). The Egyptian government discriminates against the Christian minority following sectarian attacks through preventing them from in many cases of returning to or establishing their houses of worship. This new law will continue to let the state prevent Egyptian Christians building houses of worship under the justification of security. Considering that the law only applies to Christians, the state puts a unique and special burden on them when building a house of worship.

However, it would be wrong to ignore some of the improvements Egypt has made in its commitments to religious freedom. The Egyptian government has repaired or rebuilt 56 churches destroyed in the 2013 riots following President Morsi's removal. The government has responded to an increase in sectarian attacks by increasing security around some churches during religious holidays (Annual Report of the U.S. Commission on International Religious Freedom 2017, 143). For instance, last Christmas, vacations and holidays for security personnel were canceled as 230,000 of them were assigned to protect holiday celebrations (*ahramonline* 2017). President Sisi has also taken an important symbolic step for unity when three years ago he became the first Egyptian president to attend a Coptic Christmas Eve mass (Kingsley 2015). These are hopeful developments. However, they should not detract from the issues discussed in this thesis, which were chosen to highlight the two main avenues that the violations seem to arise from: the authoritarian nature of the state where either laws or government officials repress religious minorities (seen in the church building laws, censorship and detainment of Shias and apostates) and the public order interpretation of the courts where justices

legislate through judicial fiat (seen in the apostasy prohibitions and the identity card issue). Through both avenues a contradiction arises between the standards Egypt helped draft and signed to what it does in reality.

The Egyptian state uses its authority to discriminate on religious grounds, as seen in the issues related to church building, apostasy, the Bahai identity cards, its hostility towards Shias, and the discriminatory nature in its own constitution regarding the freedom of religion. Its actions contradict the standards that it agreed to in the binding ICCPR, despite them having the force of law as Article 93 in the Egyptian Constitution mandates. The conflict between state authority and international standards of religious freedom makes implementing these standards difficult in Egypt, as it does in most countries. Implementing these standards must face the realities of the lack of international enforcement regime and the impediments to human rights activists, in and outside of Egypt. The challenges of enforcing the ICCPR in Egypt are emblematic of the difficulties faced in the enforcing human rights agreements in general. There is no powerful, effective, formal enforcement regime to cause Egypt to follow the standards it ratified. Enforcement of the ICCPR, like other human rights agreements, likely must come from informal mechanisms.

## Chapter 4

Regarding Egypt's ongoing practice, it appears that the ICCPR lacks the proper means to enforce compliance. There is no formal international authority that can make Egypt follow the terms of the covenant. Compliance can only come when domestic actors, and likely international ones as well, pressure the Egyptian government to do so. However, that does not mean human rights agreements (HRA's) do not help. While in general HRA's like the ICCPR do lack powerful "teeth" to enforce their terms (meaning that they do not have strong formal mechanisms to make countries abide by their terms), they do provide some value to human rights activists and organizations. They provide internationally agreed upon legal norms and standards that can eventually be internalized into the domestic legal systems. Much of the enforcement of these HRA's and of human rights in general involve diffusion of these norms into the domestic legal and political systems. This could result from the states following the patterns of the communities they belong to or domestic pressure from citizens, activists, and NGO's to push governments to internalize these standards in law and in practice. In Tunisia, a constitution and democratic institutions that enforced and protected civil rights followed the regime change in the Arab Spring. Domestic civil society organizations took a strong part when reforming the constitution and the government. Enough people opposed the authoritarian regime to bring reform and created stable domestic institutions, like the constitution, that protect religious freedom and other rights. Success hinged on creating successful domestic reform and institutions.

In Egypt, reformists should consider the two main avenues which bear the contradictions between Egypt's treaty obligations and its practice. One is the public order interpretation of the courts which have interpreted Islamic legal principles in a manner that restricts the religious practice or daily life of religious minorities. The other is through the regime itself, creating rules and using its power to repress religious minorities and the expression of their faiths, sometimes even ignoring the courts. Each are equally important, and creating long-term reform will require focusing on both. However, achieving reform in the short-term should involve pressuring the regime to start some measure of reform. This is because changing the courts definition of Islamic legal principles will involve changing both legal and religious thought, a lengthy process. Influencing the regime is likely quicker.

