The "Divinely Revealed Religions"

The preamble to the 2014 Constitution contains the following grandiloquent passage:

> Egypt is the cradle of religion and the banner of the magnificence of the divinely revealed religions. On its land, Moses grew up (peace be upon him), the light of God was revealed to him, and the message descended to him on Mount Sinai. On its land, Egyptians embraced the Virgin Mary and her son and presented thousands of martyrs in defense of the church of Jesus (peace be upon him). When the seal of the messengers, Muhammed (peace and blessings be upon him), was sent to all people to complete noble characteristics, our hearts and minds were opened to the light of Islam. We were the best soldiers of the earth to fight on behalf of God, and we spread the message of truth and religious sciences throughout the world. This is Egypt: a homeland in which we live and which lives in us.[1]

This lofty passage illustrates that the drafters of the 2014 Constitution saw the concept of the divinely revealed religions (*al-adyan al-samawiyya*) as central to Egyptian nationalism. The divinely revealed religions, also translated as the heavenly religions, is a notion that emphasizes the mutually intertwined histories and theologies of Judaism, Christianity, and Islam. Thus, while Islam is presented as the religion that perfects religious sensibilities

in Egypt and represents who Egyptians are, it is framed as historically and theologically linked with Judaism and Christianity. These three monotheistic religions are deeply rooted in the land of Egypt. Egypt's identity is permeated by this religious history. The constitution claims to speak for Egyptians as a whole—all Egyptians, it assumes, feel this connection to the divinely revealed religions. While sentiments about national unity between Copts and Muslims had been present in the preamble to the 2012 Constitution, the Constitution of 2014 outdid its predecessor in articulating a commitment to the heavenly religions.

Among the many new articles that appeared in the Egyptian Constitution of 2012 was Article 3. The article stated that "the principles of the religious laws of Christian and Jewish Egyptians are the main source for the legal regulation of their personal status affairs, their religious affairs, and for the nomination of their religious leaders."[2] The article thus gave Jews—although their population in Egypt is too small now for this to have much effect—and Christians, about 6–8 percent of the population, a level of judicial autonomy. This judicial autonomy was granted to Jews and Christians on account of their status as members of the heavenly religions.

While the statement on the judicial autonomy of the divinely revealed religions formalized what had been in effect in Egyptian case law since the country's independence from the Ottoman Empire in 1914, such a commitment went further and made a national proclamation about the special status of the divinely revealed religions. In so doing, it formalized the state's view that believers in non–divinely revealed religions, specifically the Baha'is, estimated to number around 2,000, are heterodox and therefore contrary to what being Egyptian means.

In criticisms in the Egyptian press and the Western media, Article 3 of the 2012 Constitution was accused of contributing to the "Islamist" nature of the constitution, and of detracting from the principle of legal equality. Such a strident identification with Jews and Christians and antipathy toward the Baha'is was seen as the result of the greater role of Islam and the sharia in the Egyptian public sphere. While this chapter demonstrates that this antipathy toward Baha'is is partly the result of a particular form of Islamization—in which multiple legal possibilities were jettisoned in favor of one—and is not discontinuous from Ottoman norms, it also shows that this antipathy became particularly resonant under the socialist, statist, and secular rule of Gamal 'Abd al-Nasser in the 1960s. This particular level of hostility in the Nasserist period indicates that the concept of the divinely revealed religions has become a national cultural concept that transcends the secular-religious divide. This was further illustrated when Article 3 was retained in the seemingly more secular Constitution of 2014. While Article 3

of the 2014 Constitution was opposed by some secular groups, it had a broad constituency of support that encompassed a diverse range of groups, including the Coptic Church, the military, and parts of the secular and judicial elite.

In looking at Egyptian Copts and Baha'is, the late Saba Mahmood argues that modern secular governance has contributed to the exacerbation of religious tensions, and that this has polarized differences between religions. Secularism, she argues, "promises to demolish religious hierarchies in order to create a body politic in which all its members are equal before the law."[3] Yet, she argues, modern secularism has resulted in a rise in inequality between religions and caused more interreligious conflict. It has thus led to the "increasingly precarious position of religious minorities in the polity."[4] This is in part because "modern governmentality involves the state's intervention and regulation of many aspects of socioreligious life."[5] The modern secular state, she contends, "is not simply a neutral arbiter of religious differences; it also produces and creates them."[6]

Mahmood's argument that modern secularism has resulted in the intensification of religious inequality and conflict is a vitally important intervention in pointing out the disparity between what secular states claim to do (consign religious differences to the private sphere) and what she claims they actually do (politicize such differences, leading to sectarian conflict). However, in emphasizing that interreligious relations have been transformed by the modern secular state, she overlooks how the management of religion in its current form in Egypt has closed off opportunities for some but opened up opportunities for others. Without a sufficient analysis of the premodern and Ottoman periods, a discussion of interreligious relations in Egypt can miss the ways in which religious tension and inequality have both continuity and discontinuity with the past.

In this chapter, I employ a broad historical scope to look at how the nature of religious belonging has become recast through constitutional commitments to the national will. I start by exploring premodern Ottoman history to discuss the *dhimmi* system of governance, the extent to which this system constituted a form of state recognition for non-Muslims, and how the Ottoman Empire dealt with the question of religious heterodoxy. I then return to modern Egypt to look at how the concept of the heavenly religions has become nationalized, leading to an intensification of some forms of difference but also to the emergence of new alliances. Briefly digressing to look at how and when the Baha'is were excluded from the Egyptian public sphere, I then return to the post-2011 context to show the ways in which the commitment to the concept of the divinely revealed religions has become nationalized to form an important cultural concept. While the concept of

the heavenly religions has resulted in the exclusion of Baha'is, it has also resulted in more specific inclusion for Coptic Christianity centered on the church. This church-centric type of Christianity has become more specifically intertwined with Islam through such a constitutional statement.

This chapter argues that the commitment to the concept of the divinely revealed religions does not constitute a simple revival of premodern sharia even though it has origins in it. Rather, the application of Article 3 results in different dynamics between the state, members of the divinely revealed religions, and those who do not belong to those religions. Article 3 effectively gave constitutional recognition to the right of Jews and Christians to apply their own personal status law by virtue of their status as members of the heavenly religions. This system of judicial autonomy has origins in premodern sharia and the Ottoman Empire. However, in the context of the modern nation state, the process of giving an exemption from state law requires positive state recognition of the community being given the exemption. Giving positive state recognition to a religious community involves accepting that this religious community forms part of the cultural makeup of the broader national community. Article 3 makes a more formal commitment to the idea that some religious commitments are publicly acceptable while others are not. This new dynamic of positive inclusion and positive exclusion is not a simple incarnation of the sharia nor is it a break with it, but is born out of the nation state's demand to articulate a totalizing and unitary culture.

People of the Book and State Recognition

Article 3 gave Jews and Christians judicial autonomy over an undefined area of personal status law. The idea of giving judicial autonomy to the divinely revealed religions has origins in the premodern Islamic order. The dhimmi system was one in which Jews and Christians, and, in some cases, other non-Muslims were given legal protection and a level of religious and judicial autonomy in return for their submission to the Islamic ruling polity and their payment of the *jizya* (a poll tax). The specific legal rights and duties inherent in the dhimma contract were complex and not always clearly defined. The contract offered non-Muslims security of life and property, defense against enemies who attack, communal self-government, and freedom of religious practice. Most accounts of the role of non-Muslims in premodern Islamic societies assume that the dhimmis had considerable autonomy: they were allowed to retain their own religious organizations and places of worship and were entitled to their own religious trusts, law courts, and law codes, which covered an area of law that was broader than—although in some respects

corresponded with—what is now denoted by the term "personal status." The nature and extent of this autonomy were subject to negotiation. Some non-Muslims were able to enforce their communal laws exclusively, while others—including the Copts—only had the right to concurrent communal autonomy (see chapter 7). In addition, while the dhimmi system gave protection and freedoms to Jews and Christians, the status of other non-Muslims remained ambiguous.

