Law, the State, and Public Order: Regulating Religion in Contemporary Egypt

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A substantial scholarship has studied the extent to which states across the political and geographic spectrums rely on legal, bureaucratic, and judicial institutions to govern religion. However, a deeper inquiry into the mechanisms through which regulation occurs has yet been achieved. This article foregrounds conversion, understood as mobility between social groups in which belief and sincerity may figure but is not reducible to either, to observe these dynamics. Through an analysis of Egyptian jurisprudence on the right to change religion as well as interviews with complainants and litigators, the article challenges widespread assumptions about who and what constitute the regulatory field. It also shows how religious difference is produced in the legal-bureaucratic encounter. By accounting for institutions that are not typically considered part of the regulatory field nor thought to be bound by the strictures of legal positivism, this article further occasions a rethinking of the public–private distinction within critiques of secularism.

A strikingly tall talkative man in his early sixties, Maher al-Gohary, nervously wiped the rim of his soda can before popping the lid. Al-Gohary is one of two Muslim-born Egyptians who raised administrative suits seeking legal conversion to Coptic Orthodoxy; the administrative judiciary, called *Majlis al-Dawla*, rejected the first suit and denied the other.[1] Both cases roused profound national

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[1] Court of Administrative Justice no. 35647, Judicial Year 61, 29 January 2008; Court of Administrative Justice no. 53717, Judicial Year 62, 13 June 2009; and Court of Administrative

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controversy over the Islamic identity of the Egyptian state because of its simultaneous constitutional commitments to religious freedom and legal equality.[2] Al-Gohary recalled his first appearance in court as we sat in a crowded Cairo cafe:

> The court officer called out "Maher Ahmed al-Mu'tassimbillah Gohary who has raised a suit against [Interior Minister] Habib al-Adly." Everyone hates Habib al-Adly so as I passed they wished me luck. But then when I went inside and people found out that I raised a case to change the information on the identity card from Muslim to Christian, the whole world changed. I found that all the attorneys who had cases on the docket registered their identity cards in solidarity with Habib al-Adly to oppose me [They requested permissive intervention on behalf of the defendants].
>
> I found myself in a difficult situation… The judge requested from me, from them you know [referring to his attorneys], to bring a scientific certificate (*shahada ma'maliyya*). This of course put us in an impossible situation (*'u'da fi al-munshar*): Who here would give me a certificate of baptism so that I can present it to [the judge]? When I went to get a baptism certificate from the Archbishop of Cyprus—at this time I was in Cyprus for a whole year—I had left Egypt. [It was] an accredited certificate (*shahada mu'tamida*). We got it and translated it and presented it to [the judge]. The [state's] attorneys saw it and said "No, no! We want a certificate from Egypt!" And I asked, "Why do you want a certificate from Egypt? Here's a certificate. And here I am in front

Justice no. 22566, Judicial Year 63, 13 June 2009. The first complainant, Muhammad Hegazy, was arrested and detained in December 2013 on what most civil society groups suggest were bogus charges. When in 2008 the Court of Administrative Justice refused to accept Hegazy's petition against the Interior Ministry, allegedly because of the lack of an administrative decision, Hegazy took up work as a journalist in Egypt for various Coptic satellite channels. He was arrested in 2013 on charges of spreading false news, endangering national security, and insulting religion, the latter of which is a crime under Article 98 (f) of the Egyptian Penal Code. When Hegazy was released from prison in July 2016, he announced through social media that he had returned to Islam. See *Al-Jazeera*, "*Ba'd ithartho al-jadl bi tahwilho li al-misihiyya . . . hijazi ya'ud li al-islam*" [After the controversy raised by turning to Christianity . . . Hegazy returns to Islam], 6 August 2016, accessed 1 September 2016, http://mubasher.aljazeera.net/news/arabic-and-international/2016/08/201685181942969917.htm. Accusations of defaming religion sharply increased after the 25 January 2011 uprising. See Egyptian Initiative for Personal Rights, *Besieging Freedom of Thought: Defamation of Religion Cases Two Years After the Revolution*, August 2014, accessed 4 September 2014, http://eipr.org/sites/default/files/reports/pdf/besieging_freedom_of_thought_0.pdf.

[2] Muhammad Hegazy's case was widely publicized in Egyptian and international news media. See, for example, *Al-Arabiyya*, "*Walid misriyy yuhadid bi qatl ibnho al-lathi a'tanaq al-misihiyya itha lam yarja'*" [An Egyptian father whose son converted to Christianity threatens him with death if he does not return], 26 January 2008, accessed 19 March 2014, http://www.alarabiya.net/articles/2008/01/26/44732.html. Maher al-Gohary's case likewise initiated a media firestorm. See, for example, Christopher Landau, "Egyptian Christian's Recognition Struggle," *BBC*, 13 February 2009, accessed 19 March 2014, http://news.bbc.co.uk/2/hi/middle_east/7888193.stm.

of you in person and I'm telling you I'm Christian. What certificate do you want?"[3]

The state regulation of religion is both a global phenomenon and one that assumes particular characteristics in Muslim-majority states, as al-Gohary's case illustrates. A substantial scholarship has studied the extent to which states across the political and geographic spectrums rely on legal, bureaucratic, and judicial institutions to govern religion (Agrama 2012; Asad 2003; Chatterjee 2011; Danchin 2008; Hurd 2015; Mahmood 2015; Özgül 2014; Presler 1987; Saeed 2017; Schonthal 2016; Sullivan 2005). Related literature has further examined the legal dilemmas specific to states where *shari'a* has not only been codified, but also enshrined alongside liberal rights within a nation's constitutional framework (Brown 2002; Hirschl 2010; Lombardi and Brown 2006; Moustafa 2018; Stilt 2004). In such contexts, *shari'a* implementation often defines states' identities, raises questions about the compliance of substantive laws with *shari'a* establishment clauses, and provides a vocabulary that diverse social actors can use to compete for the power to adjudicate religious questions (Hussin 2016; Menchik 2016; Moustafa 2013, 2014a, 2014b; Peletz 2013; Stilt 2015; Zeghal 2013).

A deeper inquiry into the mechanisms of regulation has yet been achieved. Conversion is a particularly apt site to examine these dynamics.[4] Rather than conceive of conversion primarily as a change in sincere and interiorized religious belief, this study understands it as mobility between social groups in which belief and sincerity may figure but is not reducible to either. Scholarship that equates sincerity with personal conviction, and marks conversion only in the presence of the two, ignores the social and legal implications of conversional practices. It further belies the significant role that state institutions play in establishing the social and legal boundaries that are crossed when a conversion is determined to have taken place. Within a modern state context, sincere personal conviction is often insufficient for inaugurating the change of status desired by the convert (Kravel-Tovi 2017 and Roberts 2016). Recall al-Gohary's response to the state's attorneys in court: "Why do you want a certificate from Egypt? Here's a certificate. And here I am in front of you in person and I'm telling you I'm Christian. What certificate do you want?" By foregrounding conversion controversies as debates over lawful belonging and

[3] Interview with Maher al-Gohary, Cairo, Egypt, 4 September 2014.

[4] My approach to conversion is deeply informed by canonical investigations within the anthropology of religion and cultural studies, particularly Webb Keane (2007), Peter Van der Veer (1996), and Gauri Viswanathan (1998).

exclusion, this article considers new possibilities for who and what constitute the regulatory field. In so doing, it illuminates the production of religious difference in the legal-bureaucratic encounter.

As the vignette above suggests, and as I explain throughout the article, regulation in modern Egypt consists of bureaucratic agencies, administrative courts, and ecclesiastical institutions, all of which set the terms of individuals' relationships to themselves, their community, and the state. While this study focuses on conversion in the Egyptian context, the larger conversation to which the study contributes—that of the state regulation of religion—is not unique to Egypt, the Middle East, or Muslim-majority states. Underlying my case-specific analysis is a concern with regulation as a feature of secular governance, a feature that Hussein Ali Agrama has shown, partakes in "an ongoing, deepening entanglement in the *question* of religion and politics, for the purpose of identifying and securing fundamental liberal rights and freedoms" (2012: 29). This question exhibits a particular character in Egypt, yet reflects common anxieties throughout the modern world.