Though that does not mean it is easier, and it would encompass many moving parts. Any strategy likely to succeed should involve Egyptian citizens, NGO's, and the international community, such as international NGO's and governments, pressuring and working with the current regime to change its practices. This should involve religious minority groups politically organizing as they had done before but alongside as many other Egyptians as possible to try to alleviate some of the criticism that such politics opposes Egyptian national unity. They should try to constantly push legal change to the forefront, whether in parliament, like the recent vote to remove religion from identity cards, or in demonstrations. Meanwhile NGO's should continue to publicize violations against religious freedom, even though they are currently facing even greater government repression and censorship. However, this likely means that the government sees them as a palpable threat to their current practices. Considering the top-down nature of the state,

foreign governments should try to influence President Sisi to change current practices. Meanwhile, reforming the definition of Islamic legal principles and how they interact with the institution of the nation state is more of a “battle of ideas.” Scholars and organizations should publish as much work as possible. They should take advantage of newer media platforms, like YouTube, that can get around government censorship and control. Meanwhile, NGO’s should continue to defend members of religious minorities in the courts should continue and try to change some of the courts’ interpretations and precedents. Signing the ICCPR itself is not enough to protect religious freedom; the state still must decide to follow its terms.

Considering that many HRA’s, like the ICCPR, and their constituent regimes lack the power to enforce their terms, it is easy to dismiss their worth as effective protections for human rights. Even still, Egypt seems to fit the correlation of states that ratify HRA’s (for perhaps diplomatic reasons) because they know that their country lacks the strong democratic institutions to enforce them (Hathaway 2007, 590-593). Egypt likely signed because the price of signing was cheap; no formal institution could force its compliance. However, completely dismissing HRA’s would ignore their value in creating internationally agreed upon norms and standards that transnational and domestic actors can use to push states to internalize the rules that they ratified. They help create international norms that states may eventually adopt. These norms and the reporting processes within the treaties “help mobilize advocates who demand changes at the domestic political level” (Saunders 2012, 103). Binding HRA’s can also make domestic courts, one of the most important means of their enforcement, consider their terms in their decisions (Hathaway 2007, 593). An example of this in Egypt is the plaintiffs in the

Bahai identity card affair referencing the UDHR in their court cases (Egyptian Administrative Court, Case no. 24044 2006). HRA's reporting mechanisms and their terms also may help create a "human rights culture" that pushes countries to slowly adopt its norms (Saunders 2012, 103). Unfortunately, critics of HRA's are correct in their statement that enforcing terms of these agreements is not easy, if even possible. However, some legal scholars have described ways that these agreements, alongside other forms of international law, are enforced.

The most effective form of enforcement is the eventual domestic adoption of the international norms. There are multiple theories on how this happens, such as the realist, rational choice, liberal, communitarian, and legal process explanations (Koh 1999, 1401). These theories help form models on how international agreements are enforced without formal enforcement mechanisms.

The realist explanation is based on power. States follow international agreements and norms because other states bribe, coerce, or pressure them. Pressure is applied at the government to government level, so change comes horizontally. The rational choice theory states that states follow rules that they believe will serve their self-interest. States decide that cooperation based on a set of rules will serve them better through "reducing transaction costs, providing dispute-resolution procedures, performing signaling functions, triggering negative responses, and promoting information disclosure" (Koh 1999, 1402). The liberal explanations claim that states follow rules that they consider legitimate, like the principle of diplomatic immunity. (Koh 1999, 1404). The communitarian explanation says that states tend to follow the norms and values of the

international societies that they belong, such as NATO members tend to follow international law because everyone else in NATO does as well (Koh 1999, 1405-1406).