The dhimmi system is rooted in the sharia and Islamic theological principles. It was broadly based on the theological concept of the People of the Book (Jews, Christians, and Sabians), which implied that freedom of religion was to be accorded to fellow monotheists whose religion was based on some form—albeit a distorted or misinterpreted one—of revelation from God. However, Anver Emon argues that, rather than reflecting a particular Islamic ethos, "the Islamic legal treatment of non-Muslims is symptomatic of the more general challenge of governing a diverse polity."[7] Emon contends that, in the sharia, there was a mutually constitutive relationship between law and governance, so that the sharia should be understood as the rule of law embedded in the logic of empire and governance. He maintains that a particular legal doctrine was a direct product of the environment in which that rule was applied.[8]

The concept of the millet has often been used to refer to the system of governance, based on the dhimmi system, which developed between non-Muslims and the Ottoman Empire, although the term "millet" only dates to the nineteenth century.[9] The extent to which the dhimmi system of governance was formalized, organized, and systematized has been disputed. Benjamin Braude argues that there was "no overall administrative system, structure, or set of institutions for dealing with non-Muslims."[10] Karen Barkey, however, disputes this, pointing to the extent to which the Ottoman Empire organized the communities it conquered.[11] What is clear is that the level of formality of the relationship between the Ottoman Empire and its non-Muslim subjects varied. There was often a lack of clarity about what the rights and obligations of the dhimmi system of governance were. The system gradually emerged to provide a degree of religious, cultural, and ethnic continuity within the communities conquered by the Ottomans while also incorporating them into the Ottoman administrative, economic, and political systems.[12]

Yet the level of autonomy granted to these non-Muslim communities depended on what kind of state recognition—if any—they received. The most formal relationship that the Ottoman Empire had with non-Muslim communities, which came to be officially named as millets in the nineteenth

century, applied to three main groups: Greek Orthodox Christians, Armenians, and, eventually, Jews. Each was managed differently.[13] The Greek Orthodox community was recognized in 1454 by a berat between Mehmed the Conqueror and the patriarch of the Greek Orthodox Church by which the latter had the power to administer many of the affairs of the empire's Orthodox community.[14] The Ottoman Empire preferred the Greek Orthodox model for dealing with non-Muslim communities due to its highly centralized nature. The Armenians and particularly the Jews, however, did not have such a developed ecclesiastical hierarchy. Yet, over time, the Jews and especially the Armenians developed simpler and more hierarchical patterns of organization. The Armenian community was officially recognized in 1461 and Christian groups that could not be fitted into the Greek Orthodox community were added into the Armenian Gregorian Church.[15] While such recognition was given due to the sharia concept of People of the Book, it was—perhaps even more so—given as a method of governance.

Jews, for example, were not officially recognized by the Sublime Porte, the government of the Ottoman Empire, until the nineteenth century in part because they were not so centrally organized. Bernard Lewis points out that, from the sixteenth century through the eighteenth century, there is little evidence that a chief rabbi who had jurisdiction over Jews throughout Ottoman lands existed. For the most part, Jews lived in separate communities, grouped around their own synagogue and led by their own rabbi.[16] It was not until 1835 that the Jews were recognized by an imperial decree as a millet under the authority of the *hahambashi*, the chief rabbi, with roughly the same status, rights, and duties over the entire Jewish community of the Ottoman Empire as the ecclesiastical leaders of the Greek and Armenian churches.[17]

British diplomacy was a driving force in the appointment of the hahambashi. In the 1830s, the British fashioned themselves as the protectors of Jewish interests in the Ottoman Empire, as did Russia with the Greek Orthodox and France with the Catholics.[18] In response to French pressure, Sultan Mahmud II (1785–1839) recognized the Armenian Catholic millet in 1831.[19] The sultan also responded to British and American pressure by recognizing Protestants as a separate millet in 1850.[20]

One of the most important components of the millet system was that it required official sanction by the state. Heads of the millets were chosen by the community, but the sultan had to approve their appointment. Upon official sanction, the heads of the millets had a position in the official hierarchy of the state.[21] This gave them a level of judicial autonomy, which sometimes involved the right to exclusive jurisdiction. However, the opportunity

to exercise levels of communal autonomy was not limited to the more official form of the millets, although such autonomy often involved non-Muslims being able to have recourse to the sharia courts. Local Ottoman rulers entered into agreements with numerous groups without this level of formality. The word "ta'ifa" was used to define a number of social or economic groups, which included—but were not limited to—religious communities. Each ta'ifa was able to have its own leadership and its own rules and regulations, which were then affirmed and registered before the chief qadi.[22] Magdi Guirguis reports that the term "ta'ifa" was commonly used by the Ottoman administration for the Copts, and that Egypt's Copts used the term when they appealed to the state. She argues that the Ottoman administration dealt with them as if they were one group.[23] The Coptic pope was given a different mandate from the one given to the Greek Orthodox patriarch. The Coptic pope was appointed upon the approval of the Ottoman governor in Egypt, and due to the Coptic's community's distance from Istanbul and its localized nature in Egypt, the pope did not have the same level of contact with the Sublime Porte or the same official recognition from it.[24]

Such systems of judicial autonomy have often been looked at through the lens of the concept of toleration, which has been projected back onto Islamic history. Yet toleration should not be taken to assume positive endorsement of religious difference. Karen Barkey argues that toleration of non-Muslims was a strategy to organize the diverse communities of the Ottoman Empire, keep order, and maintain their loyalty. It was therefore "a means of rule, of extending, consolidating, and enforcing state power."[25] It is important to note here that Amnon Cohen argues that such tolerance and communal legal systems did not extend to notions of religious brotherhood. He argues that the Ottoman state regarded Christianity and Judaism with disdain, although this did not preclude their inclusion in Ottoman society.[26] There was no concept of some kind of unified Abrahamic identity. Aaron Hughes has linked the adjective "Abrahamic" to a modern interfaith agenda. He argues that the term is a "modern creation, largely a theological neologism" to promote ecumenism.[27] Hughes highlights the problems involved in translating the diversity and tolerance of the Ottoman Empire into positive endorsement.

Under the period of Ottoman reforms known as the Tanzimat (1839–76), equality for non-Muslims was established. In 1850 a decree opened up the army to non-Muslims. The Khatti Humayun Decree of 1856 emphasized the equality of all Ottoman subjects before the law, including the right to serve in the government.[28] It promised that "no one shall be compelled to change their religion" and undertook to ensure freedom of religious

exercise, guaranteeing it for sects in localities where "there are no other religious denominations."[29] The decree also provided for greater non-Muslim participation in provincial councils, and, for the first time, for non-Muslim representation on Ottoman governing councils.[30] However, it reduced the control that religious leaders could exercise, since, for the first time, laymen were given a major voice in the governance of the millets.[31] The Khatti Humayun Decree also decreased the areas over which the millets had control. Education, for example, now came under government administration.[32] The decree assigned jurisdiction for criminal, civil, and commercial matters to the newly established Nizamiyya courts based on French codes. This restricted the jurisdiction of both the sharia and the non-Muslim communal courts.[33]

Niyazi Berkes argues that Mahmud II (1785–1839) wished to abolish the millet system to establish equality for non-Muslims. Yet Mahmud was hindered by the fact that the millet system had emerged as an important tool for international diplomacy by which the Christian powers of Europe exerted influence in the region.[34] Thus, the millet system was not abolished but retained and reformed. The Khatti Humayun Decree of 1856 granted legislative autonomy to non-Muslims with regard to "special civil proceedings, such as those relating to successions."[35]

In restricting the jurisdiction of the millets, the Khatti Humayun Decree also reaffirmed the immunities granted to them.[36] The decree affirmed that the rights and freedoms granted to the millets were given and controlled by the government.[37] However, it established greater state control over the millets, stating that each community should discuss its immunities and privileges—and reforms required—with the Sublime Porte.[38] The decree therefore recognized the dependency of non-Muslim communities on the state, requiring religious leaders to take an oath of loyalty to the Sublime Porte upon their entrance into office.[39]

In 1869 the Ottoman government imposed upon Ottoman subjects an Ottoman citizenship that was modeled on Western conceptions of citizenship: every person born of an Ottoman father was an Ottoman subject and was equal regardless of faith or language. Ottoman nationality established a more direct relationship between the individual and the state. Yet, in doing so, the relationship between non-Muslims and the state was altered by the fact that the Sunni Muslim character of the Ottoman government had acquired a new political significance. This is because the idea of the nation state needs the national community in order to justify its claim to represent its citizens, thereby making it necessary for the political system and the religious-national culture to be more intricately intertwined.[40]

After Egypt became officially independent from the Ottoman Empire in 1914, Egyptian Law No. 8 of 1915 gave formal recognition to the Khatti Humayun Decree.[41] The law recognized all already established judicial authorities and empowered those authorities to continue to exercise their rights and privileges based on Ottoman decrees. The reorganized Coptic Orthodox community had been officially recognized by the Sublime Porte in 1883.[42] The Rabbanite Jews were recognized in 1891.[43] Law No. 8 of 1915 also granted each non-Muslim community a communal council (*majlis milli*) to deal with questions of personal status and its own communal laws, customary or codified.[44] By the mid-twentieth century, there were some fourteen non-Muslim *majalis milliyya*, or communal councils. Some of these religious communities, such as the Coptic Orthodox Church, the Coptic Evangelical Church, and the Coptic Catholic Church, were formally recognized by the government, whereas others were simply tolerated.[45] The question of state recognition was to become more important.[46] While the new national Egyptian courts assumed jurisdiction over criminal and commercial matters, matters relating to marriage, divorce, custody, guardianship, and inheritance remained the province of the sharia courts for Muslims and the communal courts for non-Muslims.

