Chapter 7

Judicial Autonomy and Inheritance

In 2011 Youssef Sidhom, editor of the Coptic newspaper *Watani*, wrote an article entitled "Eating Up a Woman's Inheritance." In it he stated that one of the "ugliest" issues faced by Egyptian women related to inheritance. Egyptian women, he asserted, face a double injustice. One injustice is that they are discriminated against in Islamic inheritance law, in which female heirs often receive half that of corresponding male heirs. The second injustice, Sidhom argues, is that many women are swindled out of the legacies that Islamic inheritance law gives them by male members of their family seeking to lessen the fragmentation of estates.[1] Since Islamic inheritance law in Egypt constitutes national law and is applied to Muslims and Christians, Sidhom calls for reopening the question of inheritance law and for Copts to be able to apply their own Christian inheritance law.

In Egypt, Islamic inheritance law constitutes national law. It is applicable for Muslims and has been applicable for Coptic Christians since the 1940s. The 1940s stipulation that Islamic inheritance law would apply to Copts was part of the new Egyptian state's efforts to create a single juridical jurisdiction. In so doing, it strengthened the new state's monopoly on legal authority and marked the encroachment of the sharia upon non-Muslim judicial autonomy.

In chapter 5, I argued that Article 3 of the 2012 and 2014 Constitutions illustrates that the concept of the divinely revealed religions has become

nationalized. The concept of the heavenly religions has, on a legal and rhetorical level, created a stronger tie between Christianity and Islam in Egyptian nationalism. In this chapter, I argue that the promulgation of Article 3 has had, to use the words of Tamir Moustafa, a "radiating effect." It has opened up the possibility for renegotiating the nature and extent of the judicial autonomy of non-Muslims and therefore of revisiting the question of inheritance law. While Article 3 of the 2014 Constitution grants Jews and Christians the right to apply their own personal status law, what areas of law personal status law includes is not specified. In strengthening the grounds upon which Jews and Christians can be exempt from national law, Article 3 makes it possible for further negotiations to take place between Copts and the Egyptian state about the extent and nature of this exemption. Article 3 has empowered some Christians to seek to widen the area of personal status law over which they have jurisdiction to include inheritance.

Such a petition to widen the area over which non-Muslims have judicial autonomy might be seen as a revival of the millet system, as some have argued.[2] The nature and extent of the judicial autonomy of non-Muslims was always subject to negotiation between communities and the ruling polity. This happened in the Ottoman Empire, where the relationship between state law and the judicial autonomy of non-Muslim communities was fluid. The case of inheritance was particularly characterized by such changeability.

Yet, rather than seeing the petition to widen Christian personal status law as a reintroduction of the millet, I show the precise dynamics that are taking place in modern Egypt regarding the granting of judicial autonomy and legal pluralism to non-Muslims. Reaching back into Ottoman and pre-Ottoman history and comparing these periods with the ways in which Copts are petitioning for their personal status law to include inheritance law almost a decade on from the revolution of 2011, I show the continuities and discontinuities between premodern communal law and communal law in modern Egypt. I argue that the petitioning for personal status law to include inheritance does not constitute a revival of the millet system of governance under the Ottomans, although it does resonate with certain aspects of it.

In fact, the judicial autonomy of non-Muslims in contemporary Egypt involves a particular dynamic in which non-Muslims are free to apply their own law only by way of exemption from national law. The granting of an exemption is contingent on three conditions. First, an exemption from national law is predicated on the national recognition of the community that is being exempted. A community has to be officially recognized before it can be granted the exemption. In the case of Copts, such recognition is contingent on national unity narratives that emphasize the concept of the divinely revealed religions, which forms a key component of Egyptian nationalism.

Second, the granting of judicial autonomy is conditional on that area of law over which non-Muslims are to be given autonomy not contravening the public order. In Egypt, the judiciary's increasing concern with public order since the early twentieth century reflects the importance it attaches to a unitary public sphere. In Egyptian law, Islamic inheritance law for all Egyptians has been linked to public order and to the "feelings" of the Egyptian people. The granting of a separate inheritance law for Christians has the potential to produce further fractures in this aspired-for unitary public sphere.

Third, the granting of an exemption is contingent on defining the status—and its relationship with religion—of the act, law, or idea that is to be granted the exemption. This raises difficult questions about what a religious norm is, how essential that religious norm is, and whether that religious norm is important enough to be deemed worthy of an exemption. In the case of inheritance, negotiating a dispensation from national law involves Copts drawing on biblical texts and practices in the history of Coptic communal law to make the case that gender equality is an essential principle of Christianity. In so doing, Christianity in Egypt is being rearticulated and disciplined through modern conceptions of religion and gender.

To illustrate what is involved in the negotiation over the extent and nature of non-Muslim judicial autonomy in contemporary Egypt, I start by discussing the nature of this negotiation in premodern and Ottoman history. I proceed to address inheritance and how the question of its inclusion within personal status law for non-Muslims was subject to constant renegotiation. I then address how Islamic inheritance law became national law in modern Egypt and then illustrate the ways in which, since the revolution of 2011, Copts have asserted their right for a distinctly Christian inheritance law.

The Extent of Judicial Autonomy

The system of judicial autonomy for non-Muslims in premodern Islam refers to the right of non-Muslims to seek legal redress and mediation for their legal affairs in communal courts that were officially recognized when those cases were not interreligious and did not involve capital crimes. Discussions about such judicial autonomy have often emphasized the insular and self-contained nature of premodern non-Muslim communities. It has often been assumed that this is an area in which the ruling polity was not interested, where non-Muslims were simply left alone, and in which they had extensive judicial autonomy. Bernard Lewis argues that, for the most part, Jews of the Ottoman Empire were responsible for the conduct of their own internal affairs and were judged by their own courts, possessing a "whole apparatus of quasi autonomy."[3] Aryeh Shmuelevitz contends that the

autonomy non-Muslims enjoyed was a continuation of the Byzantine and Sassanian practices. He points out that maintaining such autonomy logically coincided with the fact that the sharia was designed for Muslims, not for non-Muslims. The Ottomans, he writes, "consolidated the autonomous system of the non-Muslim communities under their rule into a well-organized and well-regulated administrative system."[4] Likewise, Amnon Cohen asserts that Jerusalem's Jewry in the sixteenth century had an independent legal system, "headed by rabbis who functioned within the framework of the Jewish community and in accordance with traditional Jewish legal tenets."[5]

However, others have disputed the argument that non-Muslims had extensive autonomy. Joseph Hacker argues that the Jewish community of the Ottoman Empire had no officially recognized and unlimited right to judicial autonomy even in matters of personal status. He maintains that dhimmi courts had no official standing in the Ottoman Empire, and that judging in accordance with Jewish law was often contingent on the agreement of the qadi. The law for all subjects of the Ottoman Empire was the sharia, although the sultan neither enforced the laws of the land upon the Jews nor compelled them to judge according to the sharia. This effectively enabled Jews to create their own legal systems.[6]

In looking at court records of late eighteenth- and nineteenth-century Damascus, Najwa al-Qattan argues that dhimmi communities used the sharia courts for the settlement of cases that related to numerous business and family law matters when their personal and financial interests were better served in so doing. Al-Qattan suggests that the extent to which dhimmis used the sharia courts raises questions about the extent of their own judicial autonomy. Pointing to the lack of documentary evidence to confirm the existence of the communal courts in Damascus, she contends that there are reasons to question the assumption that Ottomans had a policy of setting up and formally recognizing official courts for non-Muslim communities.[7]