When Egypt modernized its civil-data collecting practices during the twentieth and twenty-first centuries, concurrent developments in law and judicial institutions raised questions about whether and how the newly sovereign state would regulate communal belonging. The independent republic ultimately endowed the category of religion, like the categories of gender and marital status, with an administrative significance. This decision meant that religious status would be subject to verification and would determine the rights for which an individual is eligible. Paradoxically, the decision to link religion with citizenship was intended to ensure communal integrity and due process of law. It was thought that by legally confining individuals to discrete religious communities, these communities would maintain their internal coherence. Other questions quickly emerged, however, that challenged this classification scheme: Can someone with an official Muslim status change that designation to Christian? How is a change of religion brought about? Who gets to decide? These questions provoked anxieties around the legal resolution of religious issues, generating a secular politics born of modernization. As Agrama explains, "This politics rarely reduces any of the indeterminacy or anxiety that secular decision creates; on the contrary, it tends only to consolidate and expand the state's sovereign authority to decide what counts as religious and what scope it should have in social life" (2012: 73–4).

The following analysis is divided into three parts. Beginning with the history of vital event registration, part one provides an

overview of the bureaucratic arrangements that regulate religion in Egypt. Part two discusses the founding and development of *Majlis al-Dawla*, the judicial body that adjudicates the right to change religious affiliation. Part three offers an in-depth analysis of representative cases and interviews with litigating attorneys, tracking the questions that emerge and the modes of legal reasoning that circulate within the judgments. This part additionally attends to how and why administrative judges and other actors invoke precepts of *shari'a* in relation to the concept of public order, and what this conjoined use means in the Egyptian context. The conclusion considers the greater theoretical significance of this study. By accounting for institutions that are not typically considered part of the regulatory field nor thought to be bound by the strictures of legal positivism, the article occasions a rethinking of the public–private distinction and the Egyptian case study within critiques of secularism. To date, this scholarship has theorized religion and the family as domains of privacy, and the state and politics as domains of publicity. While such a schematization helps explain the phenomenon of personal status law in post-colonial contexts and the creation of family law more generally, it does not contend with the regulation of religion through public law nor contexts where religious difference is a condition of citizenship.[5]

The Administrative State

Compulsory vital event registration in Egypt dates back to at least 1839 and has primarily concerned the recording of live births and deaths.[6] Local health bureaus eventually coordinated with civil registration offices of the Interior Ministry and the Central Agency for Public Mobilization and Statistics (CAPMAS) to produce national vital statistics. The nationwide collection and registration of vital statistics involved a greater number of administrative agencies, increased coverage of rural areas, and added

[5] Research for this study was conducted in Cairo, Egypt between 2011 and 2015. Sources consist of administrative jurisprudence—including the evidence submitted within those cases—on the right to change religion, participant observation at bureaucratic agencies that oversee the production of vital records, structured and semistructured interviews with complainants and their legal counsel, and discussions with civil society activists who monitor the status of religious minorities. This article primarily offers an analysis of the administrative suits and the interview material. I use pseudonyms except when referring to public figures or individuals whose legal claims are widely circulated in the media.

[6] For my discussion of the registration of vital events in Egypt, I draw on Gamal Askar (1981).

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demographic indicators such as marital status.[7] During the routine registration of vital events, applicants were required to reveal personal information such as their religion, occupation, nationality, marital history, and age. For women, this included the number of live births over their lifetime. The administrative state thus classified citizens' social lives within discrete taxonomies, facilitating more expansive regulation.

Egyptian civil registration underwent several phases of development during the twentieth and twenty-first centuries. These phases correspond to decrees issued in 1912 (Decree 23), 1946 (Decree 130), 1960 (Decree 260), and 1965 (Decree 11). In the first phase, from 1912 to 1959, the Health Ministry was responsible for registering live births. Following the proclamation of Decree 260 in 1960, the Department of Civil Registration (also established that year) not only assumed the responsibility previously held by the Health Ministry but also began maintaining records for all vital events, including births, deaths, marriages, and divorces. Founded in 1963 through a merger of the Statistical Department and the Department of Public Mobilization, CAPMAS continued to compile, tabulate, and publish vital statistics. Between 1960 and 1964, procedures for the notification of vital events were centralized. When the third phase began in 1965, CAPMAS significantly modified data-collection procedures and channels of reporting to further consolidate the production of vital statistics. The forms introduced through Decree 11 served the health bureaus, civil registries, and statistical agencies, thereby generating a web of documentation whose sheer volume and content was unprecedented in 1965.

The fourth phase of administrative innovation dates to the 1990s and involves computer technology. This development not only entrenched the bureaucratic encounter in the lives of ordinary Egyptians but also generated new challenges for regulating social difference. Before the turn of the century, administrative agencies relied primarily on paper-based methods, which lacked systematization and made vital records particularly susceptible to forgery. In 1990, under the mandate of a new state project called the National Number Project (*mashru'al-raqam al-qawmi*), the Civil Status Organization (CSO) of the Interior Ministry began to standardize and enter information on births, marriages, and divorces, as well as more extensive data on family lineage into a national database. Each citizen was assigned a unique national identification number through this initiative. Nationwide issuance centers were subsequently established in order to meet the demand for identity card

[7] Outside of Cairo, births and deaths were not registered systematically even by 1860. For a discussion of the relationship between law and medicine within nineteenth-century Egyptian legal reform, see Khaled Fahmy (1999).

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services. These centers were followed by the first high-production identity card factory with state-of-the-art equipment, plastics technology, and security measures. In less than a decade, the CSO oversaw the only identity card production factory in the Middle East of its kind. Egypt became a model for other African states.[8]

Twentieth-century transformations in civil administration were part of a global trend among newly independent states renegotiating whether and how colonial-era governance mechanisms and laws would endure in the postcolonial period (Mamdani 2012). In Egypt, two 1955 reforms increased state control over the population and limited judicial review of government decisions. The first was Law 462, which dissolved the religious court system and transferred its jurisdiction to the national courts (Brown 1997; Sezgin 2013; Sfeir 1956; Ziadeh 1968). When the religious courts were brought under the jurisdiction of the national courts, so too was the domain of family law, affecting most acutely non-Muslim communities that previously maintained legislative and judicial autonomy in this area. Community councils had been able to generate distinct legal rules and enforce these rules among their members. After Law 462 radically circumscribed communal authority, these councils would continue to generate laws pertaining to marriage and divorce. However, the interpretation of these laws fell to the national courts.[9] Secularly trained civil court judges would apply a codified version of the religious laws of the litigants in personal status disputes.[10]

The dissolution of the religious courts eliminated existing methods for regulating communal boundaries, raising the question: How would judges distinguish between religious communities in order to properly apply their respective laws? To address this issue, Law 181 on personal cards was passed the same year that religious courts were brought under the national court system. Although Egyptian authorities collected information about individual religious affiliation before 1955, Law 181 was distinct from earlier data collection initiatives;[11] it authorized the Interior Ministry to create an

[8] Transcript of a 2010 presentation made by General Moustafa Radi, former Assistant Minister of the Egyptian Interior Ministry and Director of the Civil Status Organization, to members of the United Nations Economic Commission for Africa. Transcript on file with the author.

[9] For a detailed analysis of the jurisdictional conflict between ecclesiastical institutions and the administrative courts, see Nathalie Bernard-Maugiron (2011).

[10] Rights to inheritance were codified according to *shari'a* and applied to all Egyptians regardless of religious affiliation. As in the pre-1955 period, Islamic personal status law today is used in the event that non-Muslim litigants are not of the same denomination (*milla*) and sect (*ta'ifa*).