Thus, while the system of dhimmi governance that emerged in the Ottoman Empire, later inherited by Egypt, was based on the sharia and theological notions of respect for the heavenly religions, it must also be seen in the context of what Emon refers to as the relationship between law and governance. Emon calls for eschewing the frame of tolerance through which the rules regulating the dhimmi system have been understood, arguing that tolerance "often hides the underlying regulatory features of governance that spark the need to discuss tolerance in the first place."[47] The dhimmi system of governance varied and included models that involved state recognition by the Ottoman Empire and less formal systems that involved acknowledgment of the judicial autonomy of non-Muslims on a more localized level. For the Ottomans, this was a method of governance and a mechanism of control. The Copts did not have the same official recognition and judicial autonomy as the Greek Orthodox or the Armenians until 1883. With the reform of the millets, this area of judicial autonomy was truncated and while judicial authority was maintained, it became more formally connected with—and dependent on—official recognition of the state. As the Ottoman state's Islamic character became more important, the dynamic between religious minorities and the state was altered. The idea of official recognition was to become more important upon Egypt's independence from the Ottoman Empire.

Islamic Heterodoxy

While the religious freedom of Jews and Christians has—with some important exceptions—been unquestioned by those advocating for the revival of the sharia, the proposed treatment of religions that do not fall into the category of People of the Book has been much more ambiguous. The Sunni schools of law have differing opinions on the question. The Hanafi school, which was the dominant school of the Ottoman Empire, and the Maliki school, which was second in importance in Mamluk Egypt (1250–1517), argues that the jizya may be collected from any polytheist. Thus, all non-Muslims received protection from the state on the basis that anyone who submits to the political authority of the Muslim government can become a non-Muslim subject of that government. However, the Shafiʿi school (dominant in Mamluk Egypt) and the Hanbali (dominant in Saudi Arabia) schools argue that jizya may only be accepted from People of the Book and Zoroastrians.

In her discussion of religious conflict in contemporary Egypt, Saba Mahmood briefly mentions that the distinction between the heavenly and nonheavenly religions "has no historical justification because there is no consensus in the shariʿa on how to treat followers of non-Abrahamic religions."[48] Such a distinction, she argues, is a product of modern secular governance. She maintains that, in premodern Islamic empires, non-Muslims were subject to a variety of different institutional and legal arrangements and that, while Ottomans did not generally have to deal with communities that were not Muslim, Christian, or Jewish—such as Hindus or Buddhists—in other parts of the Islamic world, this was not the case. The Islamic empires, she argues, "could not afford to treat these religious communities as juridical nonentities, heretics, or simply infidels, but had to integrate them into the state's economic and governing structure."[49] She also inscribes a stark contrast between the premodern and the modern Egyptian state by saying that, "under various premodern Islamic empires, followers of non-Abrahamic religions were also granted state protection. The Egyptian government, however, refuses to extend similar recognition to Bahais."[50]

However, there was no consensus among the four schools of law about whether non-Muslims who were not Jews or Christians could be allowed to maintain their own religion and therefore have a level of judicial autonomy. The distinction between divinely revealed religions and others clearly has theological roots in the sharia, although it is the social and legal implications of such a distinction that are more difficult to ascertain. Yet to say that the distinction between the heavenly and nonheavenly religions had no

historical justification is to assume that what we consider to be religions were thought of as separate religions then. Those who did not identify as Jews or Christians were not necessarily seen as belonging to a different religion. In many cases, such followers were classified as heterodox and the Islamic legal classification apostate was sometimes applied to them. The writings of Ibn Taymiyya (1263–1328) attest to a level of antipathy to groups such as the Druze, the Alawites, the Qaramita, and the Batiniyya.[51] The Ottoman Empire frequently did not legally recognize groups it deemed heretical. Yet the consequences of the lack of state recognition were less pernicious at the time as there were more spaces for communities—under the rubric of ta'ifa, which were autonomous yet sometimes not recognized—to organize themselves. This premodern context was marked by a relative lack of state intrusion, meaning that there were many areas in which communities had considerable autonomy on account of their distance from the state. As such, this meant that the Ottoman Empire did not necessarily have to integrate groups it did not wish to legally recognize. It is for this reason that some heterodox Islamic sects—while not recognized—ended up possessing local judicial autonomy. This was particularly true of the Druze in Lebanon and the Alawites in the Levant.[52]

With the consolidation and centralization of the Ottoman Empire in the sixteenth century, the empire's identity as a representative of Sunni Islam became more important. In the sixteenth century, the empire had recently conquered many lands with Muslim majorities, such as Egypt and the Levant. In addition, the proximity of the powerful Safavid Shi'i Empire to the east caused the Ottoman authorities to question long-extant policies of religious tolerance and to place greater emphasis on the Ottoman Empire's Sunni identity. Barkey argues that, by the sixteenth century, the Ottoman Empire had developed from a multireligious syncretic empire to a more orthodox Sunni Islamic or scripturalist one. Under Selim II (1566–74), the construction of outsiders took on religious terms. Barkey argues that Ottomans would often persecute heterodox Sufi groups rather than non-Muslims, since heterodox groups did not fit easily into their model of organization and the boundaries between them and Sunni orthodox communities were not so clearly defined.[53] The scholar Ibn-i Kemal (d. 1534) classified communal acts of rebellion as signs of nonbelief and defined segments of the population as apostates. Ibn-i Kemal's scholarship reflected the way in which religious practice and sharia norms were utilized for state interests.[54]

Thus, while the Ottoman Empire officially recognized a number of non-Muslim religious communities, there were many groups that were not officially recognized. Non-Sunni religious minorities were not regarded

as non-Muslims or as belonging to another religion. This included Shi'is, Druze, Yezidis, and Alawites. These were creeds seen by the Ottoman Empire as deviant and therefore, Necati Alkan contends, had no official status as autonomous religious communities and were increasingly defined as deviant during the reign of 'Abd al-Hamid II (1876–1909).[55] The Druze, for example, were not a recognized religion. The Druze often resorted to the sharia courts although, in some cases, matters of personal status were settled within the community.[56] The Ottomans refused to acknowledge the Shi'is as a separate millet that was to be protected, and they were seen, Alkan argues, as "sinning Muslims."[57] In addition, the Alawites of northern Syria were generally not "mentioned in official Ottoman documentation until after the second half of the 19th century."[58] In some cases, the Alawites were allowed by the authorities to make use of the sharia courts but, as apostates, their legal status was questionable.[59]

The understanding that these communities were heterodox intensified in the nineteenth century. During the period of the Tanzimat reforms, the Ottomans pursued a policy of "Sunnitization" of heterodox communities. This policy intensified in later years.[60] Religious conformity, Sami Zubaida argues, was increasingly emphasized and religious dissent was seen as rebellion.[61] 'Abd al-Hamid II feared that Protestant missionaries would try to convert heterodox Muslims, so he tried to convert Alawites to the official Hanafi-Sunni school. Muslim schools and mosques were established in non-Sunni areas.[62]

It is debatable whether the discrimination against those who were seen as heterodox Muslims marks a break with a more tolerant Hanafi jurisprudence. Hanafi norms could yield a number of possibilities and how these possibilities were translated into law varied and were subject to the form of governance that existed in a particular Islamic empire. Hanafism argues that polytheists—that is, those that were not identified as People of the Book—could be tolerated. Yet the category of polytheist does not necessarily include the category of apostate, which was often applied to include heterodox Muslims. Thus, heterodoxy and exclusion existed within premodern sharia and thus laid the foundation for its manifestation in modern Egypt. Islamic law, however, was malleable and responded to the needs of Islamic governance and the distinction between polytheist and apostate was not always upheld. It is at particular moments and junctures that these forms of inclusion and exclusion become operative, something which Emon's argument about the mutually constitutive relationship between sharia law and governance helps explain.[63]

What is clear is that the Ottoman Empire's development into a more centralized and modern state required increased legibility for its religious minorities in the sense of how these minorities related to the whole. This

in turn necessitated clarification of the state's responsibility to them and their responsibility to the state. This process of formalization also demanded that the state fix its own identity and articulate more firmly which religious minorities formed part of the national culture. This need for the formalization of the state's identity meant that the classification of heterodox had different implications. Just as the Ottoman Empire was formalizing its relationship with non-Muslim communities in the form of the millet system, it was also formalizing its Islamic identity and thus its conception that non-orthodox Muslims were heterodox. The formation of the civil code of laws in the Ottoman Empire alleviated some of the consequences of the designation of non-orthodox Muslims as heterodox and partly secured their legal status. However, at the same time, it brought their status as different and potentially politically deviant into much sharper focus.