The final explanation, the legal process, uses international and domestic processes to bring international norms into law. Rules initially discussed at the “horizontal” government to government level move their way down in a “vertical” process. This happens when “governmental organizations, nongovernmental organizations, and private citizens argue together why nations should obey international human rights law” that eventually cause global norms and rules to “become internalized into the domestic legal structure” (Koh 1999, 1406). What makes these international rules effective is that move from “externally imposed sanctions” to “internally felt norms” (Koh 1999, 1407). These norms become enforced through the domestic courts, perhaps the most effective formal tool for enforcing international human rights agreements, considering the sovereign nature of the nation state.

The current system of international human rights law, such as the UDHR and the ICCPR, was designed around the institution of the nation state. Considering that it forms a major part of the circumstances unique to this particular time in history, it seems perfectly reasonable that interpretations of sharia should include the consideration of the nation-state and its obligations under international law as the practitioners of ijihad, the mujtahideen, considered the different characteristics unique to their time and place (An-Naim 2016, 271; An-Naim 2011, 143). This is especially necessary in Egypt considering the function they play in forming the public order doctrine and that Egypt holds international agreements like the ICCPR conditional to their terms. However, some people, like Saba Mahmood, criticize the attempt to interpret Islamic principles within the

frame of liberalism and the nation-state, claiming that rather those should be the target of criticism (Dr. Mahmood goes even further, writing a book in 2016 on how the secular nature of the nation-state prevents religious freedom and pluralism in Egypt) (Mahmood 2003). While that is a fair criticism, I do not think that it is practical and allows people to ignore the conflicts between certain civil rights principles and the state's implementation of certain sharia principles. The nation-state, "with exclusive sovereignty and jurisdiction" has "came to prevail throughout the world" and "incorporated in international law, which is the legal framework for the protection of human rights under the UN and other regional systems" (An-Naim 2016, 271).

The nation-state is not going anywhere, and it seems more practical to find interpretations that better consider its nature than to disregard such interpretations as secular imports, especially when there already secular imports in Egyptian law. For instance, it is the French legal concept of public order that the state uses to justify its intrusion into religious life. Likely none of the jurists who compiled the Hanafi school of Islamic law ever considered this French import. Moreover, rethinking the Islamic legal principles that takes this and international law into consideration is not a new phenomenon in the Egyptian courthouse. The Egyptian courts already attempt to consider modern circumstances, like the state's human rights obligations, in its interpretations of Islamic legal principles since the addition of Article 2 to the Egyptian Constitution. Islamic legal scholars and organizations showing that they can do a better job is not exactly an imposition of Western secularism. It would also be a rebuttal to those who say that Egypt state must become completely secular to best come under compliance. Which even if true, considering that 74% of Egyptian Muslims favor

making sharia the law of the land, is an unrealistic proposal (Pew Research Center 2013, 46). Islam will continue to have a role in the Egyptian nation state for the foreseeable future. Any attempt at reform must realize this.

This would involve Islamic legal scholars advancing sharia jurisprudence authentic to Islam that takes into consideration to the current institution of the nation-state, its obligations under international law to protect religious freedom, and the conformity between Islamic principles and human rights (Hibri 2014; Hibri 1998). The basis for such jurisprudence reform is the precedence of reexaminations of Islamic law according to the circumstances of the time and place. While it would be easier and less controversial to avoid this topic, considering the role that Islamic principles play in the legal system, such as its importance in the constitution, forming the basis of public order, and that Egypt considers the ICCPR conditional to their terms, they cannot simply be ignored. In order to withstand criticism of being simply a Western secular export, or even worse, a form of religious imperialism, such re-examination must come from Muslim scholars that are well-versed in the history and religious texts who do not simply create interpretations just to fit Western norms. If the secular judges who adjudicate Egyptian law change their interpretations as a result, then hopefully the legal reform will result in a system that better protects religious freedoms and not engage in religious discrimination.