[11] Egypt's first two countrywide censuses, conducted in 1848 and 1882, enumerated demographic information on religion. Surveys conducted in villages during this period recorded "aggregate accounts of the population of each village section, broken down by age, sex, religion, free or slave status, and—for men—occupational category." See

administrative data field for religion on vital records and introduced bureaucratic procedures for the authentication of religious identities. The Civil Status Law 143 of 1994 would subsequently govern the turn to computerized data collection and record keeping.[12] As questions emerged about the law's applicability, the administrative judiciary was quickly catapulted to the forefront of debates on conversion.

The Administrative Judiciary

Egypt adheres to the civil law or continental tradition, and its legal system is based on codified laws derived from the French civil code. The Egyptian judicial system primarily consists of courts of first instance, appellate courts, and the Court of Cassation (*mahkamat al-naqd*), the highest court in civil and criminal matters. Courts of special jurisdiction include the Supreme Constitutional Court (SCC) (*al-mahkama al-dusturiyya al-'ulya*), which interprets and determines the constitutionality of laws and resolves jurisdictional disputes; the State Council (hereafter called *Majlis al-Dawla*), which exercises jurisdiction over decisions propagated by the government and its representatives; and family courts, which adjudicate disputes related to marriage, divorce, alimony, custody, and inheritance. Since 1980, Egypt has recognized *shari'a* as the principal source of its law.

Majlis al-Dawla was established in 1946. Modeled after the French Conseil d'État, the Egyptian institution consists of disciplinary courts, courts of first instance, the Court of Administrative Justice (CAJ), and the Supreme Administrative Court (SAC). *Majlis al-Dawla* also reviews draft laws originating from the executive branch, formulates *fatawa* (advisory opinions) at the government's behest, and ensures that administrative bodies comply with the law. Though *Majlis al-Dawla* once held powers of constitutional review, today administrative judges primarily adjudicate abuses of executive authority. The disputes that fall under their jurisdiction are those among low-level bureaucrats, ministers, ministries, and the President of the Republic, as well as those between ordinary

Kenneth Cuno and Michael Reimer (1997). As Khaled Fahmy has shown, the perceived problem of drifting identities in Egypt dates to the 1820s, when Mehmed Ali's administration sought to remedy high rates of desertion among peasants in the army. Identity verification first consisted of branding conscripts' bodies to easily identify and return them to their military units. A decade later, a more effective identification method required every villager to carry a passport (*tadhkara* or *tezkere*) indicating his name, father's name, physical description, and village. See *All the Pasha's Men: Mehmed Ali His Army and the Making of Modern Egypt* (Cairo: American University in Cairo Press, 2002), 106 and Khaled Fahmy (2012).

[12] The law's 81 articles are organized into 10 chapters: General Provisions, Births, Marriage and Divorce, Deaths, Failed Registration and Re-Registration, Correction of Civil Status Restrictions, Implementation of Civil Status Services for Citizens Living Abroad, Guarantees for the Protection of Citizens' Rights, Sanctions, and Transitional and Final Provisions.

individuals and bureaucrats. *Majlis al-Dawla* may also compel compensation for wrongdoing and annul administrative decisions.[13]

From the first years of its establishment, *Majlis al-Dawla* was a formidable check on arbitrary government decisions. Yet a series of laws passed soon after the institution was formed diminished its formal autonomy well into the 1970s. These changes took place in the period leading up to and following the 1952 Free Officers' coup led by Colonel Gamal Abdel Nasser, the soon-to-be president, which ended monarchical rule in Egypt. The 1956 constitution granted Nasser expansive power to rule by presidential decree, further limiting the administrative judiciary's potential to galvanize resistance against the new regime. The subsequent president Anwar al-Sadat used rule-of-law rhetoric to build political legitimacy, attract foreign investments, and reverse the debilitating effects of Nasserism (Moustafa 2007). *Majlis al-Dawla* would reclaim some of its lost autonomy in the 1970s and 1980s, when judges were granted greater latitude in managing appointments, promotions, and transfers and also enjoyed significant protections against dismissal (Rosberg 1995: 187).

Majlis al-Dawla today routinely adjudicates legal questions for which there is no legislative provision, or when there are conflicting or unclear provisions.[14] All three were in play during the early 2000s when *Majlis al-Dawla* began deciding whether administrative bodies had properly implemented the new law on civil status. Article 47 (2) of the law stipulates that "changes or corrections in nationality, religion, or profession—or the civil status registers concerning marriage or its annulment, authentication, husband- or wife-initiated divorce, physical separation, or proof of parentage—may be made on the authority of rulings or documents issued by the competent body (*jihat al-ikhtisas*) and do not require elicitation of a decision from the specified committee."[15] On its face, this stipulation substantially expands one's personal freedom by providing a lawful route to amend formal religious identity. However, Article 47 (2) led to unprecedented administrative litigation.

The jurisprudence that developed in the wake of the law's passage is remarkable for several reasons. First, although *Majlis al-*

[13] For further discussion of the political and legal context in which *Majlis al-Dawla* was established, see Enid Hill (1993, 1995).

[14] While it is assumed that judges in civil law jurisdictions simply apply code-based law whereas common law judges exercise creative discretion, scholars have shown that the differences among judicial roles across these legal systems are not so stark. See Mitchel de S.-O.-l'E. Lasser (1994); Bruno Latour (2010); and John Merryman and Rogelio Pérez-Perdomo (2007).

[15] Legislators limited the jurisdiction of the committee specified in Article 46 of the Civil Status Law to settling requests to change or correct the civil status records for births, deaths, and family lineage and the requests of those omitted from birth and death registers due to facts that were not reported during the legally prescribed interval.

Dawla jurisdiction over the bureaucracy is stipulated in statutes and constitutional provisions, there is no law that explicitly governs religious conversion or mobility between religions.[16] Moreover, while the sources of law in civil legal systems typically consist of and are organized hierarchically by legislation, regulations, and custom, administrative judges routinely rely on Article 2 of the constitution in their reasoning.[17] Questions thereby emerge about how to decide cases that concern social practices, such as conversion, that are at least theoretically lawful yet challenge the Islamic identity of the state.

In their reasoning, administrative judges conjoin the concepts of public order (*al-nizam al-'am*) and *shari'a* to defend values that they deem essential to the state's social cohesion and that they purport a majority of Egyptians hold. Public order as a legal concept originates in international law and was incorporated into the domestic laws of various states in the late nineteenth century (Mills 2006). The public order doctrine in Egyptian law, which is derived from Article 6 of the French civil code, permits judges to dissolve a contractual obligation between two parties—including one entered into between state agencies and ordinary citizens—if the judges determine that the motivation behind such an agreement breaches public interests (Bechor 2007). As Maurits Berger (2001, 2003, 2004) and Hussein Ali Agrama (2012) have shown, judges in modern Egypt invoke public order to justify exceptions to liberal legal norms like procedural fairness and equality under the law. This judicial practice has developed despite the inconclusiveness within Islamic theology and the Islamic legal tradition on what the punishment for apostasy should be in this life (An-Na'im 1986; Johansen 2003; Peters and De Vries 1976; Saeed and Saeed 2004).

The inconclusiveness within the concept of apostasy, the rigidity imposed by bureaucratic taxonomies, and the salience attributed to communal belonging as a condition of civil status together provoke intractable questions: Who is a Muslim? Can a Muslim leave Islam? Other questions emerge under the strictures of legal positivism: How would one prove one's departure from Islam? What entity can certify such a departure? The repertoire of religious status litigation, or what I call Article 47 cases, concerns three classes of persons who do not fit neatly into state categories

[16] The jurisdiction of *Majlis al-Dawla* has been articulated in Egypt's constitution since 1956. The 1971 constitution significantly expanded the scope of state actions over which *Majlis al-Dawla* exercises jurisdiction, and subsequent constitutions have further elaborated on this scope. Law 47 of 1972 additionally governs the functions of *Majlis al-Dawla*.