In reconciling the polarity of these two positions, it is useful to think in terms of Anver Emon's concept of the relationship between law and governance and of the vast and varied areas over which the Ottoman Empire had control (mentioned in chapter 5). Given the variety of experiences that dhimmis had across the Ottoman Empire, it is fair to say that distinct communities did exist but that the level of institutional autonomy that those communities had and the extent of interaction between Muslims and non-Muslims varied. It is therefore likely that Jews and Christians had extensive interaction with the Muslim courts and moved between their own and other judicial systems. Amnon Cohen, for example, maintains that, in the sixteenth century, while

Jerusalem's Jews had an independent legal system, they also made extensive use of the sharia courts for the settlement of a number of issues partly because the sharia courts could enforce its judgments.[8]

In thinking about the extent and nature of communal autonomy, it is useful to think in terms of factors that shaped this autonomy. One of those factors was whether the jurisdiction of the dhimmi courts was concurrent or exclusive. In civil procedure, exclusive jurisdiction exists where one court has the power to adjudicate a case to the exclusion of all other courts. Concurrent jurisdiction, however, means that more than one court may take jurisdiction over the case. Pre-Ottoman and Ottoman non-Muslims would have had an interest in preventing members of their communities from having recourse to the sharia courts, since this would be seen as threatening the community's ability to keep itself culturally and religiously distinct.[9] Exclusive jurisdiction would mitigate against—although not entirely remove—this possibility, whereas concurrent jurisdiction would restrict the means by which non-Muslim leaders could prevent non-Muslims from using the sharia courts.

For the most part, the Greek Orthodox Church in the Ottoman Empire had exclusive jurisdiction, even though sometimes the Ottoman courts tried cases that were under the control of the church.[10] This meant that all the qadis and military governors had a duty to carry out the decisions of the Greek Orthodox patriarch as far as they pertained to the Christians who were under the patriarch's control.[11] The exclusive nature of its jurisdiction meant that the church was able to inflict punishment on those who had recourse to the sharia courts in the form of spiritual penances, including excommunication. A number of agreements between the sultan and the patriarch allowed the clergy to regulate matters according to their own law, but also contained provisions prohibiting the Ottoman authorities from interfering. While the qadi courts did sometimes officiate civil temporary marriage agreements between Christians, the Greek Orthodox Church tried to limit this by imposing spiritual penances and even requested the assistance of the Ottoman authorities in prohibiting it. In 1819 a synodic bull referred to a recent Ottoman decree that ordered imams and judges not to grant such marriages to Christians.[12]

While some non-Muslim communities were granted exclusive jurisdiction, in many instances, dhimmis were only given concurrent as opposed to exclusive rights to apply their own laws. This aligns with Islamic jurisprudence. The four schools of law stated that dhimmis were able to apply to the sharia courts. However, the Shafiʿi school of law preferred that the qadi decline his jurisdiction when a dhimmi asked for it, and Imam Malik said the

qadi was able to abstain from passing a judgment. Abu Hanifa stated, however, that the qadi must pronounce judgment according to the sharia when sought by a dhimmi, except in cases relating to wine or pork, and emphasis was put on the voluntary decision of the dhimmis.[13]

There is a consistent pattern throughout the pre-Ottoman and Ottoman period of dhimmis applying to the Islamic courts. Tamer el-Leithy illustrates that, when the Mamluks established four judges from the schools of law in 1265, Copts had five legal options—their own communal courts and each of the four schools of law—and frequently sought out whichever courts would be most advantageous to their particular case.[14] Magdi Guirguis points out that occasionally Coptic families in the sixteenth century practiced polygamy and married in the sharia courts.[15] Al-Qattan shows that non-Muslims appealed to the sharia courts in eighteenth-century Damascus, and E. W. Lane reported that in 1830s Egypt, while the Coptic patriarch judged small disputes among Copts in Cairo and other clergy did the same in other areas, Copts were able to appeal to the qadi.[16] In many cases, the Ottoman authorities imposed one important restriction on the judicial autonomy of non-Muslims. In the case of the Jewish community, leaders could not prevent any of its members from resorting to the qadi. The penalty for a Jewish judge who tried to stop Jews from using the Islamic courts was suspension.[17]

The concurrent or exclusive nature of their jurisdiction was one factor that determined the experience of dhimmis. The second factor that shaped the possibilities of the lives of dhimmis was the level of formal recognition they had from the authorities. The more official the recognition a community received, the greater right they had to exclusive jurisdiction. Richard Clogg argues that the Greek Orthodox Church's expansive jurisdiction in civil and ecclesiastical matters was wider than that enjoyed in the Byzantine Empire and was a result of the system of official recognition that evolved into the millet system.[18] The exclusive nature of the jurisdiction of the Greek Orthodox Church meant that the Greek Orthodox community was able to increase the extent of its autonomy. Nikolaos Pantazopoulos maintains that, until the eighteenth century, the Ottomans limited the Greek Orthodox Church's authority to religious matters. By the end of the eighteenth century, the authority of the ecclesiastical courts had broadened and consolidated into a wide area of private law, including inheritance, debts, and many other aspects of Christian civil law.[19]

While the Greek Orthodox and Armenian churches had exclusive jurisdiction, the status of Jewish judicial activity was unstable since they did not have this level of official recognition.[20] Armenian Catholics, however, were

not recognized as a separate millet until the nineteenth century. Thus, while they received some recognition and were spiritually governed by the Latin archbishop, they were governed in civil matters by a Muslim judge.[21] Similarly, when the Jewish community received more formal recognition with the establishment of the official rabbinate in 1835, their position improved. The Copts were not granted the status of a millet until 1883.

Another factor that shaped the possibilities of the lives of dhimmis was that state interference in the Ottoman Empire fluctuated with state control. Hacker argues that at the end of the sixteenth century, when the control of the Ottoman Empire was at its peak, qadis more frequently intervened in the appointment of non-Muslim community leaders.[22] The judicial autonomy of the non-Muslims was perhaps most concentrated—but at the same time more limited—in the nineteenth century, when the Ottoman Empire was becoming increasingly weak. One of the reasons for this was that Western powers lobbied for greater autonomy for the millets. One of the consequences of the Khatti Humayun Decree of 1856 was that it confirmed the exclusive jurisdiction of the Greek and Armenian patriarchs.[23]

In the following years, the privileges contained in this legislation were extended to other non-Muslim communities, although the extent to which this exclusive jurisdiction was upheld is unclear. According to Magdi Guirguis, in Egypt in 1868, a ministerial decree prohibited the sharia courts from hearing cases that were initiated by non-Muslims in matters of testamentary disposition, marriage, and divorce.[24] However, it appears that the exclusive nature of the jurisdiction of non-Muslims was not always upheld. B. L. Carter reports that the Copts of Egypt during the early part of the twentieth century were not bound by the communal court's decision and were able to take their cases to the sharia court.[25] Ron Shaham argues that, "practically speaking, the division of jurisdictions between the shari'a, the sectarian and the civil courts was not clear-cut and the different courts continuously competed for jurisdiction."[26]

While the overall effect of the Khatti Humayun Decree was to strengthen the exclusive jurisdiction of non-Muslims in the Ottoman Empire, it did reduce the area over which non-Muslims could exercise that jurisdiction. The religious communities ceded authority to the new secular state institutions in both legal and educational affairs. In 1886 the Ottoman Ministry of Justice issued a statement that the following matters would come under sharia court jurisdiction for Muslims and therefore communal court jurisdiction for non-Muslims: marriage, divorce, alimony, retaliation, bloodwite, wills, and inheritance.[27] This was the point at which the boundaries between personal status law and other areas of law began to take firmer shape. As a

result, non-Muslim leaders lost the ability to prevent non-Muslim communities from applying to the sharia courts in other areas of law and in educational affairs. These new regulations carried over into twentieth-century Egypt so that, according to Shaham, Egyptian Jews had more—rather than less—room to move between the different types of courts.[28]