The Divinely Revealed Religions and Egyptian Nationalism

Michel Rosenfeld has argued that identity and difference—and the interplay between the two concepts—are an important part of constitutions. In the nation, he asserts, accommodating differences must be limited by the need to preserve the dominant identity. Accordingly, he contends, determining how and in what way individual and group differences gain constitutional protection involves consideration of the interaction between identity and diversity.[64] Modern constitutions express certain ideological commitments, including articulating a balance between identity and difference. Proclaiming such commitments may communicate—either internationally or domestically—their importance within a society.

The interplay between identity and difference has taken various forms in Egypt's constitutional history. The Egyptian Constitutions of 1923 and 1956 were praised for their secular nature and for the absence of any reference to religious difference. For example, in writing about the 1923 Constitution, Mervat Hatem maintains that the absence of any reference to religious distinctions in the constitution meant that religion did not make a difference in the exercise of the new rights of citizenship. Sameness, not difference, Hatem argues, "was to be a central concept in the discussion of the unity of the nation."[65] According to Hatem, "this suggested that religious matters were to be treated as spiritual matters that had no impact on the definition of the political rights in the homeland."[66] For S. S. Hasan, the constitution did not specifically mention the Copts because Egyptian nationalists had wanted to apply the French homogenizing model of national integration.[67]

Hatem's interpretation reflects the narrative that this historical period was a secular one that facilitated the integration of Copts and Muslims into the Egyptian state. However, the absence of language focused on religion and Islam does not mean that religion was necessarily relegated to the private sphere. It simply points to the fact that no need was felt to make a constitutional commitment to religion. Armando Salvatore argues that the idea of an opposition between the secular and the Islamic was only just developing at this time. It was only in the 1920s and 1930s that public discourse reflected an increasing need to distinguish the Islamic from the non-Islamic.[68]

Mervat Hatem points out that, despite the secular nature of the Wafd party's discourse, it still assumed that Islam would form an intrinsic part of Egyptian culture and encouraged the Copts to adopt this legacy as part of their national identity.[69] In addition, Sebastian Elsässer illustrates that the Egyptian nation at this time consisted of a conception of two—possibly three—religious communities living alongside one another. He argues that the mantra "Long live [the unity of] crescent and cross" served as the tenet of Egyptian nationalism and was expressed in a discourse of national unity. He maintains that religious symbols, references, and networks remained highly significant and that popular support "was often mobilized through religious or communal networks and expressed in a religious idiom."[70] This religious patriotism emphasized that national identity should remain connected to religious identity.[71]

Article 2 of the 1971 Constitution, which states that "the principles of Islamic jurisprudence are the main source of legislation," made a much more explicit commitment to the Egyptian state's Islamic character. Many argued that Article 2 symbolized the end of the secular democratic state in Egypt, the end of national bonds, and linked this with a rapid increase in sectarian conflict. Yet the promulgation of Article 2 in the 1971 Constitution is also reflective of the point at which the question of the state's secular or Islamic nature had become much more dominant in political discourse. Nevertheless, Article 2 introduced a specific commitment to the idea that state law could not contravene the sharia. What that commitment would mean in practice was—as we have seen—unclear.

When Article 2 was first promulgated, the Coptic pope Shenouda III (1921–2012) objected. Despite protests against Article 2 in the 1970s, many Copts have tempered their views as Article 2 has become more and more entrenched as a defining feature of the relationship between state and society. While there are common assumptions that the Copts would want a secular state and would therefore be opposed to Article 2, a constitutional commitment to the sharia has strengthened the claim that Copts should have

their own personal status law. A number of Coptic writers have taken this position. Dr. Milak Tamir Mikha'il, a lawyer and writer on Egyptian law, contends that the church's ability to exercise its judicial competence in personal status law derives from Article 2 of the constitution.[72] Likewise, Dr. Nabil Luqa Bibawi, a Coptic author and vice-chairman of the Shura Council Information and Culture Committee, maintains that it is the sharia that gives non-Muslims the right to follow their own personal status law.[73]

That attitudes towards Islamic law among Copts are more ambiguous than is commonly assumed was manifest during the debate about the amendment of Article 2 of the 1971 Constitution that took place in 2005–7. While a number of secular Copts—and some secular Muslims—opposed Article 2, others called for amending Article 2 and giving Christianity a firmer platform in statements about the cultural identity of the state. Some suggested that such an amendment should take into account the fact that Egypt is a multireligious country, for example, by inserting a reference to Christians and Christianity as partners in the Egyptian homeland.[74] Amin Iskandar, a Coptic intellectual and political analyst, argues that Article 2 is logical since the majority of the Egyptian people are Muslim.[75] Pope Shenouda III, despite having opposed the introduction of Article 2 in 1980, took the position that "if rightly applied, all laws and articles are for the good of the people."[76] In early 2007, he rejected calls by Coptic expatriates for Article 2 to be removed and pointed to the danger of amending it.[77] While such a position can be partly explained by a reluctance to offend Muslims, the Coptic Orthodox Church has taken an ambiguous position on Article 2 precisely because the principle of legal pluralism within Islamic sharia supports the right for Christians to have autonomy over their own personal status law.[78]

Article 3 of the 2012 Constitution did make a constitutional commitment to a level of judicial autonomy for Jews and Christians. However, this only applied to the divinely revealed religions and not to non-Muslims as a whole. Article 3 stated that "the principles of the religious laws of Christian and Jewish Egyptians are the main source for the legal regulation of their personal status affairs, their religious affairs, and for the nomination of their religious leaders."[79] Another article, Article 43 of the 2012 Constitution, stated that "freedom of belief is protected. The state ensures the freedom to practice religious rites and to establish places of worship for the divinely revealed religions, as regulated by law."[80]

Articles 3 and 43 constitutionally enshrined the rights of Jews and Christians to follow their own personal status law. While it was the first time for such a constitutional declaration, it had long been established in law and practice. Article 46 of the 1971 Constitution had stated that "the state shall

guarantee the freedom of belief and the freedom of practice of religious rites," but was limited in law and practice to the divinely revealed religions.[81] For example, in December 2006, the Supreme Administrative Court argued that the interpretation of Article 46 of the 1971 Constitution on the freedom to practice religious rites applies to the three divine religions only. While it affirmed freedom of belief, it distinguished belief from practice and denied freedom of practice to those religions that were seen as "a violation of public order and contrary to morality."[82]

While establishing the right of Jews and Christians to have their own personal status law, Articles 3 and 43 also constitutionally enshrined the principle of the divinely revealed religions as forming a key part of the relationship between religion and the state in Egypt. Such judicial autonomy was granted because Jews and Christians belonged to religions that were deemed legitimate based on the concept of the People of the Book. The relationship between these two clauses and Article 2 is particularly interesting, since these articles removed the question of the divinely revealed religions from the status of potential Islamic law provisions which the Supreme Constitutional Court might or might not apply to future legislation, and made religious freedom for divinely revealed religions a positive, state centered law. Article 3 removed the question of the divinely revealed religions within the sharia from the area of law over which the Supreme Constitutional Court had latitude of interpretation. Article 3 effectively established the concept of the divinely revealed religions—and the link between this concept and judicial autonomy—as part of constitutional law and thus made it difficult to alter.

Article 3, according to Paul Sedra, was presented by members of the Constituent Assembly as a concession "to the sensibilities of the Coptic community."[83] The three main Christian denominations in Egypt (the Coptic Orthodox Church, the Coptic Catholic Church, and the Coptic Evangelical Church) welcomed the article.[84] It represented the first time that the Egyptian Constitution had recognized the existence of other religions in Egypt. Article 3 gave Jews and Christians the formal recognition of the state. It also helped to alleviate fears that Islamists wished to impose the sharia upon them, since the article facilitated the control of the Coptic Orthodox Church over the Coptic community.