[17] Article 1 of the Egyptian civil code outlines the interpretive sources to be used by judges in the event of a legislative lacuna. *Shari'a* is the third source of law after the code itself and customary law, and yet Article 1 does not enumerate or explain which principles of *shari'a* are admissible in such circumstances. Whereas *shari'a* became a source of legislation in the 1971 constitution, and subsequently the principal source of legislation in 1980 following a constitutional amendment, it has been a source of law in the civil code since its promulgation in 1949.

of Muslim, Christian, or Jewish affiliation.[18] Complainants are Baha'i, born Coptic Christians who converted to Islam and then seek reconversion (*'a'idun li al-misihiyya*, hereafter referred to as *'a'idun*), and born Muslims who convert to Coptic Orthodoxy (*mutanaserun*). All three groups confound understandings of Islam as the final, most complete religion (*khatim al-adyan*) in a state where *shari'a* is the primary source of legislation.[19]

One of the most significant questions that *Majlis al-Dawla* has adjudicated is whether the CSO, an institution under the Interior Ministry's authority, has a legal obligation to recognize a change of religion from Islam to Christianity.[20] This question specifically concerns the legal status of converts and reconverts to Coptic Orthodoxy. Whereas the majority of Article 47 cases concern *'a'idun*, only two *mutanaserin* have sought to formalize their conversion on vital records since the establishment of *Majlis al-Dawla* in 1946. Although *'a'idun* and *mutanaserun* are Muslim by law at the time of their suits, administrative judges distinguish between them as separate classes of legal persons. In doing so,

[18] While Egypt was once home to thriving Jewish communities, these populations dwindled following the 1948 Arab-Israeli War. Today, the two main administrative classifications between which Egyptians navigate are Muslim and Christian. On the composition of Egyptian Jewish communities and the catalysts for their emigration from Egypt, see Joel Beinin (1998).

[19] Baha'i further challenge *dhimmi* status in Islamic law, which is reserved for *ahl al-kitab* (Peoples of the Book), understood as Christians and Jews, and consists of legal protections for freedom of worship and legal autonomy to organize community affairs. *Dhimmi* designation falls remarkably short of capturing the relationship between the Abrahamic traditions and Baha'i theology. For accounts of Baha'ism's relation to these and other traditions, see Moojan Momen, ed., *The Bábí and Bahá'í Religions, 1844–1944: Some Contemporary Western Accounts* (Oxford, UK: George Ronald, 1981); Peter Smith (1987); and Juan Cole (1998).

[20] Another significant question addressed by *Majlis al-Dawla* as a result of the 1994 Civil Status Law is whether the CSO has a legal obligation to list a religious affiliation on vital records for those who do not conform to one of the three state-recognized religions. This question concerns the legal status of Baha'i who, being non-Muslim and non-*dhimmi* according to Egyptian law, pose a unique administrative challenge. In March 2009, the Supreme Administrative Court upheld a 2008 Court of Administrative Justice decision in favor of Baha'i complainants. Then, Interior Minister Habib al-Adly thereafter issued an April decree specifying that Baha'is may obtain government documents without affiliating with one of the state-recognized religions. That summer, the first computerized identity cards indicating dashes in the compulsory religion field were issued. Although the 2009 SAC decision was lauded as a victory for human rights, it had limited applicability. To date, only Baha'is who were previously marked as such in their probative documents or who can prove that a blood relative is Baha'i are authorized to indicate a dash on their vital records. Even under favorable circumstances, such an inscription is highly contingent on bureaucratic compliance. Thus, favorable litigation on the right to indicate a religious affiliation that coheres with an individual's self-proclaimed identity has not resolved other administrative predicaments that Baha'is face. Chief among these is the state's ongoing refusal to recognize Baha'i marriage. The non-recognition of Baha'i marriage means that those who commence unions according to the sacraments of this community are considered single in the eyes of the state. Parents of Baha'i children face administrative dilemmas when they seek to register births with the Health Ministry. Moreover, children born to Baha'i parents experience ongoing legal precarity in the domains of custody and inheritance.

administrative judges articulate a distinction between who is and who is not a Muslim that contravenes the primary sources of the Islamic tradition yet remains consistent with majoritarian legal norms in the Egyptian context. *Majlis al-Dawla* has taken an extraordinarily innovative position in allowing Christians who convert to Islam to subsequently return to Christianity. Egypt is the only Muslim-majority state known to have authorized such a bold stance.

Lawful and Prohibited Conversions

Until 1994 official conversion was a one-way street or, as lawyer Fadi Ibrahim explained, "a path that led but did not return (*tariq yiwadi mayy gibbsh*)."[21] Copts who converted to Islam had no legal route to reconvert, and yet the number of individuals wishing to return to Coptic Orthodoxy was on the rise. In 1994, pursuant to instructions from the Coptic Orthodox Church, Ibrahim and other Coptic lawyers studied Article 47 (2) of the Civil Status Law, which allows citizens to change or correct their religious affiliation on vital records pursuant to "the authority of rulings or documents issued by the competent body (*jihat al-ikhtisas*)." After careful study of the law, Ibrahim interpreted Article 47 (2) to mean that the Coptic Church could serve as the "competent body." The Church thereafter created a Certificate of Return (*shahadat 'awda*) that it would issue to those who sought formal reconversion to Coptic Orthodoxy. Ibrahim proceeded to articulate his clients' complaints as justiciable claims.

The vast majority of Article 47 cases were not decided until 2004 or later. What accounts for the decade-long lag between the implementation of the Civil Status Law and the first administrative court verdicts? After all, paper identity cards had been in use since at least the 1950s, even if the legal route for reconversion to Coptic Orthodoxy became possible only in 1994. At the same time that Ibrahim negotiated the legality of reconversion to Coptic Orthodoxy, the Egyptian government was switching to a computerized system of data collection and record production. This process included the digitization of national identity cards and birth certificates, among other vital records, and the assignment of a unique national number, called a *raqam qawmi*, to every Egyptian citizen. In light of these developments, attorneys advised clients who anticipated filing administrative cases to first surrender their paper identity cards and to acquire computerized ones. The lawyers would then work to

[21] Interview with Fadi Ibrahim, Cairo, Egypt, 10 September 2014.

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amend the information on these cards rather than the paper-based ones, since the days of paper-based vital records were over.

The period between 2004 and 2011 brought both judicial victories and reversals for *'a'idun*. The lower administrative court cases decided between 2004 and 2006 generally found in favor of the petitioners whereas those decided between 2007 and 2008 generally found in favor of the state.[22] In 2008, the SAC handed down a landmark ruling that reversed this trend. The ruling held that "recording a change in religious affiliation from Islam to Christianity in the facts of a person's identification card does not constitute an acknowledgement of what that person has done because an apostate's act is not to be acknowledged (*la yuqarr 'ala riddatihi*) according to the principles of Islamic *shari'a* … Rather, this is in deference to the imperatives of the modern state, which require that each citizen possess a document establishing his civil status, including religious affiliation."[23] The Court found that it is incumbent on the CSO to record changes that are sufficiently documented by competent bodies. The sufficient documentation to which the judgment refers is a certificate of return from the Coptic Orthodox Church attesting to the complainant's acceptance "as a daughter of the Christian religion." According to this reasoning, a Church certificate is what establishes an individual's legal status, not the administrative records produced by the Interior Ministry. The verdict likened the recording of a change of religious affiliation to recording the facts of marriage: "The record is not which brings about the legal status resulting from marriage … the fact of marriage may only be recorded if a marriage has in fact happened and the essential elements of marriage have been completed."