Inheritance

From the perspective of Islamic law, inheritance is one area that has a complex and comprehensive set of rules, many of which are explicitly stated in the Qur'an. Islamic inheritance law has a number of notable features. Perhaps the most well-known is that most female heirs, principally wives and daughters, inherit one-half of the share of the corresponding male relation. However, the laws are complex. There are circumstances in which male and female heirs of the same degree receive equal inheritance. For example, the mother and father of a deceased person who has left children behind inherit equal shares. Women also form the majority of the first set of heirs who receive a precise fractional share before lesser-degree heirs, although "the residue, usually the bulk of the inheritance reverts back to the male agnates."[29] Indeed, Islamic inheritance law can work to the detriment of all relatives on the maternal side, both male and female.[30] Another notable feature of Islamic inheritance law is that it limits—to a third of the estate—the individual's ability to bequeath property according to his or her wishes, although a larger portion can be left if there are no heirs. Legally designated heirs cannot also be beneficiaries of a bequest. These features reflect the partible nature of Islamic inheritance law. Partible systems tend to redistribute wealth at each generation and therefore hinder its accumulation. Islamic inheritance law denies any privileges to primogeniture. Inheritance law fragmented family fortunes although, as Pascale Ghazaleh shows, there were various mechanisms for mitigating this fragmentation.[31]

A look at Islamic history shows that inheritance is an area in which the ruling polity has been keenly interested. In the wake of the reign of Saladin (d. 1193), the Jews of Egypt complained about the interference of the authorities in an affair of inheritance. They presented their grievances to the sultan and argued that they were accustomed to relying on their religious authority for any matter that concerned them. Saladin consulted the Maliki and Shafi'i imams who replied that the Muslim judge could only exercise jurisdiction if all the parties in question were in agreement about appearing before him, and that even in this case the judge could decline his jurisdiction. If they did consent, the sharia had jurisdiction, but if they declined the jurisdiction of

the sharia, the qadi had to recuse himself and send them back to the authorities of their confession, which, of course, would apply their own law.[32]

There are indications that the Hanafi school of law became more assertive in applying Islamic law to non-Muslims. According to this school, Islamic law governs the inheritance of the dhimmis in cases of intestacy. If a non-Muslim dies without leaving any heirs or if the shares given to legal heirs do not use up the entire estate, the remainder of his possessions belongs to the treasury.[33] It is for this reason that the Ottomans were interested in getting involved in inheritance questions even when no one asked the court to do so.[34]

Jews in the sixteenth century tried to stop the interference of the Ottoman authorities when there were no heirs, sometimes by producing fictitious heirs.[35] Amnon Cohen reports that, in mid-1550s Jerusalem, the leaders of the Jewish community complained to the Sublime Porte that the qadis in Jerusalem were applying Islamic inheritance laws to the estates of deceased Jews. In response, the shaykh al-Islam, Ebussuud Efendi (1490–1574), ruled that the Jews should be allowed to behave in accordance with the laws of their religion. As a result, the qadi of Jerusalem ruled that a Jew should follow his own law unless he explicitly requested the allocation of a legacy in accordance with the sharia.[36] Yet Cohen reports that many Jews in Jerusalem accepted the application of sharia laws.[37] While many non-Muslims were able to apply their own religious law in matters of inheritance, this was less so with regard to matters of intestate succession. From the sixteenth until the nineteenth century, intestate succession was not treated the same as other matters of communal law.[38]

Sometimes non-Muslims sought the Islamic court's involvement in matters of inheritance. Aryeh Shmuelevitz points out that, in the sixteenth century, Jewish daughters sometimes tried to claim part of their father's estate according to the sharia.[39] Jewish inheritance law had developed to reflect the needs of an agricultural society and mitigated against the fragmentation of estates by giving the eldest son the principal share. Women could only inherit if there were no male heirs, in the absence of which women got the entire estate.[40] Najwa al-Qattan illustrates that dhimmi communities in eighteenth-century Damascus frequently resorted to the sharia courts to resolve inheritance disputes.[41]

For the Greek Orthodox of the Ottoman Empire, inheritance appears to have initially been regulated by Ottoman law. However, the church had control over inheritances of the clergy when these inheritances were bequeathed as donations. The church tried to extend its judicial jurisdiction over the inheritance of the laity as well, and in many cases it succeeded,

using church laws, synodic rulings, and canonical edicts based on Byzantine law. By the late eighteenth century, the prelates of the Greek Orthodox Church were dealing with large areas of Christian civil law such as inheritances and debts.[42]

The extent to which Egypt's Coptic Christians had—or tried to exert—control over inheritance is not easy to ascertain. Fathy Ragheb Hanna argues that Egyptian Christians applied Christian rules and conditions to inheritance when Christianity came to Egypt in the first century.[43] Yet Maurits Berger suggests that Egyptian non-Muslims were formally subjected to Islamic succession law in cases of intestacy possibly from the eighth century when the Egyptian governor issued a decree to that effect. However, in cases of testate succession, Copts were allowed to apply their own law when the actual heirs were decided in accordance with the sharia and when all those heirs agreed on the application of the communal law of the community of the deceased.[44]

S. D. Goitein reports that, from the tenth until the beginning of the thirteenth century, many estates were "handled as though no outside interference was anticipated."[45] Non-Muslims were frequently banned by their own communities from applying to the sharia courts to improve their inheritance claims. However, in thirteenth-century Cairo, the authorities began to interfere in the estates of non-Muslims. They tried to lay claim to a portion of the estate, especially in cases in which there were female heirs, heirs who could not be found, or persons leaving their possessions for charitable purposes when they had no legal heirs.[46] Goitein reports that "the intervention of the qadi was dreaded so much because once he had laid his hands on an estate, it was difficult to get it away from him."[47]

A form of Coptic inheritance law does appear in the canons of Gabriel II (1131–45) and Cyril III (1235–43). The canons of Cyril III are to be found in the compilation of al-Safi Ibn al-ʿAssal (c. 1205–65) completed in 1238. Ibn al-ʿAssal's compendia formed the basis of ecclesiastical law for the Coptic Church of Egypt.[48] Despite a number of similarities between Islamic and Coptic inheritance law—its relatively partible nature and the recognition of the extended family—Ibn al-ʿAssal's regulations on inheritance law privilege the marital bond more than Islamic inheritance law does. They establish a much greater—but not complete—level of gender equity among heirs of the same degree, including, most notably, that male and female offspring and husband and wife inherit in equal measure. The laws still privilege the paternal side of the family.[49] Al-ʿAssal explains the fact that the husband and wife inherit from each other equally and have precedence in succession (although they cannot inherit more than their children) with reference to

the nature of Christian marriage whereby men and women constitute "one flesh only as God has said."[50]

Tamer el-Leithy confirms that, in twelfth- and thirteenth-century Mamluk Egypt, Copts had their own inheritance law stipulating that sons and daughters would inherit equal shares of a deceased parent's estate, contributing to the perceived economic power of Coptic women. However, in 1354 the Mamluks issued a decree that if a non-Muslim chose to convert, his entire family had to convert. In addition, converts could not be stopped from inheriting from a non-Muslim relative, so that wealth could not stay within the non-Muslim community upon a community member's conversion to Islam. The decree also stipulated that a dhimmi's estate would revert to the treasury upon his or her death, unless the deceased's heirs presented proof of their claims, according to the sharia. The heirs would then receive their claims, with the rest of the estate reverting to the treasury. El-Leithy argues that the decree "served as an alibi for the Mamlūk state to insert itself within dhimmī communal affairs—most importantly, to extract wealth from these communities."[51] El-Leithy suggests that the dhimmis' use of the sharia, and the lack of segregation between religious communities resulted in the decline of Coptic law and the weakening of its legal autonomy.[52] It is possible that this happened with regard to inheritance.