However, a number of Coptic groups and activists have opposed the fact that Article 3 increased the authority of the church over Copts. Such an increase in the church's authority at the expense of the laity can be traced back to Nasser, who weakened the Coptic laity by removing the religious endowments from the authority of the Coptic Orthodox Council and

assigning them to the Coptic Orthodox Church. The nationalization of the courts in 1955 also removed one of the council's sources of power.[85] Sedra has criticized "the disproportionate attention afforded to the Coptic Orthodox Church as the purported representative of the community," which, he argues, has obscured "the vitally important intra-communal dynamics of the Copts."[86]

The Coptic intellectual Samir Marcos, for example, has long been a critic of the authority of the church over the Coptic people. Marcos argues that it is the very social conservatism focused around personal status law that is impeding the development of citizenship for Copts. The church's approach, he argues, is part of the problem. Marcos argues that you cannot behave as citizens while behaving as a religious community. The concept of citizenship transcends the notions of sect or religious community.[87] Samir Marcos and Vivian Fouad argue that the concept of citizenship "means surpassing the ideas of sect, denomination or *dhema*, where the nation absorbs all this." Citizenship, they contend, "also surpasses the idea of minorities."[88] They assert that those "who try to defend the rights of Copts on the basis of minority rights . . . and who see Copts as one homogenous block" are going against the concept of citizenship.[89]

These intracommunal fractures can be seen in the fact that many Copts participated in the uprisings of January 2011, despite the fact that the Coptic Orthodox Church had voiced its opposition to the involvement of Copts in the revolution. Such Copts participated in the revolution "first and foremost as Egyptians," Mariz Tadros argues, in spite of the opposition of the church.[90] The Maspero Youth Union, formed during the Arab Spring, challenged the church as the political representative of the Copts. It came out in opposition to Article 3 since it wanted to have a constitution based on citizenship that downplayed religious identity. Copts who have opposed the authority of the church do not simply constitute the secular laity. Angie Heo has pointed to the development of pious insiders who were raised and educated from "within the Coptic Church itself—as priests, deacons, and lay servants"—and have emerged as critics against the intervention of the church in politics.[91]

Organizations such as Right to Life (*al-Haqq fi al-hayat*) and Copts 38 have been campaigning against the Coptic Orthodox Church's control of personal status law. Since 2008 the Coptic Orthodox Church has limited the grounds upon which Copts can divorce and remarry.[92] Article 3 has served to formalize and enable such limitations. Such restrictions on divorce are likely to be further entrenched when the new unified Christian personal status law, which seems imminent at the time of writing, is passed. Such groups

question the hold that the church has over the Christian community. They have appealed to the law of the centralized state to allow them to divorce and remarry. These networks of Christians have protested in front of the Ministry of Justice as well as in the Coptic Orthodox Cathedral. They have also petitioned to the courts for their rights.[93]

Paul Rowe has argued that "the neo-millet partnership between church and state is gradually eroding in the face of Coptic participation in the broader scope of Egyptian politics."[94] However, secular Copts did not emerge as prominent in either drafting the Constitution of 2012 or the Constitution of 2014. Indeed, the level of support the church has among the Coptic populace for its approach to personal status law can be shown by Youssef Sidhom, who is the editor of the Coptic newspaper *Watani* and son of the newspaper's founder, Anton Sidhom. He mentions Article 3—along with Article 63—as one of the inalienable articles that secure a modern, civil Egypt of tomorrow.[95]

Article 3 was frequently portrayed as pointing to the Islamization of the state. There are clearly parallels between limiting religious tolerance to People of the Book in some schools of premodern jurisprudence and a current constitutional article that only gives formal recognition to Judaism and Christianity. Certainly, the religious autonomy of religious communities— as opposed to religious individuals—and the fact that autonomy is given to the divinely revealed religions indicates that the article is theologically and judicially informed by the sharia. Modern Islamist literature is infused with the bond between Muslims and People of the Book. There are calls for the "freedom of establishing religious rites for all the known heavenly religions" and it is emphasized that Muslims are religiously compelled to have close relations with People of the Book.[96] Such views have had considerable influence over certain factions of the Muslim Brotherhood. One of the mechanisms by which the Muslim Brotherhood distanced itself from radical groups in the decade or so leading up to the revolution was through its rhetoric about Egypt's Copts, which included its advocacy of the concept of citizenship and its emphasis on the concept of the divinely revealed religions.[97]

The Muslim Brotherhood continued to see unity between Muslims and People of the Book as integral to the Egyptian state and to nation building during the revolution. For example, in 2011, the Freedom and Justice Party Platform stated that "we believe that it is necessary to support the role of the Egyptian church to safeguard the morals and values of our society and thus to confront the surge in moral and intellectual invasion, which is directed at Egyptian, Arabic and Islamic society. We should also support the values of

social and familial cohesion and of national unity."[98] One of the means by which this should be done is through dialogue between the Egyptian church and al-Azhar. It also states that the Muslim Brotherhood would support the role of the church as a leader for Christians in the East.[99]

Yet a commitment to the divinely revealed religions cannot simply be seen in terms of a revival of the sharia. Such an approach would efface the precise implications that the concept of the divinely revealed religions has when it is applied as the positive law of the state. While the concept of the People of the Book had legal and social ramifications in the premodern Islamic order, such ramifications existed within a context in which the relationship between the sharia and state law was much more fluid. In premodern Islamic jurisprudence, the four schools of law took different positions on whether members of communities that were not of the divinely revealed religions could be tolerated. The exclusion of Baha'is as a group from being publicly recognized represents the fact that one among a number of options for addressing this question has been chosen and now has the backing of state law.

In addition, according religious tolerance to the People of the Book in premodern jurisprudence did not equate with a positive endorsement of a particular minority by the modern nation state. Copts themselves were not officially recognized by the Ottoman sultan with a millet partnership until the late nineteenth century. Article 3, however, does not simply establish the principle of religious tolerance for Jews and Christians but rather positively endorses this identity, while positively marginalizing others. In making a constitutional commitment to the concept of the divinely revealed religions, it has turned it into a national cultural concept. The nationalization of the divinely revealed religions is connected to the sharia but it is also connected to the state's need to articulate a national culture.

The Baha'is

Article 3 of the 2012 Constitution was criticized for explicitly excluding religions other than Islam, Judaism, and Christianity. The article does indeed do this, although the specific limitations on the rights of religions that are not seen as divinely revealed would only come into effect with the passing of particular laws limiting those rights. The implications for the Baha'i religion in Egypt illustrate how the concept of the divinely revealed religions works in contemporary Egypt. While Baha'is are relatively small in number, the question of their legal status speaks to broader questions about legal status and religion in contemporary Egypt. By looking at the history of Baha'is

in Egypt, this section shows how the concept of the heavenly religions has become integral to how Egyptian citizenship is experienced.

The presence of Baha'is in Egypt dates from the late nineteenth century, possibly as early as the 1860s when Iranian Baha'is began establishing themselves in Alexandria and Cairo. The Baha'is gained their first Egyptian converts by 1896, when the Baha'i al-Gulpayagani (1844–1914) took up a post at al-Azhar, and, by concealing his faith, established himself as an important scholar there while converting a number of teachers and students to Baha'ism.[100] The legal status of Baha'is in Egypt is complex, and as Johanna Pink illustrates, is a product of the interaction between the sharia and state jurisdiction. Pink points out that because the Baha'i faith is post-Qur'anic, the sharia has no precedents for how to address it as a religion.[101]

The Baha'i faith—with its emphasis on the notion of continuing prophecy and a continuing revelation—constitutes a denial that the Qur'an is the final revelation and Muhammad is the seal of the prophets. For many, it poses a theological challenge to Islam. This was clearly expressed in the Egyptian fatwas on the Baha'is that date from about 1910, which is when Baha'is in Egypt gained widespread publicity. Egyptian fatwas on the Baha'is argued that the faith of the Baha'is constitutes unbelief (*kufr*) so that Muslims who embrace it are apostates.[102] However, Juan Cole illustrates that Muhammad 'Abduh (1849–1905) and Rashid Rida (1865–1935) disagreed about the Baha'i faith. 'Abduh viewed Baha'is as a creative minority which was striving to modernize Shi'ite Islam and whose ideas were relevant to Islamic reform in general. However, Rida saw Baha'ism as a pernicious threat to Sunni Islam.[103]