Although the CSO argued that recording changes from Islam to Christianity violated public order, the 2008 SAC ruling found instead that *not* recording the true status of the citizen constitutes a public-order violation. The danger posed by misidentifying individual religious affiliation is especially grave, reasoned the Court, "for it results in societal interactions with that person that are at odds with the religion he professes, whose rites he strives to perform." The decision established that the information on a citizen's identification card, including religious affiliation, forms the basis of his or her civil status. The CSO must record the citizen's religious affiliation and any change that occurs to it, provided that the religion is one of the three recognized religions. The Court

[22] For a human rights analysis of these cases, see Ahmed Seif al-Islam Hamad (1999) and Moataz Ahmed El Fegiery (2013).

[23] Supreme Administrative Court nos. 12794 and 16766, Judicial Year 51, 9 February 2008.

ruled in favor of the petitioner, finding that the requirements for demonstrating the reality of her religious affiliation had been established. It compelled the CSO to record a Christian affiliation on her personal identification card and birth certificate, and required that these documents display a reference to her prior adoption of Islam. As the SAC is the highest court in the *Majlis al-Dawla* hierarchy, its 2008 decision should have ended administrative litigation over *'a'idun* amending their formal religious affiliation from Muslim to Christian. However, the 2008 SAC decision was only implemented in the case of the petitioner who filed the suit.[24]

Within a few weeks of the decision, a lower court, the CAJ, not only heard another suit on the same question, but also invoked Article 29 of the SCC Law 48 of 1979 to suspend and refer the suit to the SCC for an opinion on the constitutionality of Article 47 (2).[25] The CAJ held that the petitioner's reliance on Article 47 (2) to contest the administration's refusal to change his religious affiliation from Islam to Christianity pointed to several defects in the Civil Status Law. The phrase "change of religious affiliation," which appears in the absolute in Article 47 (2), was said to conflict with Article 2 of the constitution. Rather than address the constitutional significance attributed to Islam in relation to other constitutional guarantees of legal equality and religious freedom, the CAJ instead asserted that constitutional clauses "do not contradict, oppose, or conflict with one another; rather, they complement one another within a framework of organic unity that organizes them by reconciling their various provisions and aligning them with the higher values that the community, in its different stages of development, believes in."

The Court also took issue with the meaning of legal equality that was used to justify the petitioner's right to change religious affiliation. The reasoning held that "the principle of equality does not mean equivalence of all aspects of all individuals even when their legal statuses differ, as in total equality of outcome (*musawa ḥisabiyya muṭlaqa*); rather, this principle means there is no discrimination or differentiation between individuals of a single group." Insofar as the complainant declares his belief in Islam, reasoned the Court, he must abide by the precepts of the Islamic faith, "foremost among them the prohibition of apostasy from this

[24] This ruling was one of several handed down by the SAC in February 2008. See also Supreme Administrative Court no. 13198, Judicial Year 53, 9 February 2008 and Supreme Administrative Court no. 13496, Judicial Year 53, 9 February 2008. They collectively authorized more than forty *'a'idun* to record their reconversion on vital records. Yet, the ruling in each case was restricted to the petitioner and not applicable to *'a'idun* as a single legal class.

[25] Court of Administrative Justice no. 444, Judicial Year 61, 4 March 2008.

religion to another." Whoever converts to Islam "is thus equal in his obligations to someone born Muslim of two Muslim parents who announces his apostasy from Islam." The reasoning also rejected the petitioner's reliance on the Universal Declaration on Human Rights "on the basis that, when the exigencies of the public order in the country—which derives primarily from Islamic *shari'a*—dictate that adoption of religion be regulated in a certain manner, legislators are bound by this when regulating the adoption of religion." We will recall that no statute on conversion exists to regulate change of religion and the SAC decision of just one month prior held that *not* recording a change of religion from Islam to Christianity constitutes a public-order violation. The reasoning in this case thus highlights deep disagreements within the administrative judiciary about what counts as lawful conversion and the extent to which the statutory right to amend religious status conflicts with the state's religious establishment clause.[26]

The SCC Commissioners Authority, which consists of junior judges who submit advisory opinions on cases referred to the court, held a preparatory hearing in July 2008 concerning the constitutionality of Article 47 (2). Following the submission of advisory opinions from the Commissioners Authority, SCC judges were expected to begin hearings on the matter later that year. To date, however, the SCC has not ruled on the constitutionality of Article 47 (2). By 2008 administrative litigation reached a standstill and the enormous backlog of lawsuits against the Interior Ministry continued to grow.[27] *Majlis al-Dawla* waited until 2011 to offer a conclusive opinion on these cases despite the absence of a SCC decision. The SAC compelled the Interior Ministry to find an administrative solution for the problem of *'a'idun* as a single legal class.[28] The Interior Minister complied by issuing a decree to ease the process of return. This decree diminished the role of the administrative courts—effectively side-stepping them altogether—in addressing the legality of changes to religious affiliation from Islam to Christianity for those born to Coptic fathers. Whereas Article 47 (2) allows citizens to amend their religious affiliation by pursuing a ruling from a competent court or documentation from a competent authority, the ministerial decree

[26] Among the international documents cited in this and other Article 47 cases are the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Arab Charter on Human Rights, and the African Charter on Human and Peoples' Rights.

[27] The law office of Fadi Ibrahim alone has filed 4,000 petitions challenging the Interior Ministry's implementation of Article 47. Interview with Fadi Ibrahim, Cairo, Egypt, 10 September 2014.

[28] Supreme Administrative Court no. 5324, Judicial Year 54, 3 July 2011.

nullified avenues for changing religion by means of administrative litigation.

Egyptians seeking to reconvert to Coptic Orthodoxy no longer need to provide a court decision authorizing their return in order for the CSO to fulfill their requests. The change of religious affiliation from Islam to Christianity for *'a'idun* is now contingent on procuring two documents: one is the Certificate of Return from the Coptic Orthodox Church, which the decree refers to as the "competent religious authority" (*al-jiha al-diniyya al-mukhtasa*). This certificate attests to the applicant's admission to Church membership and is treated as sufficient proof of the sincerity of the applicant's religious belief. The other document is a Report on Criminal Record (*sahifat hala al-jina'iyya*), which proves that the applicant neither committed a crime while holding a Muslim status nor is the subject of a criminal sentence. If the applicant is married to a Muslim woman, he is required to notify her of his intentions to reconvert by way of a registered letter prior to filing his reconversion request. These documents are then submitted to the CSO, at which time a committee authorizes the modification of his papers or, as Ibrahim put it, "It returns him" (*bit ragga'ho*).[29]

While the 2011 ministerial decree halted administrative litigation on changing religious affiliation from Islam to Christianity for *'a'idun*, it generated other administrative dilemmas for the children of *'a'idun*. Referred to in legal and popular discourse as *awlad al-'a'idun*, their religious affiliation is automatically changed to Muslim following their father's initial conversion, and they are put in a legal class dictated by that conversion. They are Muslim by law, and there is no certificate that can attest to their sincerity of belief in Christianity or their belonging in the Coptic Orthodox denomination. Whereas a father's certificate of return to Coptic Orthodoxy enables *awlad al-'a'idun* to petition administrative bodies to change their affiliation from Muslim to Christian, the ability of these individuals to do so is highly contingent upon bureaucratic compliance and often requires retaining legal counsel.[30]

[29] Interview with Fadi Ibrahim, Cairo, Egypt, 14 September 2014.