Magdi Guirguis shows that, at the end of the Mamluk period (1517), the decree of appointment between the government and the Coptic pope stated that "he shall proceed according to what they profess, with regard to selling, breach of contract, inheritance, and marriage," although she concedes that decrees might not "correspond to reality on the ground."[53] In addition, Guirguis illustrates that, under the Ottoman sultanate, the Coptic patriarch was not granted the same kinds of privileges as the Greek Orthodox patriarch and a law, issued in 1525, removed legacies from the control of the Coptic patriarch.[54]

B. L. Carter states that the communal courts of the late nineteenth century and the first part of the twentieth century followed Islamic inheritance law unless the heirs privately agreed to a different division of the property.[55] This is supported by Samir Marcos who argues that the Coptic Orthodox Church did not have a position on inheritance and applied the sharia. This was because the Coptic Orthodox Church did not oppose any civil law as long as it did not interfere with the church's sacraments.[56] Yet Fathy Ragheb Hanna argues that the Ottoman decree in 1883, which was modified by a law in 1927 concerning the bylaws of the Coptic Orthodox general council, stipulated that Egyptian Christians were entitled to resort to their Christian doctrines in matters of inheritance.[57] It is possible that the greater autonomy

granted in the second half of the nineteenth century enabled Copts to revive some of the practices that had been jettisoned in the fifteenth century. In any case, the lack of clarity regarding inheritance law is instructive as it speaks to the fluidity of the question of the extent and nature of personal status law in general and inheritance law in particular.

Inheritance, Personal Status Law, and National Culture

With the establishment of the modern Egyptian legal system, the nature and extent of the judicial autonomy of non-Muslims was handled differently. The judicial autonomy of non-Muslims was subject to the new state's need to unify Egypt's various juridical jurisdictions and unify and homogenize the law. In 1914 the millet system was continued when the Egyptian government agreed to recognize the existing privileges that non-Muslims already had. However, the area of law that was defined as the "personal status law" of non-Muslims became more exclusive and more restricted, since the state encroached on areas of personal status law which had not clearly been defined as religious. The relationship between this exclusivity and increasing restriction was filtered through the demands of national culture, legally referred to as the concept of public order. Public order, sometimes referred to as public policy, served to restrict the laws of non-Muslims that were seen as incompatible with the general mores and traditions of Egyptian society. At the same time, it was used to protect the rights of non-Muslims. This restriction meant that the nature and extent of non-Muslim personal status law was examined with reference to the essential beliefs of Christianity and the question of Christian personal status law's compatibility with the Islamic Egyptian public sphere.

Since the term "personal status" has no specific origins in the sharia and dates from the late nineteenth century, which areas it covered has been a matter of contention between civil and religious authorities. The Khatti Humayun Decree of 1856 and the ensuing negotiations ended up granting exclusive jurisdiction to the Greek Orthodox and Armenian patriarchs, including over matters of succession. In the following years, these concessions were extended to other non-Muslim communities in the Ottoman Empire.[58] For example, in 1868 a ministerial decree gave the communal courts in Egypt exclusive jurisdiction in matters of testate succession, marriage, and divorce and prohibited non-Muslims from bringing cases to the sharia courts.[59] However, in matters of intestate succession, the jurisdiction of the communal courts remained concurrent.[60]

In 1874 the Coptic community was reorganized and a Coptic Community Council (*al-majlis al-milli*) was established. The Coptic Orthodox community

was given official recognition in the same year and this recognition was confirmed in 1883. The Sublime Porte empowered the Coptic Community Council to handle cases involving all matters of personal status according to Qadri Pasha's definition of personal status law, including wills, testate succession, endowments, and bequests.[61] With Egypt's separation from the Ottoman Empire in 1914, the authorities moved to recognize the privileges of the patriarchs presiding at that time. Law No. 8 of 1915 gave formal recognition to all extraordinary judicial authorities already established in Egypt and enabled those authorities to continue to exercise their rights and privileges based on Ottoman decrees.[62]

Yet this exclusive jurisdiction was not always adhered to in practice. It appears that it was not until the second half of the twentieth century that the Copts' right to exclusive jurisdiction was strictly upheld by the Egyptian Court of Cassation, Egypt's highest civil and criminal appellate court. In 1969 the court stated that, "as a matter of public policy, parties are not at liberty to opt for the family law of their choice."[63]

Inheritance and testaments were not regulated by the French civil codes of the nineteenth century, which provided that such "questions generally should be regulated by the law of personal status applicable to the deceased person."[64] In the Court of Cassation's definition of personal status in 1934, wills were included.[65] Carter suggests that the communal courts actually applied Islamic law for inheritance.[66] However, in the 1940s, the Egyptian state moved to limit the authority of the communal courts, starting with intestate succession and then proceeding to testate succession. Law No. 77 of 1943 codified Hanafi doctrine in the area of intestate succession and was deemed "applicable to all Egyptians irrespective of religion."[67] Law No. 25 of 1944 affirmed the application of the sharia in inheritance and stated that the laws of intestate succession (1943) and of testate succession are the state's laws. However, Law No. 25 also stated that if the deceased is not a Muslim, his estate can be divided up according to his communal law if all his heirs (in the eyes of the sharia) wish to do so. As a result, inheritance became a matter of concurrent rather than exclusive jurisdiction: the communal courts decided inheritance cases unless one of the heirs appealed to the sharia courts and to the laws of Islam. However, this changed in 1949 and Article 875 of the 1949 Civil Code declared Law No. 71 of 1946 on testate succession to be applicable to both Muslims and non-Muslims.[68]

The 1949 Civil Code contravened the Coptic Orthodox bylaws of 1938, published by the Coptic Community Council.[69] The bylaws of 1938 took a detailed position on inheritance. There are many similarities between the Coptic bylaws and Islamic inheritance law, such as the inclusion of multiple heirs of different degrees and some provision for discretionary legacies. Yet

there are important distinctions. First, the husband and wife inherit from each other equally (a half if there are no children and a quarter if there are up to three children) although neither the husband nor the wife can exhaust the estate unless other heirs cannot be found (Articles 241 and 242). The guidelines do point to a system that is less partible than Islamic inheritance law. For example, the parents only inherit when the deceased has no children (Article 246) and the descendants of the deceased take precedence over all other relatives in inheritance. They take the entire estate or what remains of it after the spouse is given his or her share (Article 245). There is a greater emphasis on gender equality. The Coptic bylaws of 1938 state that if there are several descendants and they are all relatives of the same degree to the deceased, the estate is divided evenly among them, regardless of whether they are male or female (Article 245). Other clauses relating to other circumstances similarly imply that male and female descendants of the same degree to the deceased get an equal share (Articles 246 and 247). There is also no difference in the husband's and wife's right to inherit from one another (Article 242). There is an exception to this gender equity: when the deceased has no children, after the husband or wife inherits his or her share, the deceased's father inherits double that of the mother (Article 246).[70]

In 1956 Nasser nationalized the sharia and communal courts to make Egyptian law consistent and to strengthen the state's monopoly over law. Non-Muslims were, still, however, to be given a degree of judicial autonomy in matters relating to personal status law. Yet Law No. 462 of 1955 on the Abolition of the Sharia and Communal Courts did so by way of exemption. It stated:

> With regard to disputes connected to the personal status of non-Muslim Egyptians who are united in sect (*al-ta'ifa*) and rite (*al-milla*), and who at the time of passing of this law belong to organized communal judicial institutions, judgments will be passed—within the limits of public order (*al-nizam al-ʿamm*)—according to their law (*tabqan li-shariʿatihim*).[71]

This altered the dynamic between non-Muslim communities and the state. It changed the basis upon which the state could grant non-Muslims the right to adjudicate according to their own law. Personal status law came to be governed by the sharia and non-Muslim law was only granted as an exemption.[72] The idea of an exemption from the application of national law made national recognition of the community that was to be given the dispensation more necessary, since it only applied to "organized sectarian judicial institutions" that had been formally recognized by the state. That dispensation was

to be granted within the limits of public order—that is, it was contingent on being in the interests of the Egyptian state. In addition, it was implied that the exception should be compelling enough to be allowed.