The fatwas that declared the Baha'i faith to be unbelief mostly focused on the status of Baha'is as individuals from the perspective of the sharia. They tended to concentrate on the sharia rules for apostasy and the implications that their state of apostasy would have for personal status law.[104] One example is the fatwa of Jadd al-Haqq 'Ali Jadd al-Haqq, the former shaykh of al-Azhar (from 1982 to 1996) on the question of whether a Baha'i's marriage to a Muslim woman is valid or not. Jadd al-Haqq states that Baha'is are not Muslims, "the Baha'i faith is not an Islamic faith," and "whoever joins the faith is no longer a Muslim and becomes an apostate from the religion of Islam."[105] He also argues that many jurists agree on the necessity of killing the apostate if he insists upon his apostasy. He affirms that the apostate's marriage is no longer valid (*batilan*) and if he was married to a Muslim woman or a non-Muslim woman then the sexual relations between them would be considered unlawful (*zina*).[106] Jadd al-Haqq focused on the fact that Baha'ism has altered a number of the key articles of the Islamic faith—such as the concept that Muhammad is the seal of the prophets—and

changed a number of its laws. He did not address the question of Baha'is of non-Muslim descent who cannot be considered apostates other than stating that Baha'ism is a "faith that is made of a mixture of the following religions: Buddhism, Brahmanism, Paganism, Zoroastrianism, Judaism, Christianity, and Islam, and esoteric beliefs."[107]

Jadd al-Haqq's fatwa is typical of such Egyptian fatwas on the Baha'i question, which, according to Johanna Pink, have focused on the status of the individual as opposed to that of the religious group as a whole.[108] This reluctance to address the status of the group as a whole was also due to the fact that muftis were confronted with new questions relating to the relationship between the sharia and state jurisdiction and how certain more ethical or theological sensibilities, such as the concept of the People of the Book, could be translated into state jurisdiction. It appears to be the case to this day that muftis and jurists—and some Muslim Brotherhood members—tend to avoid this question. For example, Muhammad Habib, who was deputy supreme guide of the Muslim Brotherhood in 2007, argues that Baha'is clash with the public order and that the ulama consider them to be apostates. However, he argues that there is no actual law in the sharia that needs to be put into effect in this regard.[109]

Egyptian state law initially used the designation of apostasy as grounds for allowing Baha'ism to be a different—and possibly officially recognized—faith. Before 1952, Egyptian law provided a greater level of religious freedom and the ability to organize communally for Baha'is. An important event enabled this. In 1923 civil unrest broke out in Beni Suef in Upper Egypt, when village inhabitants demanded that the wives of three Baha'i residents be divorced from them on the grounds that their husbands had abandoned Islam. In 1925 the Appellate Religious Court of Beba, a province of Beni Suef, contended that "the Bahá'í Faith is a new religion, entirely independent, with beliefs, principles and laws of its own, which differ from, and are utterly in conflict with, the beliefs, principles and laws of Islám."[110] The court ordered the dissolution of the marriage contracts of the parties on trial.[111] It thus ruled that the Baha'i faith was a distinct religion, which implied that the Baha'is concerned had apostatized from Islam.

Shoghi Effendi (1897–1957), the great grandson of Baha'u'llah, the founder of Baha'ism, saw the ruling as a positive one, and a move away from stigmatizing the faith as an offshoot of Islam. For Effendi, the ruling meant that Baha'is could seek recognition from the government for the independence of Baha'ism. For him, it facilitated negotiations between the representatives of the Baha'i community and the Egyptian civil authorities regarding obtaining such official recognition.[112] The *Baha'i News*, a monthly magazine

that started in 1924 to give updates on news and events in the worldwide Baha'i community, provides insight into the possibilities that lay before the Egyptian Baha'i community during the interwar period. The *Baha'i News* reports that the first Baha'i National Spiritual Assembly (NAS) was legally recognized by the government in 1936.[113] In the mid-1920s the Baha'is in Egypt established a printing house.[114] In the mid-1940s, Baha'is were also able to build their own meeting place, the Hazirat al-Quds in 'Abbasiyya, which included an assembly hall, library, and meeting rooms.[115]

In 1939, at the request of the Ministry of Justice, the mufti of Egypt issued a fatwa that Shoghi Effendi felt strengthened the claim that the faith was an independent one. In its inquiry, the Ministry of Justice asked for a pronouncement regarding a petition put forth by the Egyptian Baha'i community to the Egyptian government for the allocation of four plots to serve as cemeteries for the Baha'i communities of Cairo, Alexandria, Port Said, and Ismailiyya. In his reply, the mufti stated that the community is not to be regarded as Muslim and whoever "among its members had formerly been a Muslim has, by virtue of his belief in the pretensions of this community, renounced Islám, and is regarded as beyond its pale, and is subject to the laws governing apostasy." Since this community is not Muslim, he argued, "it would be unlawful to bury its dead in Muslim cemeteries."[116] As a result of this fatwa, two Baha'i cemeteries, one in Cairo and the other in Ismailiyya, were established.[117]

Baha'is also formulated their own personal status law covering marriage, divorce, inheritance, and burial and presented these laws to the Egyptian Cabinet. These personal status laws were included in the Ministry of Justice's request for the fatwa from the mufti about Baha'ism. The mufti declared that the Baha'i laws relating to personal status were evidence that Baha'ism should be considered a separate religion. During the 1940s, the Baha'i Egyptian National Spiritual Assembly was able to assume most of the duties and responsibilities connected with the conduct of Baha'i marriages and divorces, as well as burial of the dead.[118] Efforts were also made to have Baha'i marriage contracts legally recognized.[119] During that time, Baha'is were able to register themselves as Baha'is in state documents.

In the 1940s, Baha'is presented a petition to the Egyptian government requesting that they be recognized as a separate milla, "as a body qualified to exercise the functions of an independent court and empowered to apply, in all matters affecting their personal status, the laws and ordinances revealed by the Author of their Faith."[120] In 1944 Effendi wrote that he believed it would "eventually lead to the establishment of that Faith on a basis of absolute equality with its sister religions in that land."[121]

In 1945 the *Baha'i News* reported that regular meetings had "the official sanction and approval of the local authorities who have become convinced, as a result of attending some Bahá'í meetings, and reading Bahá'í literature that the followers of Bahá'u'lláh do not meddle in politics and are faithful and obedient subjects of their government wherever they live."[122] In June 1945, the *Baha'i News* reported that they are "very happy that . . . their Faith stands recognized as an independent religion with its own laws and institutions."[123]

This, of course, is not to deny that there were intermittent periods in which Baha'is experienced repression and persecution.[124] Yet, even in 1952, the climate was such that Shoghi Effendi reported that members of the Egyptian Baha'i community were engaged in missionary work.[125] In the same year, the Egyptian State Council argued that every citizen has the right to adhere to the Baha'i faith or even to be an apostate. It stated that the application of the sharia laws for apostasy were not applicable and "thus the registration offices are required to examine all marriage contracts submitted to them, even if they concern Baha'is" although it left the question of the validity of such marriages open.[126] While the petition for recognition as a milla was ultimately unsuccessful, the very act of petitioning for such recognition illustrated that Baha'is were not seen as antithetical to Egyptian nationalism in the same way that they are now.

It is with the independence of the Egyptian nation state and the further consolidation of the state and nation building process that one can identify increased restrictions on Baha'is and, notably, the increased use of the idea that the Baha'is are apostates to frame Baha'is as heterodox. This is often seen as the result of the increasing influence of Islam. However, it must also be viewed as a consequence of the state's centralization of personal status law courts. The nationalization of the personal status courts, which came out of the state's desire to consolidate its legal sovereignty, meant that the concern with what religions the state recognizes and what religions it does not recognize became more important. In 1955 the sharia and communal courts were nationalized under Law No. 462. The personal status law of all Egyptians was to be governed by the sharia, while the exception allowed for non-Muslims to be governed by their own personal status laws with the condition that such laws should fall within the limits of public order ("al-nizam al-'amm").[127] In 1979, the Court of Cassation confirmed that personal status law was governed by national law, which was informed by Islamic law, and Coptic Christian family law was only granted as an exemption.[128] The granting of an exemption had to conform with conceptions of public order, so that tolerance was not granted in the sense of simply being

allowed to happen, but a level of positive endorsement had to be given to the group being granted the exemption. The state's centralization of personal status law courts therefore made the question of state recognition of Baha'ism more pressing. The idea of being exempt from national law became much more inextricably linked with the notion of national identity and national recognition. There must, it implied, be compelling enough reasons to exempt a community from national law.