However, making the case for the re-interpretation of religious legal principles is a touchy endeavor, even though there a historical basis for it. Islamic law was “constructed by early Muslim jurists and... they acted in accordance with their historical context. Whether through the selection and interpretation of the Quran and Sunna or

through the application of such techniques as consensus (ijma') and analogy (qiyas), the founding jurists of Sharia constructed what they believed to be an appropriate legal and ethical system for their communities in very local terms" (an-Naim 2001, 137). Humans have reinterpreted religious principles into law 100s of years after Muhamad, such as when "the great Imam al-Shaft'i, who upon departing from Iraq to Egypt, changed his jurisprudence to one more suitable for the Egyptian society" (al-Hibri 1998). Reformers target the legal principles developed hundreds of years after Muhamad. This is the key point as some critics of this rethinking of sharia principles, like Saba Mahmood, claim that much of reform is based on reading and criticizing the Quran as a historical text rather than a religious or a divinely inspired one (2006, 337). This is not the case; rather, it is based criticizing the human attempts at implementing Islamic principles into law and forming new jurisprudence based on the present circumstances, which is consistent with historical practice and not contesting the divine. However, those who engage in such jurisprudence reform must satisfy three general requirements: the procedural (consisting of "scholarly... knowledge of the Arabic language, its complicated grammar, subtleties of meaning, the foundations of Islamic jurisprudence, and logic"), the substantive (consisting of "knowledge of sacred and tradition texts, reasons for the revelation, and the prophetic precedents"), and the ethical (which requires that the "scholar conduct... scholarship honestly and fairly, and without shaping the analysis to fit a predetermined outcome that serves non-scholarly interests," i.e. not simply creating a form of Islam just to fit certain norms (Hibri 2014, 18). Instead, it will take into consideration the current circumstances of the nation state with its powers and obligations, like how prior jurisprudence took into consideration of circumstances unique to that time.

One of the goals of this is to make these interpretations focusing on the egalitarian principles in Islam so powerful and widespread enough that the secular judges who decide what Islamic legal principles must be enforced will use them in adjudication and change their precedents. However, it could also help in one very uncomfortable area of discussion, religious intolerance among some of Egyptian society. Among some of the evidence that points to that according to a Pew Research survey, over half of Egyptians say that apostates should be killed (Pew Research Center 2013, 55). Meanwhile, Arab-West Reports did a study on church construction that posited that sectarian tensions were a greater barrier to church construction than then current legislation (Fastenrath and Kazanjian 2008). Protecting religious freedom will require something more than simple legislative change. However, “transforming popular beliefs and attitudes, thereby changing common practice” likely will result in a “viable and acceptable way of changing religious and customary laws” in a manner that will have an influence outside of the legislative (an-Naim 2011, 132).

Much care should be taken so that it does not seem that Islamic legal scholarship and reform is the result of Western, and specifically non-Muslim, efforts. This is where Dr. Mahmood is correct when she criticized the Rand Corporation’s prescription to the US government to fund and support efforts for an “Islamic Reformation” (2006, 335-336). That is a counterproductive idea that would likely backfire as it would seem like, and would be, an attempt of illegitimate “religious imperialism.” Rather, any interpretation of religious principles must come from co-religionists that are well-versed and highly educated in the religion (i.e. not people like). People like Abdullah an-Naim and Azizah al-Hibri are two such examples, and Dr. Hibri’s organization Karamah, is an

example of an organization that works to interpret and educate about Islamic law and human rights that could and should convince the Egyptian courts and society to embrace their ideas. People and organizations like this should be supported, and non-Muslims in the West could do so by not lecturing and declaring the incompatibility between Islam and human rights. Rhetorically creating a gulf between Islam and human rights will only make it harder to protect them in Egypt. Meanwhile, the U.S. government should leave such organizations and people alone to not ruin their legitimacy.

Spreading these ideas will be difficult. However, that does not mean it is impossible. Scholars and organizations should continue to publish as much as possible, in Arabic especially, to publicize their ideas and give them legitimacy in Egypt. While the Egyptian state can censor religious publications if it deems it blasphemous, there are some possible ways around. Newer forms of media like YouTube can allow those outside of jurisdiction of the Egyptian state to spread their ideas to Egyptians and anybody else with an internet connection. While it may seem naïve and simplistic to suggest using platforms like YouTube, social media did help spread human rights norms during the Arab Spring (Harrelson-Stephens and Callaway 2014). It could help do the same to religious ideas. Meanwhile those defending religious minorities in court should use these interpretations as much as possible when they deem fit to help change the legal precedents.