[30] Article 47 of the Civil Status Law also affects children of non-Muslims who convert to Islam but remain Muslim. Like *awlad al-'a'idun*, children of Egyptian converts to Islam become legally Muslim. One example is the case of Andrew and Mario Ramses Labib, twin brothers born to Coptic Christian parents and whose father allegedly converted to Islam to divorce their mother in 1999. Although rules governing divorce in the Coptic Orthodox tradition have changed considerably with shifts in papal leadership, conversion to another denomination or religion has long remained a legitimate reason for divorce. The courts initially granted the father custody of the children, but that decision was remarkably overturned on appeal (Egyptian courts typically grant custody to the Muslim parent). Nevertheless, the father's conversion meant that at the age of sixteen the

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Only two *mutanaserin* have filed Article 47 cases: Muhammad Hegazy and Maher al-Gohary.[31] Hegazy was the first to challenge the Civil Registry's refusal to issue him a new identity card bearing a Christian religious affiliation. Like petitioners seeking reconversion to Coptic Orthodoxy, he argued that the refusal violated the provisions of the constitution establishing the principles of equality between citizens and freedom of belief and practice of religious rites.[32] Hegazy further argued that the decision violated the Civil Status Law in addition to various human rights accords to which Egypt is a signatory. The CAJ ultimately ruled to not accept the suit, finding that the Civil Registry was not obligated to consider the complainant's request on account of the public order. The reasoning is significant for what it shows about the Court's understanding of revelation and the mutually reinforcing—indeed, constitutive—relationship between the public order and what it claims are Islamic precepts. For example, the judgment held that "Islam, being the religion that a majority of the Egyptian people profess, is one whose precepts and principles respect the right of the non-Muslim to embrace any heavenly religion he wishes. Those same precepts also forbid anyone who has entered Islam and practiced its rights from leaving the faith, given its status as the last of the heavenly religions. This has become a facet of the public order which we must respect."[33]

The judgment ignores the twofold fact that religious affiliation, and therefore legal status, is conferred through ties of filiation in Egypt, and that only those *not* born to Muslim fathers are able to adopt Islam as a religious affiliation and a legal status. Egyptians born to Muslim fathers are marked as Muslim on their vital records regardless of their wishes. The 2008 CAJ judgment articulated a religious hierarchy that confirms this logic, asserting "Those who profess Judaism are invited to embrace the subsequently revealed Christianity, and those who embrace Christianity are invited to embrace Islam (the last of the religions). The opposite, in any case, is incorrect according to both the will of God in his arrangement of the revelation of His heavenly religions and Egyptian public order and mores." Non-Muslims in this formulation are always aspiring toward Islam, whose wisdom born Muslims are said to inherit and to which they are

twins were issued official documents, including birth certificates and national identity cards, bearing a Muslim religious affiliation—despite the evidence that their mother later presented in court to prove the twins' Christian identity and request a change to their status. See Court of Administrative Justice no. 54471, Judicial Year 63, 30 March 2010.

[31] Yet, born Muslim conversions to Coptic Orthodoxy are on the rise. One attorney reports that upwards of 6,000 *mutanaserun* have sought his counsel. Interview with Nabil George, Cairo, Egypt, 21 September 2014.

[32] Court of Administrative Justice no. 35647, Judicial Year 61, 29 January 2008.

[33] Ibid.

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eternally bound. As a general matter, then, judges who adjudicate Article 47 cases merge precepts of *shari'a* and the concept of public order to restrict mobility between groups that undermines distributions of rights sanctioned by the state and allegedly, too, by the divine.

In one of the boldest examples of how administrative judges have ascribed to themselves the role of guardians of the public order and qualified interpreters of *shari'a*, the judgment in the Hegazy case dismissed as irrelevant the fact that no statute on apostasy exists. The Court further denied the relevance of an authoritative religious opinion on the matter, finding it sufficient that as a general fact apostasy is forbidden in Islam:

> While Islamic scholars differ on the required punishment—if any—for apostasy, none deny the gravity of the apostate's crime and assault on Islam after having entered the religion willingly. And while Egyptian legislation lacks a text that explicitly outlines the act of and punishment for this crime, an administrative judge, on assuming his constitutional and legislative role of settling administrative disputes related to what an apostate claims is a right of his, need not stand about waiting for a cleric or religious organization to issue a *fatwa* no matter the religious nature of the case. Rather, it is his duty to concern himself with the public order, which is grievously wounded by the harm the sins of apostasy and deviation from Islamic precepts cause to the official national religion a majority of the Egyptian people has taken to heart—especially when the apostate presents himself to an administrative body requesting that it validate his malfeasance and corrupt tendencies.[34]

Notwithstanding that Hegazy did not choose the Muslim religious affiliation to which he is legally bound, the Court denied his motion to consider an opinion by the Egyptian state's religious establishment on the question of apostasy. This opinion was delivered in July 2007, just one month before Hegazy filed his suit, by then-Grand Mufti of Egypt Ali Gomaa. Gomaa offered his views on apostasy as part of the "On Faith" project by the *Washington Post*. The project hosted an online forum with sixty leading scholars, politicians, and clerics from around the world who responded to questions about the impact of religion on contemporary affairs. Titled "Muslims Speak Out," the online discussion held in collaboration with Georgetown University and the Pew Foundation on Religion and Public Life specifically asked Muslim authorities to clarify Islam's views on violence, human rights, and interfaith relations. In response to the question "Can a person who is Muslim choose a religion other than Islam?" Gomaa replied, "The answer is yes, they can, because the Quran says, 'Unto you your

[34] Court of Administrative Justice no. 35647, Judicial Year 61, 29 January 2008.

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religion, and unto me my religion,' (Quran 109:6) and, 'Whosoever will, let him believe, and whosoever will, let him disbelieve,' (Quran 18:29) and, 'There is no compulsion in religion. The right direction is distinct from error' (Quran 2:256)."

Gomaa's opinion suggests that there are sufficient sources within the Islamic legal tradition to justify an expansive reading of Article 47 (2). Such a reading would permit any Egyptian, regardless of religious affiliation at birth, to not only change this affiliation but also record it on vital records. However, Article 47 (2) makes such an amendment conditional on rulings or documents issued by a competent court or religious authority. Legally changing one's religious affiliation thus requires the complainant to furnish sufficient evidence that a change of religion has occurred. Hegazy's suit failed to meet the full standard of proof as outlined in the law; he did not submit any documentation that attested to his conversion to Christianity. Presumably, the Coptic Orthodox Church—insofar as it has been authorized to attest to an individual's membership in the Church—could have provided this documentation. The CAJ would consider the extent of this competence in Maher al-Gohary's case, just months following the dismissal of Hegazy's suit.

Maher al-Gohary was born to two Muslim parents and informally converted to Coptic Orthodoxy in 1973. He brought his first suit in August 2008 on behalf of himself and in his capacity as the natural guardian of his daughter. Al-Gohary requested the Court order a change in his religious affiliation from Islam to Christianity—pursuant to Article 47 (2)—on his and his daughter's birth certificates and national identification cards. Al-Gohary filed a second suit in February 2009 in which he requested the Court rule to revoke the CSO's decision to refrain from taking steps to amend his name and religious affiliation from Maher Ahmad al-Mu'tasim Billah al-Gohary, Muslim, to Peter Athnasios 'Abd al-Masih, Christian. The CAJ ruled on both petitions in June 2009.[35] Al-Gohary's statement drew heavily on the judicial reasoning from the February 2008 SAC decision that compelled the CSO to record the change of religion from Muslim to Christian for *'a'idun*. Al-Gohary argued that previous SAC rulings affirmed the obligation of the administrative body to record any changes that occur to citizenship and religious affiliation, and that such a record is not considered in any way an admission or acceptance of that information's accuracy, nor does it establish legal status; rather, it is a report of an undeniable reality, and to not record this fact conflicts with the public order. Drawing on the growing jurisprudence of Article 47 cases, attorneys for the complainant further argued that recording the change in

[35] Court of Administrative Justice no. 53717, Judicial Year 62, 13 June 2009; and Court of Administrative Justice no. 22566, Judicial Year 63, 13 June 2009.

religious affiliation from Islam to Christianity on an identity card does not constitute an acknowledgment of the apostate's act, for an apostate's act is not to be acknowledged (*la yuqarr 'ala riddatihi*) according to the principles of *shari'a*.