Starting in the late 1950s, the concept of public order was increasingly invoked to argue for the lack of public representation and state recognition of Baha'ism as a separate religion. This was facilitated by Islamic writings that stated Baha'ism was a form of apostasy, but the implications of such apostasy took on a new form. This was because treating Baha'ism collectively as an aberration departed from the sharia provisions which relate to the question of apostasy of the individual of Muslim descent.

The move to restrict the presence of Baha'is in the public sphere came in the context of the newly independent Egypt and was brought about by the seemingly secular nationalist politics of President Gamal ʿAbd al-Nasser (r. 1956–70). In 1957 Baha'i marriage contracts were declared invalid, as marriage contracts are valid only if both parties belong to a religious community recognized by the state.[129] Most notably, in 1959, in relation to a case of immigration, the administrative court in the State Council argued that the Baha'i faith constitutes apostasy and that an apostate, significantly, "may not become part of the Egyptian people."[130]

This trend toward the exclusion of Baha'is from the Egyptian public sphere culminated in Law No. 263 in 1960. It was preceded in 1959 by Nasser's issuance of a presidential decree that banned Jehovah's Witnesses because they were seen as supporters of Zionism. The Baha'is were also viewed as being agents of Israel and other foreign powers.[131] In 1960 Nasser issued Law No. 263 banning Baha'ism, and consequently, the communal properties of Baha'is were confiscated, including their libraries and cemeteries. Their temples were shut down and their historical records were destroyed. Since then, Baha'is have met in houses and have organized themselves informally.[132] The Baha'i cemetery in Cairo is the only collective property that was not confiscated in 1960 and, to this day, Baha'is are allowed to bury their dead there.[133]

Nasser's reasons for turning against Baha'ism seem to have been related to anti-Zionist sentiment. They were also due to the particular structure of personal status laws and the fact that the question of which religions were deemed legitimate and which were not became more important. Yet such moves were enabled in many respects since they resonated with Islamic

theological sensibilities and could draw on Ottoman conceptions of hetero-doxy. This can be seen in further legal cases that upheld Law No. 263. In 1971 the Egyptian constitution specified that "the state shall guarantee freedom of belief and the freedom to practice religious rites" (Article 46), but in 1975 the Supreme Court upheld protections only for the three divinely revealed religions.[134] In 2006 the Supreme Administrative Court affirmed previous rulings and confirmed that Baha'ism goes against the heavenly revealed religions, followers of it are apostates, and any recognition of it would be a "violation of the established order of the state."[135]

However, the version of the sharia enabling this legislation to be consolidated was a distilled one that was utilized to make a firm distinction between divinely revealed and non-divinely revealed religions. Such a distinction had not been made explicit by the Ottomans even though it had antecedents in the concept of apostasy.[136] The turn against Baha'ism thus also occurred in part because the state recognition of legitimate and illegitimate religions became more pressing during the project of state centralization and consolidation. This in many respects was distinct from periods of Islamic history in which certain religious communities were tolerated without being officially recognized. Yet such a dynamic between minorities and the state had precursors in the Ottoman Empire, although at that time official recognition did not include the same official endorsement in the sense that those being officially recognized constituted a part of national culture. In this new context, toleration, in the sense of judicial autonomy, could only be granted to those who were officially recognized, and official recognition had to support Egyptian nationalism.

A National Project

In this final section, I show the ways in which the sharia-based commitment to religious freedom and judicial autonomy for Jews and Christians has become nationalized and embraced by a wide array of political actors in Egypt. In some respects, Articles 3 and 64 of the 2012 Constitution, which gave Jews and Christians the right to apply their own personal status law, can be seen as the result of the increasing influence of the sharia. Yet one must also accept that, in translating Islamic legal norms into judicial autonomy for Jews and Christians in contemporary Egypt, the sharia has been recast in the process. Such recasting has resulted in new and more explicit forms of inclusion and exclusion. While the Baha'is have been excluded and have been designated as heterodox, this has been accompanied by greater inclusion for Christians and—theoretically—for Jews.

When I speak of the inclusion of Christians in contemporary Egypt, this is not to deny the vulnerability of Copts. Copts have been subject to confessional violence particularly since the 1970s. The upheaval of the revolutionary events has only led to more violence and more reminders of the fragility of Muslim-Christian relations. In January 2011, for example, a bombing in Alexandria killed twenty-three Copts. The state's failure to protect them resulted in a significant "rupture in relations between Copts and the Mubarak regime."[137] Under the interim rule of the Supreme Council of Armed Forces, Copts who engaged in a sit-in in front of the Maspero Television building, the headquarters of the Egyptian state television, in October 2011 were attacked by the security forces and the army resulting in twenty-four deaths. Sectarian clashes and brutal crackdowns continued under the rule of Muhammad Mursi, and after the coup against Muhammad Mursi in 2013, over forty churches were torched in August 2013 in retaliation for Copts having supported the coup.

Indeed, it is precisely the fragility of Muslim-Christian relations in Egypt that explains the investment in the concept of the divinely revealed religions since the revolution of 2011. The concept is viewed as way of reinforcing this unity in the face of sectarian strife. That the concept of the divinely revealed religions has become a key component of Egyptian nationalism is even clearer when one recognizes that singling out Jews and Christians for recognition and a level of communal autonomy resonated with a broader constituency beyond that of the Islamists. The concept of the divinely revealed religions has come to form a national cultural concept. While this dates back in many ways to the revolution of 1919, as Sebastian Elsässer has shown, it has become particularly emphasized in the post–Arab Spring era.

This can be seen, for example, in a manifesto issued by the Democratic Front, which was a coalition of thirty-four parties including the Labor Party and the Egyptian Arab Socialist Party. The manifesto, issued in the summer of 2011, detailed fundamental guiding principles for the forthcoming constitution. One of these principles was a commitment to the ability of non-Muslims who belong to the divinely revealed religions to apply their own personal status law and oversee their own religious affairs.[138] A similar commitment also appeared in a document issued by al-Azhar after the revolution entitled "Document of al-Azhar on the Future of Egypt."[139]

Such support can be seen in the responses of the Orthodox, Catholic, and Evangelical churches in Egypt to the Constitution of 2012. These denominations jointly issued a document expressing their particular concern with the 2012 Constitution, and presented it to Judge Mahmoud Mekki, who was the vice president of Egypt at the time. However, the Coptic churches did

not express any concern with Article 3. Rather, they expressed some concern with Article 43, which read as follows: "Freedom of belief is *protected*. The state provides for the freedom to practice religious rites and to establish places of worship for the divine religions, as regulated by law." The authors of the document complained that there was "a serious flaw," which, they argued, constituted a "trap" for Egyptians. The trap, they argued, was the clause stating "as regulated by law." This flaw, they argued, "gives rise to suspicions of intentions to pass legislation that would restrict or manipulate the freedom of belief and practice of religious rites."[140] The authors then proposed that Article 43 should be amended to read: "Freedom of belief is *absolute* and freedom to practice religious rites is ensured. The state guarantees the freedom to build places of worship for the heavenly religions as regulated by the law." While the clause "as regulated by law" would be maintained, freedom of belief would be strengthened from being "protected" to "absolute," and freedom to practice religious rites would be "ensured" as opposed to "regulated by law."[141]

In addition, a commitment to the judicial autonomy of the divinely revealed religions appeared in public discourse after the coup against Muhammad Mursi in July 2013. After the Constitution of 2012 was abolished, ʿAdly Mansour, who was head of the Supreme Constitutional Court, issued an Interim Constitutional Declaration, which stated that "the state ensures . . . the freedom to practice the religious rites for the divinely revealed religions (Article 7)."[142] Including a commitment to the heavenly religions represents a strategic move by the judiciary and the military to gain support from the church and assert its support for national unity, while bolstering its Islamic credentials to move against the Muslim Brotherhood.