However, reforming the interpretations of Islamic legal principles is not sufficient enough to protect religious freedom in Egypt; the authoritarian nature of the state must be reformed as well. Changing the definition of religious principles will also take time since it involves changing the way people think about religion and the state. Influencing the

regime will likely be quicker considering that the power and influence the president has. However, it will likely not be that much easier. Some avenues where this can effectively be done would be through the political mobilization of religious minorities and fellow Egyptians to continually bring up reform, through the activities of NGO's and civil society to publicize government violations, pressure the regime to work with political actors demanding reform, and work through the courts to get create favorable legal precedents. and through the horizontal pressure of foreign governments on the presidential administration.

NGO's work in multiple ways to protect human rights, from reporting abuses to "providing the direct assistance to victims of human rights abuses" (Marcinkute 2011, 63). The most effective organizations to pursue reform would be domestic Egyptian ones as international organizations can be seen as foreign controlled fronts. However, in Egypt many NGO's now face legal and extra-legal restrictions from the government, such as the new restrictive NGO law and the prosecution and detention of human rights activists (Brechenmacher 2017). Foreign funding of NGO's is extraordinarily restricted if not outright prohibited. This only serves the importance of domestic NGO's in Egypt. This does not mean though that large, international organizations, like Human Rights Watch, Amnesty International, etc., should not continue to work and report human rights abuses in Egypt, rather; they should still do what they can, but domestic organizations on the ground will likely have more influence relative to their size. While the government's harsh repression of NGO's may diminish their influence, it also suggests to me that the state fears it. Important roles they would play is to continue defending religious rights in

the court system and reporting on state abuses to garner enough domestic political opposition against to state practices, as well as international pressure.

Horizontal government-to-government pressure can work in some cases if the abuses are coming from a centralized source (Hafner-Burton 2014, 275). While it does not seem like the current US administration is interested in pressuring governments to respect human rights, there are some signs that contradict this in Egypt like the 230 million \$ of aid withheld because of the Egyptian government's current repressive measures against civil society (Walsh 2018). Americans and others should encourage such actions. Considering that the Egyptian regime is run from the top-down, influencing the president through diplomatic pressure or personally convincing him would create results relatively quickly even though it is difficult to do so. It could also overcome unfavorable court precedents since the regime sometimes flagrantly ignores court rulings, such as in new church building law which violates the 2013 Administrative court ruling with its requirement that already licensed churches must apply for permission to renovate or demolish and rebuild.

Meanwhile, it seems that the religious minorities that face discrimination should politically mobilize to protect their rights. However, the political and social landscape for members of the largest religious minority, the Copts, to argue for their interests still remains precocious. The dominance of the nationalist rhetoric, "Egypt for all," and various factors like the power of the founding myth of the "Cross and Crescent" (where it was a front of Muslims and Christians who resisted British occupation, creating the identity of Egyptian rather than Christian or Muslim) make it harder for them to demand reform as it is seen as pursuing sectarian demands under the guise of invoking minority

status, implying “disloyalty by not belonging to the majority” (Ibrahim 2015, 2595). This national unity paradigm also serves to make Coptic rights “invisible” while “a long-term formal and informal policy of discrimination of Copts in public, political, and religious life” continues (Ibrahim 2015, 2591). The institution of the Church and the pope have generally sided with the state in the national unity discourse, claiming that Copts are not a minority but part of the majority by virtue of being Egyptian. Meanwhile in recent years, some lay Coptic political groups, such as the Maspero Youth Organization, challenges this stance through the use of Coptic nationalist rhetoric, asserting religious difference when demanding greater Coptic rights (Ibrahim 2015, 2591-2593).