The Court held that Article 47 (2) "included the absolute right to change one's religious affiliation information, without legislators having specified any limitations." Yet the Court also said that legislators did require a set of procedures, conditions, rules, and documents that must be satisfied in order for the administrative body to change the stated religious affiliation and name on a birth certificate and personal identification card. "These conditions," the Court explained, "do not relate to establishing belief, which remains entirely between a worshipper and his Lord, and does not need to be established. However, the conditions do concern the requirements of legal regulation for establishing the specified information in a citizen's probative documents, due to it having legal repercussions when it comes to interacting with others in matters of family such as marriage, divorce, and inheritance, the effects of which differ depending on religion and sect."[36]

The conditions enumerated in the ruling are as follows. First, an application for a change of religious affiliation must be presented to the competent civil registry department.[37] Second, the supporting documents for the application must be attached—either a ruling of a change of religious affiliation from the competent court or a certificate of change of religion issued by the competent body.[38] Third, the competent civil registry department establishes the validity of the ruling made by the competent court or of the certificate issued by the competent body and then issues a decision to make that change and notifies the information department so that it may carry out the change. Lastly, the competent civil registry department is informed of the change to the information, and the application, along with the ruling or certificate and a notification of the change, is sent to the Civil Status Police for review.[39]

The Court in al-Gohary's case examined the basis for establishing a change of religion, whether it derives from rulings issued by the competent court or from documents issued by the competent

[36] Ibid.

[37] Pursuant to Article 47 (2) of the Civil Status Law and the First Section of Article 30 of the Executive Regulations and the Application for Name Change and Application for Change/Correction to Record forms published as attachments to the Executive Regulations on pages 50 and 51 of *Al-waqa'i' al-misriyya*, Issue 50—Appendix, 27 February 1995.

[38] Pursuant to Article 47 (2) of the Civil Status Law and the first clause under the First Section and the first, third, and sixth clauses under the Second Section of Article 30 of the Executive Regulations.

[39] Pursuant to Article 47 (2) of the law and the Second and Third Sections of Article 30 of the Executive Regulations.

administrative body. The examination sought to determine the scope of regulation for rulings and documents, and the extent to which either is present in the case, in accordance with the prescribed formal, procedural, and substantive conditions for establishing either one of the two. The judgment held that "a close study of the positive legislation and the laws governing the regulation of issues of personal status for Muslims and non-Muslims … makes it clear that neither one contains any regulation of the issue of changing religions. It also makes clear that exclusive jurisdiction for this has been specified for the courts at all levels, with no one court singled out for jurisdiction to ruling on changes to religious affiliation."[40] Finding that the legislation did not recognize a court with jurisdiction over changes to religious affiliation and did not regulate the procedures for obtaining this change, the judgment stated that "the basis for realizing [a court ruling] is absent."

The Court thereafter considered whether al-Gohary had produced the certificate required by law to establish a change of religion. It held that religious belief "is a spiritual issue, one in which verdicts are based on verbal statements, and the seriousness, motives, or causes of which a judge is not justified to examine." But it also asserted that a change of religious affiliation always needs to be established "under the system of the state, its legislated principles, and the rights of others and the effects resulting from a change to the information in records of civil status." The February 2008 SAC decision recognized the Coptic Orthodox Church as the competent body for issuing certification of reconversion to Coptic Orthodoxy for *'a'idun*. To the extent that *'a'idun* and *mutanaserun* are Muslim by law at the time of filing their suits, one might expect the Church's competence to extend to both groups. However, the Court held:

> The Patriarchate of the Church of St. Mark may be able to issue certificates stating the religious affairs of adherents of the Coptic Orthodox denomination and which ones change from one denomination to another, but it is clearly not competent to take any measure of any kind that involves a Muslim changing his religious affiliation to Christianity. Moreover, it is not competent to issue any certificates confirming that this change has occurred, as neither laws nor Church regulations have

[40] The judgment refers to Law 1 of 2000 regulating certain conditions and procedures for litigating personal status issues and to the Personal Status Regulations of the Orthodox Copts, adopted by the General Congregation Council (*al-majlis al-milli al-'am*) in a session convened on 9 May 1938, in effect as of 8 July 1938, and amended by Decree of the Coptic Orthodox Patriarchate/General Congregation Council no. 1 of 2008. See *Al-waqa'i' al-misriyya*, Issue 126, 2 June 2008. These regulations were further amended following a landmark *Majlis al-Dawla* decision in 2008 requiring Pope Shenouda III, then Patriarch of the Coptic Orthodox Church, to grant a divorced Orthodox Copt a license to remarry. See Nathalie Bernard-Maugiron (2011).

> established any competency in this regard. Legislators, then, have not specified the body that is competent to issue a certificate of a change of religion from Islam to Christianity… The Patriarchate may have the authority of Church recognition for those who practice the religious rites … but when it comes to the legal system, it has no authority to change a person's religion by expelling him from whatever faith he has adopted, even in accordance to his wishes, and entering him into another faith for which the Patriarchate is responsible so long as the law does not ascribe this competency to it.[41]

Two documents presented by the complainant as evidence of his conversion to Christianity were thus found insufficient to effect a change of religious affiliation. One was an unofficial certificate of baptism that the petitioner obtained from the Holy Church of Saint John, part of the Holy Metropolis of Limassol in Cyprus. A second document was a written request to transfer from the Greek Orthodox denomination and be admitted into the Coptic Orthodox denomination, signed by a priest from the Qalyubia governorate in Egypt. The Court dismissed the admissibility of these documents by specifying that only the Patriarch may confer membership in the Coptic Orthodox denomination.

The Court in the al-Gohary case further addressed the applicability of a previous SAC ruling authorizing reconversion to Coptic Orthodoxy for Copts who had converted to Islam.[42] The reasoning found that insofar as the Church has limited competency under the law, it may not exercise its competency in the case of "a born Muslim who was originally and inherently Muslim at birth wishing to adopt Christianity."[43] Reflecting on the judgment, one attorney for Maher al-Gohary put the decision another way: "[The judge] said that we have an Orthodox Church in Egypt and it is the right of the Church to accept or reject a new member. Maher presented what would demonstrate that he was accepted into the Orthodox Church. But Maher was a Muslim, and he did not present what would demonstrate that he exited from Islam, although there is no entity in Egypt that can give him a certificate that he exited from Islam. Maher al-Gohary is therefore still Muslim."[44]

[41] Court of Administrative Justice no. 53717, Judicial Year 62, 13 June 2009 and Court of Administrative Justice no. 22566, Judicial Year 63, 13 June 2009.

[42] See for example Supreme Administrative Court nos. 12794 and 16766, Judicial Year 51, 9 February 2008; Supreme Administrative Court no. 13198, Judicial Year 53, 9 February 2008; and Supreme Administrative Court no. 13496, Judicial Year 53, 9 February 2008.

[43] Court of Administrative Justice no. 53717, Judicial Year 62, 13 June 2009 and Court of Administrative Justice no. 22566, Judicial Year 63, 13 June 2009.

[44] Interview with Nabil George, Cairo, Egypt, 21 September 2014.

While the al-Gohary ruling articulates at great length and in tremendous detail the legal conditions under which a change of religious affiliation is effected and recorded, it occludes a glaring asymmetry: The Fatwa Council of Al-Azhar acts routinely certifies born Copts' exit from Coptic Orthodoxy. Although conversion is not addressed explicitly in constitutional or statutory law, the registration (*tasjil*) and validation (*tawthiq*) of conversions to Islam are subject to internal regulations of the Justice Ministry.[45] An individual intending to convert must be at least sixteen years old and must notify his or her local Security Directorate (*mudiriyat al-amn*) of the Interior Ministry. The police thereafter arrange what is called an advice and guidance session (*jalsat nush wa al-irshad*) between the potential convert and a representative of the individual's religious denomination. In many cases, this is a clergyman from the individual's local church. The advice and guidance sessions are arranged to assess the intentions of the potential convert, to assure that he or she is not being coerced, and to afford the clergyman an opportunity to help the individual resolve the predicament that may have led to filing the application for conversion.[46] If the potential convert changes his mind after the consultation, the application for change of religion is withdrawn. If, however, the potential convert persists in his wish, then he receives security clearance to formalize the conversion at a local office of the public notary (*maslahat al-shahr al-'aqari*).