The application of Islamic inheritance law on all Egyptians was confirmed in the 1960s by the Court of Cassation, which held that Islamic inheritance law applies to Muslims and non-Muslims.[73] In 1964 the Court of Cassation ruled that Islamic inheritance law was part of the Egyptian public order and was related to decorum *(adab)* because it is "connected to the legal and social order and has become firmly embedded in the conscience of society so that it would damage the general feelings [of society] if it were not applied."[74] Inheritance was not the only area of personal status law that was affected in this way. In the first part of the twentieth century, guardianship (1925, 1952), and family names, family ties, and legal capacity (1949) were removed from personal status law and classified as general law.[75]

Public order was a concept that ended up both restricting and enabling non-Muslim personal status law. This came about because non-Muslim personal status law was filtered through the concern that the public order should represent the essence or nature of the Egyptian nation. After 1955 the courts increasingly argued that non-Muslim family law could not violate public order—that is, the essential principles of the sharia. Thus, the extent of judicial autonomy was refracted through the necessity for the Egyptian state to formulate a unitary and homogenizing national culture. For example, forced Levirate marriage for Jews, in which the brother of a deceased man is obliged to marry his brother's widow, was ruled as a violation of Egyptian public order because it infringed upon the freedom to marry.[76] Public order, however, was also used to protect Christian law from encroachment by the state. Maurits Berger points out that the Egyptian courts have confirmed that, while Egypt's public policy codes do not embody the essential principles of non-Muslim law, Egyptian public policy is related to rules that are essential to Islamic law and that "the protection of the faiths of non-Muslims is an essential rule of Islamic law and hence of public policy."[77] For example, in 1979 the Egyptian Court of Cassation held that monogamous Christian marriage is considered one of the "essential principles (*qawa'id asliyya*)" of the faith to which Christianity has adhered from its beginning.[78]

The concept of public order is of European origin, first appearing in the French Civil Code of 1804, and was introduced into the Egyptian legal system around the end of the nineteenth century. It appeared in Article 13 of the 1923 Constitution, which gave Egyptians the right to perform religious rituals "within the bounds of public order (*al-nizam al-'amm*) and decency (*adab*)."[79] In 1979 the Court of Cassation ruled that public order "includes rules that are

aimed at securing the general public welfare of a country . . . . and surpasses the interests of individuals."[80] The court contended that while public order is based on a secular view and should not be connected with a particular law, sometimes, it asserted, public order "is related to religious belief when this belief is closely related to the legal and social system."[81] It contended that the rules of public order must apply "to all citizens, Muslims and non-Muslims regardless of their religion and public order cannot be divided. It is not possible to restrict some of the laws to Christians and make others unique to Muslims" [82] Berger shows how the concept of public order has been used to endorse Islamic rules, prevent the application of non-Muslim rules that violate Islamic law, and to protect the essential values of non-Muslim law and therefore the autonomy of nonreligious communities.[83]

It is the reference to an indivisible public order and its connection to the feelings of Egyptians that is so instructive for understanding what is at stake in petitions for a separate Christian inheritance law. While the new Egyptian state maintained the judicial autonomy of non-Muslims, this autonomy was predicated on its consistency with a unitary public sphere. This implies that the area of law in which non-Muslims are given legal independence has to be compelling enough for an exemption from national law to be granted. A compelling reason would be if the area of law for which the exemption is granted is related to something that is essential to Christianity. Some scholars defended limiting the jurisdiction of Egyptian non-Muslims to marriage and divorce, arguing that the legal independence of non-Muslims related to their religion and that only marriage and divorce were important enough to pertain to religious freedom.[84] This, of course, implies the case has to be made that any area of law given the exemption must be important and essential enough to the particular religious community to be granted the exemption.

Article 3 and Christian Law

The promulgation of Article 3 of the 2012 and 2014 Constitutions and its official recognition of the legal independence of non-Muslims opened up the possibility for Copts to renegotiate the nature and extent of this personal status law. In strengthening the grounds upon which Jews and Christians can be exempt from national law, Article 3 has made it possible for further negotiations about the extent and nature of this exemption to take place.

One consequence of Article 3 is that it has strengthened the grounds upon which Pope Shenouda restricted Copts' access to divorce and remarriage in 2008.[85] This has also led to a 2016 draft of new Coptic Orthodox bylaws,

drafted under the papacy of Pope Tawadros II, who became pope in 2012. If they pass through parliament, these draft bylaws will further consolidate the church's position on divorce. These bylaws have laid the foundations for the draft of a unified Christian personal status law, the completion of which appears imminent in 2020. Copts have pushed for a unified personal status law since the 1970s, but the Egyptian state has, until the years succeeding the revolution of 2011, refused to accept one. Pursuant to the 1955 law, and upheld by the 2000 Egyptian Personal Status Law when non-Muslims are of a different sect and rite, the sharia, based on the sayings of Abu Hanifa, is applied to them.[86] Thus, a unified Christian personal status law would prevent Copts from being subject to sharia law when a divorce case, for example, involved individuals from different denominations.

Article 3 has also prompted a number of Christians to seek to widen the area of personal status law over which they have jurisdiction to include inheritance. This would involve receiving an exemption from Law No. 77 of 1943. The increase in the extent of judicial autonomy to include inheritance might well look like a continuation of the legal pluralism of the Ottoman Empire. However, the process by which certain exemptions from national law are given results in the judicial autonomy of non-Muslims being subject to a particular kind of dynamic. Thus, the application of the judicial independence of non-Muslims is not a simple holdover of the millet system. Rather, it is now subject to the fact that it is filtered through the concern about a unitary public sphere. In addition, an exemption can be given but this can only be done for communities that are nationally recognized and for which there are compelling reasons for the granting of the exemption.

The granting of exemptions by states is often done because it serves to further reinforce the cultural norms that bind a nation together. In the United States, exemptions in cases of religious freedom are given because the principle of freedom of religion is part of the mythology of the founding of the state. In Egypt, an exemption is given to the divinely revealed religions because the concept of the divinely revealed religions is an intrinsic part of Egyptian nationalism. Exemptions are also given because the sharia, with its principle of legal pluralism, is an important source of legislation in Egypt.