Finding a way for Copts (as well as the other religious minorities) to claim their right to religious difference is difficult; this shows the challenge that the paradigm of national unity poses to religious freedom and the political path for reform. One suggestion is that while religious minorities should politically mobilize to bring reform to the forefront, they should do so with as many other Egyptians as possible to give less ground for those will accuse them of pursuing sectarian politics. NGO’s could help with creating political partnerships and unity. Political movements should continually bring up reform whenever they can, whether in demonstrations to pressure the regime or in parliament. Opportunities to show support for reform do come up, such as the recent vote in the Egyptian parliament to remove religion from the identity cards (Ayoub 2016). Still, while it may seem that the church should harder challenge the government, it is also possible that the church-state entente has prevented worse violations of religious rights. It is also possible that the relationship between the church and the state has protected religious rights of Copts that they would not enjoy without such a partnership between

the presidential palace and the cathedral. Ending such a relationship could easily backfire.

The importance of domestic institutions can be seen in the story of Tunisia after the events of the Arab Spring. Using the rough “Freedom in the World” measurement (a 0-100 quantification of political and civil rights, defined in large part from the UDHR, that a country’s citizens enjoy in law and practice with 0 being the least free and 100 the most), Tunisia is rated a 70 contrasted to Egypt’s 26 despite both countries ousting entrenched authoritarian leaders after mass protests in early 2011 (2018). It was a combination of different domestic factors which allowed the creation of strong democratic institutions that contributed this divergence. Tunisian actors challenged the authoritarian nature of the state and changed their domestic institutions to respect the religious freedom of their citizens while including an interpretation of Islamic legal principles that better fit with the nature and obligations of the nation state than Egypt.

After deposing their countries’ heads of state, Egyptians and Tunisians had to form new governments and new constitutions. However, there was a critical institutional difference between the Egyptian and Tunisian experience. In Tunisia timing and other factors encouraged compromise in the constitution drafting process as well as the formation of the new government. Permanent elections were forestalled until 2014 while deliberately temporary elected officials drafted the constitution. This allowed questions about government structure and principles of the constitution to be “debated without concern that the victors of the initial election would become entrenched in power positions that would define formal rules and the course of government for years to come” (Greene and Jefferis 2016, 22-24). The opposite occurred in Egypt where legislative and

presidential elections preceded the drafting of the constitution. The rules that governed these elections were “malleable” and, combined with the perceived high stakes of the election, “heightened divisions and reinforced an understanding of elections a struggle of the fundamental course of the state rather than a repetitive competition under defined rules” (Greene and Jefferis 2016, 22-25). The seemingly winner-take-all and institutional-zero-sum games in the permanent elections that preceded Egypt’s constitutional drafting may have heightened political divisions high enough to prevent a stable, working democratic government. The 2013 coup (or revolution depending on who is talking) against the previously elected government provides evidence for this.

That is not to say that the process that formed Tunisia’s government was easy and not polarized. The assassination of two leftist critics of the Ennahda government (the “Islamist” party who had won the most seats in the elections National Constituent Assembly), as well as an economic depression, threatened to “undo the government and the emerging compromise order” (Greene and Jefferis 2016, 20). However, this did not happen, and the Assembly were successful in forming a new constitution that included important protections for civil rights. Importantly, the new 2014 constitution contained protections in Article 6 for the right of the “freedom of conscience and belief” that allows for individuals to freely choose (including leave) their faith. Ennahda leadership backed the constitution. This was despite their prior opposition to this principle and others contained within. In 1993, the Ennahda leader Rachid Ghannouchi changed from saying that apostasy is tantamount to sedition and rebellion to stating that the “greatest danger to Islam would be... the unavailability of sufficient guarantees for the freedom of conscience... the freedom of belief... and all social freedoms” when persuading his

fellow party members to support the new constitution (Netterstrom 2015, 110-119). This is significant as the largest party that opposed secularism and that wanted to include Islamic tenets in the governing system supported apostasy's legality, unlike in Egypt. Even more significant is that this position changed over time. While a political party is not judicial system, this shows that religious legal ideas can change in a manner that better respects freedom of religion.