Non-Muslims establish a Muslim legal status through a Certificate of Belief in the Religion of Islam (*shahada bi i'tinaq al-din al-islami*), which is issued by the Al-Azhar Fatwa Council.[47] The standardized document consists of the date, the person's name, address, date of birth, and original religion. It also contains the

[45] Justice Ministry, Chapter on Validating Declarations of Islam (*tawthiq ish har al-islam*), Regulations of the Public Notary and Validation Authority (*al-lawa'ih al-khasa bi maslahat al-shahr al-'qari*), 3rd edition, 2001.

[46] The advice and guidance sessions were unofficially suspended by Interior Minister Habib el-Adly following the allegedly forced conversion of Wafa' Constantine, the wife of a Coptic priest, to Islam in December 2004. For a discussion of this controversy, see Mariz Tadros (2013). The Interior Ministry's suspension of the policy is significant since the sessions technically fall under the Justice Ministry. Converting to Islam has become increasingly subject to the whims of the state intelligence apparatus such that the Security Directorate may authorize a conversion without notifying the convert's local church or family. See, for example, Sarah Said, "*Jubra'il yutalib wazir al-dakhliyya bi i'adat jalasat 'al-nush wa al-irshad' li al-mutahawwalin*" [Jubrail requests the Interior Minister reinstate advice and guidance sessions for converts], *Al-Watan*, 14 October 2014, accessed 2 December 2015, http://www.elwatannews.com/news/details/575792. There are reports of other cases in which the Interior Ministry has actively advised Al-Azhar not to authorize conversion to Islam. See, for example, Egyptian Initiative for Personal Rights, "Conversion and Freedom of Religion," accessed 25 July 2016, http://www.eipr.org/en/print/report/2009/12/06/261/269. For a brief account of these dynamics in the context of nineteenth century Egypt, see Muhammad Afifi (1999).

[47] Certificates on file with the author.

shahadatayn or the two testimonies that constitute belief in Islam: "I testify that there is no God but Allah, and Muhammad is His messenger" (*ash hadu an la ilaha illa Allah wa Muhammad rasul Allah*). The *shahadatayn* are expanded to include an additional testimony, suggesting that most, if not all, Egyptians who declare their conversion to Islam are Christian: "I testify that Jesus is a servant of Allah and His messenger" (*ash hadu an 'isa 'abd Allah wa rasulho*). At the end of the form is a statement of the convert's marital status, an indication of whether the convert decided to change his name, and a line that reads "This certification proves his Islam" (*hatha al ish har ithbatan li islamho*). The certificates are signed by the Director of the Fatwa Council and stamped with its official seal.

Many of these certificates additionally show one of two handwritten provisions at the top or bottom—either "This proclamation does not authorize marriage until it is registered with the Office of the Registry" (*hatha al-ish har la yajuz al-zawaj minho illa ba'd tasjilo fi al-shahr al-'aqari*) or "This certification is produced by the Fatwa Council for the one who announced his Islam in order to procure an identification card" (*hatha al ish har sadr min lajnat al-fatwa li al-mushahar islamho li istikhraj al-bitaqa*). Samy Gerges, another lawyer representing al-Gohary, recounted to me the exceptional nature of this practice: "There is no law that says anything about someone wanting to become Muslim having to get a certificate that is stamped with an eagle from the Fatwa Council. Here Al-Azhar is operating without a legal provision."[48] Yet in order for *'a'idun* to submit an administrative request to return to Coptic Orthodoxy, their Muslim legal status needs to have been established through this certificate.[49]

By circumscribing religion as a distinct category of social life, the Egyptian state inaugurates a riddle of paradoxes not easily resolved by further legislation or procedural innovation. In fact, the very circumscription of this category and attempts to amend it invites further questions about how to properly govern religion. Whereas Egyptian law affords all citizens avenues to appeal administrative decisions, *Majlis al-Dawla* significantly limits the competence of administrative bodies that might act in the cases it hears. *Majlis al-Dawla* resolves the disagreement within its ranks about statutory and constitutional interpretation by interpolating born Muslims as forever bound to their patrifilial descent. Such rulings rest on what is articulated as a conclusive and ubiquitous duty to protect freedom of belief from turning into, as one court reasoned, "a space of manipulation, invoked to achieve worldly

[48] Interview with Samy Gerges, Cairo, Egypt, 6 September 2014.

[49] Law 70 of 1964 on Registration and Validation Fees exempts certificates of conversion to Islam from any fees. Attorneys who adjudicate Article 47 cases report that this is the only administrative form that can be filed without cost to the applicant.

objectives, ignite conflict between civilizations, lead one religion to triumph over another, deal a blow to the deeply entrenched roots of the country's national unity, or bring about so-called 'constructive chaos' by causing a destructive sectarian chaos."[50] Petitioning the state to sanction movement between religious affiliations catalyzes a set of responses to which exceptions are made, exceptions that are not completely arbitrary. Although the conjoining of *shari'a* and the public order differs from one class of complainants to another, it is significant that these concepts are continually invoked, *together*, across the entire range of Article 47 jurisprudence.

Conclusion

Conversion, understood broadly as mobility between social groups in which belief and sincerity may figure but is not reducible to either, illuminates the terms of lawful belonging and exclusion. In contemporary Egypt, the very question of lawful belonging arose most acutely during twentieth-century modernization projects that occurred on the heels of rapid legal and judicial development. These projects sought to simultaneously enhance state knowledge of the population and ensure liberal norms such as religious freedom and equality before the law. As the Egyptian case demonstrates, when social life is made to conform to strict and oversimplified categories of difference, the structures that compel such conformity generate legally and socially significant subjectivities. To think otherwise is to assume that the lives of ordinary people and state governance run parallel to one another. Put differently, it is to assume that unmediated realms of religious belief, practice, and belonging exist unbeknownst to state rationality.

By examining one of the most significant questions that *Majlis al-Dawla* has adjudicated—whether the bureaucracy has a legal obligation to record a change of religion from Islam to Christianity—this study reveals who and what constitute the regulatory field. Bureaucratic agencies, administrative courts, and ecclesiastical institutions all affirm the state's sovereign authority to decide what qualifies as religion and the proper place of religion in public life. Controversies over conversion highlight the intractability of questions that emerge when social practices are unlegislated, yet nevertheless subject to sovereign authority. In the absence of statutes on apostasy and conversion, administrative judges conjoin precepts of *shari'a* with

[50] Court of Administrative Justice no. 53717, Judicial Year 62, 13 June 2009; and Court of Administrative Justice no. 22566, Judicial Year 63, 13 June 2009.

the principle of public order to decide an intractable question about where the line between religion and politics should be drawn. The distinctive features of the modern state, including its bureaucratic logic and monopoly over law making, may have divested *shari'a* of its characteristic pluralism and flexibility, yet *shari'a* endures alongside secular concepts in ways that substantially shape the composition of contemporary societies.

Although scholars have long held that the secularization of religious law mainly resulted in the privatization of religion and the family, this article offers a compelling reason to rethink this paradigm and Egypt's place in the critical scholarship on secularism. Narrowly associating religion and the family with an allegedly private domain, on one hand, and politics and the state with a public domain, on the other hand, fails to contend with a significant challenge to this theorization: religious difference is often *made* through public law—that is, the law that governs the relations between citizens and the state. This is not to say that a public–private distinction is irrelevant to the modern and contemporary world, nor to suggest that Egypt and other states that make religion consequential to citizenship are incompletely secular. Rather, if the secularization of religious law has resulted in both the privatization of religion and its publicity, then the very idea of what secularism is and does needs to be substantially rethought.

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