The granting of an exemption from national law has an important ramification. It can lead to more explicit boundaries between the communities that are exempt from the law and those for whom national law applies. In Mamluk Egypt (1250–1517), Sherman Jackson has shown that giving the schools of law exemptions so that the legal provisions of a school of law can be applied in turn reinforced the corporate status of the schools of

law themselves. This contributed to greater formalization of the school of law and a consolidation of its internal control. Jackson writes that, in the thought of the Maliki jurist Shihab al-Din al-Qarafi (1228–85), each school could give a level of protection to its members. This meant that a Maliki living under a Shafi'i-dominated government—as was the case in Mamluk Egypt—would enjoy a level of exemption from rules on account of being a member of the Maliki school of law. Likewise, a ruling handed down by a Maliki judge would also be exempt on the condition that it reflected an opinion held by the school itself. In this capacity, Jackson argues, the school of law became a "constitutional unit that both defines and mediates the relationship between government and the community at large."[87] Granting an exemption thus has the potential to formalize the boundaries between the community that is to be given the exemption—in this case the Copts—and the rest of society, Egyptian Muslims.

The process of granting an exemption from national law also raises the question of the basis on which exemptions are to be given. Giving a religious exemption for personal status law requires establishing that there are compelling enough grounds to warrant an exemption from national law. For Coptic Christians this raises the question of what Christian law is, what Christian values are, who it is that belongs to this community, and who gets to define it.

In light of the promulgation of Article 3, there have been demands for inheritance to be included under the category of personal status law, and therefore under the category of law from which Christians and Jews can be exempt from national law. While inheritance was not talked about so frequently or publicly before the revolution of 2011, since then there has been an increase in expressions of dissatisfaction among Copts with inheritance law in Egypt.[88] First, there is dissatisfaction that Islamic inheritance law discriminates against the female offspring of the deceased.[89] Second, there is a problem with the enforcement of Islamic inheritance law. There are complaints that in areas like Upper Egypt—particularly when land is involved—women are deprived of their property and given less than they are legally entitled to under Islamic inheritance law. This is done in Muslim as well as Coptic communities.[90] Methods of depriving women of their inheritance have included the father conducting sham sales before his death, selling his property to his sons, and in turn depriving women of their share.[91]

Youssef Sidhom has long—and repeatedly—expressed his opposition to this situation. As editor of *Watani*, Sidhom argues that wounds over inheritance run deep, and most of the readers who write to him express their hope

of recovering the equality that existed between men and women in Coptic history and establishing their equal rights in accordance with Christian doctrines.[92] This feeling of unfairness has led some Coptic families to redistribute the money equally within the family.[93] This only happens if all family members agree, and it is done after the state distributes the estate according to Islamic law. Youssef Sidhom calls upon the Coptic Church to seize the opportunity provided by Article 3 of the 2014 Constitution, and "revive Coptic legislation that treats men and women as equals regarding inheritance."[94] Sidhom says he hopes parliament "would possess the moral courage to defy the centuries-old male right to inherit double that of a female, and pass legislation to stipulate equal inheritance not only for Christian men and women but also for all Egyptians in general."[95]

Opposition to inheritance laws stretches across the secular-church divide. The Coptic thinker Kamal Zakhir is the founder of the Secular Copts Front, a group that is campaigning to reduce the church's official control over the lives of Copts. Yet Zakhir also affirmed that it is constitutional that *shari'a misihiyya*, "or Christian law," be applied in any matter relating to inheritance for Christians.[96] Nabil Ghibrial, a lawyer of the Supreme Administrative and Constitutional Courts, criticizes the prevalence—particularly in Upper Egypt—of what he refers to as "the male idea" (*al-fikr al-dhakuri*) that men are due twice what is due to women. He says that men there often think women lack intelligence so they think it is possible to dupe them and take their inheritance.[97]

Fathy Ragheb Hanna, a lawyer with the Constitutional Court and the Court of Cassation, asserts that the time has come, after the promulgation of Article 3 in 2012, for Christians in Egypt to demand the application of Christian rules of inheritance for Christian Egyptians. Syria issued Law No. 7 in 2011 to apply Christian rules of inheritance to members of the Greek Orthodox and Syriac Orthodox communities. Hanna contends that Christians in Egypt should have the same right.[98] Najib Ghibrial, a Coptic personal status law attorney and director of the Egyptian Union of Human Rights Organization (EUHRO), is often involved in inheritance disputes. He is a strong supporter of resisting any encroachment on the judicial autonomy of Copts and wants a separate law for inheritance.[99] He calls for punishing those who infringe upon the rights of women to inherit. He asserts that, while the Bible does not make a specific ruling on inheritance, equality between men and women is guaranteed in the New Testament.[100] Ghibrial adds that it is incumbent upon priests to convince men that their rights to inheritance are the same as those of women.[101] Monsef Soliman, a judge who was a member of the Coptic Community Council during Pope Shenouda's time, states

that Article 3 allows for a family law for Christians to include regulations for inheritance, admitting that it is a major concern of families.[102]

It is often assumed that the Coptic Orthodox Church's control over the lives of Copts has resulted in the church's social conservatism being applied to Copts. This is indeed true, since the ability of Copts to divorce and remarry is more limited than it has been. Yet the church has also had an important role in bringing the question of gender equality in inheritance to light.[103] In cases where there is a problem of enforcement or women feel they have been unjustly treated by the courts over inheritance, Coptic women often appeal to the church to settle the problem.[104] This is shown in the case of three sisters who resorted to the church because their three brothers refused to give them their legal rights to the inheritance of their deceased father, who owned an estate comprising buildings and shops estimated at millions of pounds. The archbishop of the church intervened to solve the dispute, stating that each girl should get one hundred thousand pounds and an apartment. However, in this case the brothers refused to carry out the advice of the archbishop, leading to the sisters seeking legal redress.[105]

Bishop Thomas of the Diocese of al-Qussia in Upper Egypt argues that Islamic inheritance law goes against the Christian faith and the beliefs of the church. This in turn puts pressure on individual Christians to choose between their faith and the norms of society. It also puts pressure on the relationship between the church and individual Christians.[106] Father ʿAbd al-Masih Basit, professor of defensive theology at the Coptic Orthodox Church, argues that, in matters of inheritance, Christians should be judged according to "their law" and that priests often try to intervene in such matters and advise Christians to treat men and women equally. However, he points out that priests cannot force families to treat men and women equally. He expressed his resentment that "in families in Upper Egypt daughters do not inherit a thing" and he states that "if the priest interferes he has succeeded if the daughter gets anything because that is better than nothing."[107]

Father Bakhumious Fu'ad, priest of the church of Marmarqis in Azbat al-Nakhl, affirmed the necessity for church leaders to resolutely pursue an inheritance issue that comes before the church on the basis of equality between men and women. He calls for priests to make the side determined on inflicting injustice upon women aware of God's displeasure. Father Bakhumious attributes the problems of inheritance in Christianity to upbringing and education and to people's lack of awareness about the Bible.[108]

The Protestant Church in Egypt has taken a particularly strong stance on this issue. Dr. Andrea Zaki Stephanous (b. 1960) is president of the Protestant

Community of Egypt and general director of the Coptic Evangelical Organization for Social Services. In recent negotiations over the unified Christian personal status law, he called for the endorsement of a clause that allows Copts to refer to their own canon code that provides for gender equality in inheritance.[109] The controversy over this question led to a delay in the law, and it was agreed that a consideration of this issue was "premature."[110]