Regardless of the reasons for the change, the willingness for the different Tunisian political actors to work together likely resulted in the creation of a stable democracy with relatively strong protections for civil rights. One of the institutions that facilitated this compromise in Tunisia came from its civil society, in particular the National Quartet who received the 2015 Nobel Prize for its efforts. Comprised of four organizations, such as the Tunisian Human Rights League and the Tunisian Bar Association, it worked in the wake of the assassinations to manage and physically facilitate dialogue between leaders of the country's political factions. Its mediated negotiations eventually produced the 2014 constitution which permanent elections followed (Hursh 2017, 318-319).

The Tunisian story shows the importance of domestic actors in achieving victories for human rights. While there was certainly international support for democratization, success hinged on the domestic actors changing institutions and working together to make stable, significant reform. International actors can pressure regimes to institute change, but powerful civil rights reform will need a strong domestic force and actors, as it did in Tunisia. Even though they can provide support, Amnesty International can only do so much, especially in a state hostile to foreign NGO's, and

diplomatic realities limit foreign governments interested in applying pressure on the regime. Tunisian actors were responsible for the success in Tunisia; if successful reform to protect religious freedom occurs in Egypt, it would likely stem mostly from the work of Egyptian actors.

Implementing reform to better protect Egyptians' religious freedoms will be hard. However, one should not simply wait for widespread legal and political reform to happen. Meaning that "strategies for promoting the protection of human rights must take into account the deep-rooted nature of the problems in devising incremental solutions that address immediate short-term need, while seeking to achieve long term ends" (An-Naim 2001, 732). People should attempt to win any victory that brings greater protections for religious freedom and human rights in general, no matter how small. One example of this is the Bahai id card controversy. While the current practice is not perfect; it is far better than when Bahais could not even get a card, preventing them from engaging in many different parts of life. Protecting the religious rights of Egyptians will be a difficult and long process, considering that doing so must involve reforming regime practices and changing religious legal principles. Little victories matter, and hopefully enough of them will amount to substantial reform, bringing Egypt under compliance of the rules that it helped draft.

## Conclusion

While Egypt did engage in the formation of international law's foremost protections of religious freedom, it has unfortunately not fully implemented them. The nature of the current regime, such as its use of the security justification, and the courts' concept of public order, which in part their interpretation of Islamic legal principles defines, play a large part in the conflicts between the legal standards and state practice. The former can be seen in state practice in issues such as the discriminatory church building laws, Shia censorship and repression, and unjust settlements following sectarian attacks on churches while the latter can be seen in the prohibitions against apostasy and the Bahai identity card controversy.

Reform to better protect religious freedom should focus on these two areas. This could happen with strong domestic, and when possible, international pressure to make the current regime lighten its repressive practices against dissidents to better allow religious minorities to defend their rights. The nationalist rhetoric must also be rethought with its disregarding claims of violations of religious rights as sectarian politics. Considering the role of public order plays, a reexamination of the Islamic principles that forms part of its basis is likely needed. Such a reexamination though must come from highly qualified Muslim scholars who will continue the tradition of interpreting Islamic principles in consideration of the time and place. The institution of the nation state and the limitations that human rights standards place on it will likely have to come in consideration. However, foreign governments, especially the US, must remain out of this area,

otherwise risk ruining a legitimate movement. This reemphasizes the importance of domestic actors in reform, as seen in the case of Tunisia following the Arab Spring. However, those outside of Egypt can help through supporting those who report on abuses of religious freedom in Egypt and push for their governments to pressure the Egyptian president to change some of the repressive practices of the regime.

Violations of religious freedom seem to come when governing authorities do not adequately relinquish enough control over the religious life of its citizens. Considering the connection between state authority and religion, the most effective path to reform will come when domestic actors, alongside international support if possible, make the state internalize human rights norms and implement them in practice. Those who wish to bring Egypt under compliance of the international guarantees of religious freedom it helped write will have to engage in both politics and religion. It will not be an easy or quick process, but I believe a necessary one.

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