In the new constitution that was passed in January 2014, Articles 3 and 43 were retained by the differently configured Constituent Assembly. A slightly amended version of Article 43 became Article 64 and states: "Freedom of belief is *absolute*. The freedom to practice religious rites and establish places of worship for the divinely revealed religions is a right as regulated by law." Thus, the Coptic religious leaders' demand for "absolute" instead of "protected" religious freedom was applied although the freedom to practice religious rites remained to be "regulated by law." According to Mona Zulficar, who was in the Constituent Assembly for the 2014 Constitution, the commitment to freedom of belief as absolute "is wonderful, because what we had in the previous constitutions, in the Brotherhood [constitution], we had nothing."[143]

In a partial concession to the problem that the lack of recognition of the nondivinely revealed religions has caused, Article 6 of the 2014 Constitution

did establish the right for everyone to have identity documents. This was in part a way of making up for the bureaucratic quandary that many Baha'is have been in for decades. According to Mona Zulficar, it was her suggestion as a solution to Articles 3 and 64 and "I got it through."[144]

While maintaining Article 3 in the constitution was supported by the Salafis and representatives of al-Azhar, it was also supported by the Coptic churches. In its memorandum released in late July 2013 about the Constitution of 2012, the Coptic Orthodox Church did not seek to abolish Article 3, and Bishop Bola, who was the bishop of Tanta and the church's representative on the Committee of 50, which drafted the 2014 Constitution, requested that it remain as it was.[145] There were some questions as to whether the article should be amended to include the category "non-Muslims." Safwat al-Bayadi, the representative of the Protestant churches in the Constituent Assembly of 2014, stated that initially he supported the insertion of non-Muslims. The Catholic Church also supported this. Yet Bishop Bola affirmed the importance of the article remaining as it was.[146] Al-Bayadi maintains that, in the end, it was wise to keep it as it is "as it would not be good to upset the religious elements in society who look to the Azhar and Salafi scholars."[147] Bishop Bola stated that "we have written a constitution that takes into account all Egyptians" and that was completed by consensus. The problems facing Baha'is, he argues, can "only be dealt with through better public awareness, education, and acceptance of the other."[148] Indeed, there were some reports that suggested some Christians, along with al-Azhar and Salafis, responded with anger to the suggestion that it be amended to read non-Muslims.[149] Mona Zulficar stated that al-Azhar and the Coptic denominations opposed amending the article and said that those who do not believe in the three divinely revealed religions "can pray in their homes or their hotel rooms."[150]

While the Constitution of 2012 had mentioned the Coptic Church as the national church in its preamble and noted its pharaonic heritage, Article 50 of the 2014 Constitution made a firmer recognition of the diversity of Egypt's cultural heritage, stating that Egypt's national heritage is based on the ancient Egyptian, Coptic, Islamic, and modern periods and that the state commits to protect and maintain this heritage. Any attack upon such heritage is a crime punishable by law.[151] In this sense, it outdid the Constitution of 2012 in fostering respect for the divinely revealed religions.

In addition, the 2014 Egyptian Constitution also went further in recognizing the communal rights of Copts in a way that reaffirms the concept of the divinely revealed religions. Under a section entitled "transitional provisions," Article 235 made a commitment to a new law to regulate the construction

and renovation of churches "in a manner that ensures that Christians are able to freely practice their religious rites."[152] The opening of a new Coptic cathedral outside of Cairo in January 2019 is a direct result of this, and marks a break with the 1915 declaration that the Ottoman Khatti Humayun Decree of 1856, which included restrictions on building churches. Also under transitional provisions, Article 244, marking a reversal of the 1923 decision not to include quotas for Christians, states that "the state shall work to ensure appropriate representation for Christians, people with disabilities, and Egyptians residing abroad in the first House of Representatives that is elected after the confirmation of this constitution. This is as regulated by the law."[153] Positive discrimination for Copts, women, and youth was one of the conditions that the Coptic Orthodox Church set for its participation in the Constituent Assembly.[154] Thus, the Constitution of 2014 has taken the concept of the divinely revealed religions further and has entrenched the idea that Copts are a community with communal rights—in some areas—superseding individual rights.

The church's position on Article 3 is perhaps difficult to understand if the concept of the divinely revealed religions is understood as resulting from the implementation of the sharia and the Islamization of the state. It could be argued that Copts, feeling hemmed in by the continued existence of Article 2, saw Article 3 as a way of strengthening their rights. However, the explanation for the church's support for Article 3 also lies in the fact that the church had a great deal to gain in retaining these articles. The Coptic Church's political and social roles, had, since the time of Nasser, been strengthened so that the church emerged from Sadat's period as the effective political representative of the Copts. Article 3 reinforces the idea that Egypt is made up of religious communities as opposed to self-governing religiously unaffiliated individuals. It also indirectly leads to the restriction of Christian citizens' right to marry and divorce, since it reinforces the church's stance that it should be allowed to control the divorce and remarriage of Coptic Christians. The maintenance of separate personal status law for Copts ties individual Copts to Christianity and to the church since the church will be the institution that will make fundamental decisions about marriage and divorce. It reinforces the control of the church over the Coptic community and thus reinforces religious differences. Paul Sedra argues that Article 3 will have an important impact on the balance of power within the Coptic community and upon its political development.[155] Here, the reason Bishop Jeremiah, head of the Coptic Orthodox Cultural Centre in Cairo, gave for resisting the insertion of non-Muslims into Article 3 is instructive. Such an insertion, he argued, would hurt both Muslims and Christians since "Christians would not be protected

from the requests of Jehovah's Witnesses and other denominations that are not recognized by the churches."[156] The only way to ensure the interests of the nation, he argued, is to "tighten religious liberties."[157] This corresponds with the position of the Coptic Orthodox Church, which is that Jehovah's Witnesses are heretical.[158]

In Egypt, the constitutional commitment to Judaism and Christianity that was enshrined in the Constitutions of 2012 and 2014 indicates that the concept of the heavenly religions has become nationalized. The notion of judicial autonomy for non-Muslims has its origins in the legal pluralism of the premodern Islamic order and in the sharia. However, while it is tempting to see this judicial autonomy for Jews and Christians in terms of the reincarnation of sharia norms and therefore as Islamist, it has become a national cultural concept that is shared by multiple political parties. While Islamists and al-Azhar supported Article 3, the Copts, the military, and the secular elite also supported such a statement, showing that the concept of the divinely revealed religions has become central to the articulation of Egyptian nationalism. In fact, they took the commitment to the communal rights of Copts further. The concept of the divinely revealed religions is something that different groups could coalesce around and, in so doing, outdo the Islamists in their commitment to—and respect for—Christianity. It therefore aligned with the interests of a number of parties who wished to marginalize the Muslim Brotherhood. The fact that the particular hostility toward Baha'is dates to the 1960s and Gamal ʿAbd al-Nasser shows how important the national unity between Muslims and Christians has been for Egyptian nation building. The move to restrict the recognition of Baha'is in the public sphere has coincided with the consolidation and centralization of the Egyptian state after 1952. The concept of the heavenly religions and the exclusion of the Baha'is continues on from premodern Islamic law and Ottoman forms, but takes on new forms in the context of Egyptian nation building.

While the exclusion of Baha'is is in part a product of what modern states do, as Mahmood has shown, the concept of the divinely revealed religions and the exclusion and inclusion that such a concept implies cannot solely be seen as a product of secular power. The question of official recognition, inclusion, and exclusion is a continuous one that operates in different historical contexts and operated at various moments in the Ottoman Empire. Here, it is again useful to think in terms of Emon's concept of the mutually reinforcing relationship between law and governance, by which certain ideas in the sharia gain traction at certain moments while others do not. It is the idea of unity between Christianity and Islam that has particular traction—in part

because it has served a form of nationalism that has been used to exclude some Islamists—just as Islamic heterodoxy was so important in the later Ottoman period.

In addition, the concept of the heavenly religions cannot solely be linked to an increase in interreligious tension. It has resulted in exclusion for some and greater levels of state recognition and inclusion for others. The concept should therefore be seen as constituting the opening up of some opportunities and the closing off of others. Certainly, the codification of the right of Christians to have their own personal status law has formalized the boundaries between Muslims and Christians and other religious communities such as the Baha'is. Article 3 represents the state's commitment to the fact that some religious commitments are considered socially acceptable and others are not. It also represents the state's commitment to the idea that the divinely revealed religions is a concept that groups can rally around. Religious commitments that are considered acceptable have been brought into the fold of Egyptian national identity while those that are not considered acceptable have been excluded from the Egyptian national identity. While this has contributed to exclusion, it has also opened up the opportunity for Egyptian Christians to assert an increased, more formalized, and more exclusive level of judicial autonomy, albeit one that is centered on the church. As will be shown in chapter 7, the increased official recognition of Christianity through Article 3 has opened up the possibility for the Coptic Church and other Copts to assert greater communal autonomy.

To say that the concept of the divinely revealed religions is a key part of Egyptian nationalism today is not to deny that Copts are subject to levels of tension, discrimination, and violence. However, to say that unity between Christians and Muslims is a key part of Egyptian nationalism is to say that the concept, in terms of the national narratives that accompany it, serves a particular purpose now. The concept of the divinely revealed religions served the needs of the Egyptian nation state during the aborted revolutionary process.