Despite its position on inheritance, the Coptic Orthodox Church did not include inheritance provisions in the 2016 draft of the Coptic Orthodox bylaws which then formed the basis for negotiations concerning the unified Christian personal status law.[111] Sidhom argues that, when the church was drafting those bylaws, church members were in a hurry and concentrated on writing articles that regulated engagement, marriage, and divorce, but overlooked the issue of inheritance.[112] The Orthodox Church has not explained why it omitted inheritance regulations from the draft bylaws. There are a number of reasons why the church is reluctant to bring the issue before the Egyptian state. One reason might be because the current inheritance law suits patriarchal interests within parts of the Coptic community.[113] Explanations volunteered by prominent Coptic lawyers and other laymen claim that there were no specific inheritance rules cited in the Bible. They argue that it is difficult to invoke Christian canons on inheritance.[114] Others argue that the reason why a provision for inheritance was not included was because it would offend Egypt's Muslims if Christians were to apply different inheritance regulations.[115] Bishop Thomas argues that Christians are reluctant to push on this question because of the danger that the call for a Christian inheritance law would make it look as if Christians are attacking Islam.[116]

Bishop Thomas echoes how inheritance has been linked to the unitary public sphere and to the feelings of the Egyptian people. This implies that Christians can only reject Islamic legal norms when the grounds for such a rejection is connected to something that is mandated by their religion. Otherwise, it is seen as a renunciation of Islam as a whole with the potential to divide Egyptian society. Monsef Soliman stated that the matter "is mired in legal controversy" and that even though the bylaws of 1938 mentioned inheritance, none of the draft laws proposed by the church since 1979 have referenced inheritance.[117]

Clearly, there is much at stake in requesting that Copts have their own provisions for inheritance. First, Copts would have to make a case that inheritance provisions are essential enough to them to justify departing from Egypt's national law. Second, not applying Egypt's national law to Copts would have implications for Coptic-Muslim relations. National unity discourse is often contingent on expressing what unifies Copts and Muslims and

how they are culturally the same. A separate Coptic inheritance law would serve to emphasize religious difference.

While many Copts appear to be calling for the widening of the personal status law to include inheritance, others argue that there should be a unified civil or national law for inheritance that applies to all individuals who have Egyptian nationality. The writer and journalist Karima Kamal also makes this argument. Strongly critical of the church's actions in limiting the access to divorce and remarriage, she calls for a civil unified personal status law for all Egyptians as necessary for a unified nation.[118] She has also spoken out on inheritance, arguing that "you should not implement the rules of one faith on people of another faith."[119]

Rather than rely on the church to mediate inheritance disputes, a number of Copts have been taking their cases to court. Some courts have been receptive to the claims. The plaintiffs are increasingly referring to the concept of shari'a misihiyya, arguing that Christian law establishes equality between men and women in matters of inheritance.[120] It is maintained that the application of Islamic inheritance law for Christians runs counter to the intent of the constitution since the constitution gives Christians freedom of personal status and there is a Christian law on inheritance. Ramses al-Najjar, a former legal adviser to the Coptic Church, said that the laws of inheritance for Christians are mentioned in the Coptic bylaws of 1938, thus Article 3 should allow Jews and Christians to be subject to their own laws. He points to the fact that the courts are beginning to apply stipulations particular to inheritance with regard to Christians according to their law, affirming that the Coptic laws do not distinguish between men and women who are heirs of the same degree.[121]

In November 2016 the Cairo Court of Appeals issued a ruling on a case in which a Coptic woman contested a lower court ruling that had granted her brother double her share of the inheritance of their sister's estate. The plaintiff demanded the equal division of the inheritance according to the 2014 Constitution and the principles of Christian doctrines. The court ruling invoked the Coptic bylaws of 1938. It stated that, "since the inheritors of the deceased are her brother . . . and her sister . . . therefore their inheritance shares should be equal according to Article 247 of the [1938] Coptic Orthodox bylaws. . . . According to their [Christian] doctrine there is no difference on that score between men and women."[122]

Another case involved a resident of Giza who appealed a judgment of 2016 from a first-level court, which restricted her inheritance from her late husband to a quarter of his legacy with the remaining two sisters taking

two-thirds. She appealed on the grounds that existing laws contravene Article 3 of the 2014 Constitution.[123] Under the Coptic Orthodox bylaws of 1938, the wife would get half of her husband's estate if they have no children before the distribution to other heirs (Article 241).[124]

One case, mentioned earlier in this chapter, involved three sisters resorting to the church because their three brothers refused to give them their legal rights to the inheritance of their deceased father, whose estate consisted of buildings and shops estimated to be worth millions of Egyptian pounds. When the sisters took the case to court, "it was ruled that the share of the female is equal to the share of the male because both parties are Christians" and that the bylaws of the Orthodox Copts, which are legally enforced pursuant to Article 3, should be applied to them, considering the law that is particular to Christians is applied in a case when both claimants are of the same milla and ta'ifa.[125]

Most recently, in early 2019 the Cairo Court of Appeals ruled that Coptic Orthodox men and women are to inherit equal shares according to Article 3 of the Constitution and Article 247 of the Coptic Orthodox family bylaws of 1938. The ruling declared that, according to Article 247, if a person dies leaving no children or living parents, the spouse is given their share, and the remaining part of the estate is divided equally between the full brothers and sisters of the deceased.[126] Sidhom contends that, while this ruling might establish an important precedent, it "appears to have the effect of a stone cast in stagnant waters."[127] This is because the draft of the unified Christian personal status law before parliament does not include inheritance provisions.[128] If it does pass, this will weaken Coptic claims in the courts since the Coptic bylaws of 1938 would no longer be able to be invoked. Indeed, in July 2019 a court rejected an appeal by Huda Nasrallah, an Egyptian lawyer for the Egyptian Initiative for Personal Rights, against the ruling of the lower court. That court had applied sharia to her father's estate so that she received less than her brothers. At the time of writing, Nasrallah is challenging the rulings.[129]

Equality between Men and Women

One of the challenges Copts face regarding Article 3 and inheritance is articulating the grounds upon which this constitutes a Christian law or a part of the Christian faith. It requires establishing that matters of inheritance are religiously compelling enough to warrant the exemption from national law.[130] Shortly after the adoption of Law No. 462 of 1955 on the Abolition

of the Sharia and Communal Courts, some courts interpreted "their law" as referring solely to the Gospels. However, in 1972 the Court of Cassation ruled that "their law" is a "general term the meaning of which is not limited to what is in the heavenly books alone, but also relates to everything that was applied in the communal legal councils before they were abolished, which are to be considered valid law."[131] There are obvious reasons why Copts who want to revise the inheritance law would want to address the question of when and how Copts had their own inheritance law in Islamic history. In addition, there are reasons why Copts would want to look at Christian texts regarding this matter.

The argument is emerging that an intrinsic part of Christian law is the principle of equality between men and women. The idea that men and women are equal is set up as a key difference between Islamic and Christian law. Bishop Marqus states that many people ask the church for advice about how they should distribute their inheritance and, he says, "we now respond from the Bible itself."[132] Coptic Orthodox Church members and writers articulate the principle of equality between men and women in the specific area of inheritance by appealing to the Bible. While the Bible is relatively silent on issues of inheritance specifically, for many, such as Father ʿAbd al-Masih Basit, the verse of Paul's letter to the Galatians (Gal. 3:28)—"There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus"—affirms the necessity of applying equality between men and women in all rights and duties.[133]

Father Bakhumious Fu'ad goes further and argues that depriving daughters of their inheritance is a sin, the perpetrator of which could be prevented from entering the Kingdom of Heaven, because that is an irrevocable injustice. He argues that it is not possible for "those who are unjust to inherit the Kingdom of God."[134] Father Fu'ad also references Paul's Letter to the Galatians and goes on to reference the book of Numbers in the Old Testament, in which the daughters of Zelophehad petitioned Moses to secure a share of their father's inheritance, who had died without a son. God answered the daughters of Zelophehad and gave a direction concerning this: "Any man who dies and has no son shall transfer his property to his daughter" (Numbers 27:8).[135] Even though the verse only technically allows for females to inherit when there are no male heirs, for Father Fu'ad, it supports the Christian principle of equality between men and women in matters of inheritance.

Youssef Sidhom, likewise, is keen to assert that Christian doctrine is supportive of equal inheritance shares for men and women. He also cites the

case of the daughters of Zelophehad in Numbers and the book of Joshua (Josh. 17:3–6), and Job 42:15—"And in all the land were no women found so fair as the daughters of Job: and their father gave them inheritance among their brethren."[136] Job had seven sons and three daughters. Giving his daughters an inheritance was exceptional and went against the Hebrew practice of inheritance; Job, having a plentiful estate, did this to oblige his daughters to settle and marry among their brethren.

For Sidhom, the concept of equality between men and women is not only rooted in the Christian texts but also in the history of the Coptic Church. He points out that, during the Coptic era, women had equal inheritance to that of men according to Christian-based legislation.[137] He also illustrates that Pope Kyrillos IV, the Coptic Orthodox pope from 1854 to 1861, resolved an inheritance dispute by arguing that because God does not reduce a person's reward in heaven on account of her being a woman, then inheritance in this world should follow God's example.[138]

For Sidhom, the metaphors of emasculation are used to express his disappointment at the status quo. He asserts that "men who have no qualms about seizing their mothers' or sisters' inheritance have lost their way to 'manliness' in the old sense of the word. . . . I intend to open this appalling file which seriously blemishes the gallantry of Egyptian men, even if equality between men and women regarding inheritance is legislated."[139]

Here, a distinction is made between the religion of Coptic Christians and the dominant culture. It is asserted that the culture of Copts in Egypt has been influenced by Islam and that people—including Copts who willingly seek to deprive women of inheritance—have become habituated to the idea that women do not deserve an equal share. Father ʿAbd al-Masih Basit expresses his regret that Christians are more influenced by society than they are by the Bible, adding that "Christians adopting the customs and traditions of the middle ages meant that they were governed by Islamic law in matters of inheritance."[140]

Sidhom argues that among the excuses made for depriving women of their inheritance rights is that land should not be passed on to strangers. Even when the inheritance does not involve land, it is claimed that females are financially supported by males so should merit half their share.[141] Sidhom says these are all "lame excuses," since women today take full responsibility in supporting their families. Besides, he writes, "it is very common for those men who end up usurping their women relatives' legacies to contribute not the slightest effort or share towards supporting these women or their children. Traditional manly nobility has come to a sorry end."[142]

Such discourse does not reflect the opinion of all Copts. Many Coptic families do support Islamic inheritance law. Samir Marcos, a Coptic activist and intellectual, argues that many families accept giving men a greater share of inheritance.[143] Munir Fakhri ʿAbd al-Nur, former secretary-general of the Wafd party, points out that Copts accept the submission to the sharia because it is part of their overall cultural heritage and tradition and that there is "no such thing as Christian inheritance law."[144] Others, such as Ashraf Anis, the founder of Right to Life want Copts to be released from the Coptic Orthodox Church's control over personal status law and for the application of a civil personal status law.[145]

In addition, not all Muslims in Egypt agree with Islamic inheritance provisions. Indeed, in 2018 there were calls for reforming Egyptian Islamic inheritance law. This was in part precipitated by the announcement in the summer of 2018 by the Tunisian president that he intends to propose a new draft law which will make men and women equal in inheritance matters. The draft law however, has been postponed. Some, such as the media presenter Muhammad al-Baz are calling for such a change to happen in Egypt.[146] Dina ʿAbd al-Aziz, a member of the House of Representatives has also called for such a law. However, her request was rejected by other members of the House of Representatives and various faculty members at al-Azhar University on the grounds that it would violate the sharia.[147] Changing sharia provisions for inheritance would be challenging given that the provisions are clearly outlined in the Qur'an and many argue they are not open to interpretation.

In this chapter, I have argued that discussions over the nature and extent of the judicial autonomy of non-Muslims in Egypt have taken on a distinct form in the modern context and since the 2011 revolution in particular. Discussions of personal status law in premodern Islamic history have often assumed that this is an area in which the ruling polity was not interested in asserting its authority. Such a position holds that non-Muslims were simply left alone to exercise their own autonomy. Yet dhimmis had a variety of experiences across the Ottoman Empire. While distinct non-Muslim communities did exist, the level of their institutionalization and their interaction with Muslims varied considerably. Such exchange was fluid and Jews and Christians often had extensive experience of the Muslim courts and moved between their own and other judicial systems. This was particularly so with regard to inheritance, where, in the case of Christians in particular, there were questions about the extent to which Christians felt that inheritance was covered by canon law. In addition, for financial reasons, the Ottoman state—and

ruling polities before it—had tried to assert their control over inheritance, particularly in the area of intestate succession. At the same time, inheritance was also a means by which some non-Muslim communities asserted their judicial autonomy. The weakening of Ottoman control in the nineteenth century enabled non-Muslims to assert their right to exclusive jurisdiction. However, new conceptions of the role of the state in people's lives meant that the area over which non-Muslims had judicial control became increasingly restricted.

The modern Egyptian state was concerned with unifying Egyptian law and making it consistent as a way of strengthening the Egyptian nation. In 1940s Egypt, national law was used to restrict the personal status law of non-Muslims so that inheritance matters were governed by the sharia. Copts were effectively only given the right to judicial autonomy over marriage and divorce law. The concept of public order was used both to restrict and protect personal status law so the relationship between the judicial autonomy of non-Muslims and the state was recalibrated. While the Coptic bylaws of 1938, written by laymen, addressed the question of inheritance, the Coptic community generally did not oppose the imposition of Islamic inheritance law in the 1940s. Inheritance was effectively subsumed by the need for a unitary Islamic public sphere on the grounds that inheritance law was not part of the Christian canon.

However, Article 3 of the 2014 Constitution, which made a formal commitment to the right of Jews and Christians to have their own personal status law, has opened up the possibility for further negotiation about the nature and extent of the judicial autonomy of Christians. This has coincided with changing attitudes toward gender and the family. While it is tempting to see this negotiation as a relic of the Ottoman Empire's millet system—and, in some respects, it is—Article 3 does not constitute a mere reimposition of premodern norms governing the relationship between non-Muslims and the ruling polity. The issuance of Article 3 and the renegotiation over inheritance illustrate how the judicial autonomy of non-Muslims as emphasized in Article 3 has taken on distinct forms in modern Egypt.

Article 3 raises the question of when an exemption is warranted. Involved in this is the intractable question about what constitutes a religious norm and whether that religious norm is central enough to that religion to be deemed worthy of exemption. Copts who want to have their own inheritance law are having to make the case that gender equality in inheritance relates to an essential part of the Christian faith; they are employing biblical texts and referring to thirteenth-century approaches to inheritance to make such a case. Yet, while non-Muslim communities negotiated the extent and nature of their

autonomy with Ottoman authorities, it did not involve the same kinds of questions about what the essential aspects of Christianity are.

The implications of granting non-Muslims greater judicial autonomy have also changed. Judicial autonomy was granted in the Ottoman Empire because it was a tactic that allowed the Ottoman area to govern vast and religiously diverse territories. The modern nation state, however, is predicated on the articulation of a national culture and the concept of the unitary public sphere. A request for a new exemption—even if Copts say that it would restore what had previously existed—implies drawing a line between Muslims and Christians, promoting the articulation of further differences between Muslims and Copts. This is in danger of fracturing the very unity for which the constitutional commitment to the divinely revealed religions is striving.