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# A Brief History of Coptic Personal Status Law

Ryan Rowberry  
John Khalil\*

## INTRODUCTION

With the U.S.-led “War on Terror” and the occupation of Iraq and Afghanistan, American legal scholars have understandably focused increased attention on the various schools and applications of Islamic law in Middle Eastern countries.<sup>1</sup> This focus on Shari’a law, however, has tended to elide the complexity of traditional legal pluralism in many Islamic nations. Numerous Christian communities across the Middle East (e.g., Syrian, Armenian, Coptic, Nestorian, Maronite), for example, adhere to personal status laws that are not based on Islamic legal principles. Christian minority groups form the largest non-Muslim

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1. The four primary schools of Shari’a law are: Hanbali, Hanafi, Maliki, and Shafi’i.

populations in the Middle East, with Coptic Orthodox Egyptians (“Copts”) being the most numerous.<sup>2</sup>

Personal status law in Egypt is a pluralistic legal regime, with diverse religious traditions informing the substance and procedure of personal status adjudications for specific segments of Egypt’s population. Yet American legal scholars studying Egypt have concentrated almost exclusively on Muslim personal status law.<sup>3</sup> This persistent, monolithic approach to personal status law in Egypt is striking considering that Copts comprise a significant portion of Egypt’s total population, which is estimated at about seventy-nine million people.<sup>4</sup> Government estimates claim that Copts comprise 4%–9% of the total population; that is, between 3.3 and 7.5 million people.<sup>5</sup> Unofficial Coptic estimates, on the other hand, place the Coptic population in Egypt at 25%–30%, or twenty to twenty-five million people.<sup>6</sup> Inaccurate census records and biased reporting make any figure disputable, and some median range between the two extremes, perhaps 12%–17%, or nine to thirteen million people, is probably more realistic. Even assuming, however, that Copts comprise merely 4% (3.3 million people) of Egypt’s

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2. See CHRISTINE CHAILLOT, *THE COPTIC ORTHODOX CHURCH* 10 (2005). For the purposes of this article, the term “Copt” refers to adherents of the Coptic Orthodox Church, and not those of the Coptic Catholic Church, founded in the nineteenth century. For information on the Coptic Catholic Church, see Petro B. T. Bilaniuk, *Coptic Catholic Church*, in 2 *THE COPTIC ENCYCLOPEDIA* 601-02 (Aziz Atiya ed., 1991).

3. See, e.g., RON SHAHAM, *FAMILY AND THE COURTS IN MODERN EGYPT* (1997); TAHIR MAHMOOD, *PERSONAL LAW IN ISLAMIC COUNTRIES* ch. 2 (1987); Fatma Khafagy, *The Challenge of Fundamentalist Muslim Movements and Women’s Rights in Egypt*, in *MUSLIM WOMEN AND THE CHALLENGE OF ISLAMIC EXTREMISM* (Norani Othman ed., 2005); Julia Clancy-Smith, *The Making and Breaking of Marital Bonds in Modern Egypt*, in *WOMEN IN MIDDLE EASTERN HISTORY* (Nikki Keddie & Beth Baron eds., 1991). For an excellent general overview of Muslim Family Law, see JAMAL J. NASIR, *THE ISLAMIC LAW OF PERSONAL STATUS* (1986).

4. CIA World Factbook, Egypt, Jan. 27, 2010, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html> (follow “People” link and scroll down).

5. See AZIZ ATIYA, *THE COPTS AND CHRISTIAN CIVILIZATION* 2 (1980) [hereinafter ATIYA, *COPTS AND CHRISTIANS*]. The CIA World Factbook lists Copts as forming 9% of Egypt’s population. See CIA World Factbook, *supra* note 4. Copts have also argued that official government censuses have deliberately under-counted Copts to “justify their under-representation in government and other walks of life.” THEODORE HALL PATRICK, *TRADITIONAL EGYPTIAN CHRISTIANITY* 172 (1996).

6. Interview with Father Maximus, Shubra al Kheima, in Cairo, Egypt (Jan. 4, 2007); Interviews with Dr. Nash and Dr. Shady, parishioners, in Cairo, Egypt (Jan. 13, 2007); Interview with Bishop Paula, Coptic Patriarchate, in Cairo Egypt (Jan. 17, 2007). The names of Coptic interviewees have been changed to protect their identity.

population, they still form a significant, distinct, and vibrant section of Egypt's populace and deserve to be studied.

Western scholars have generally bypassed Coptic personal status law, focusing primarily on ancient contract law or ancient commercial law.<sup>7</sup> Of the two English sources devoted to Coptic personal status law, the most informative is a three-page synopsis entitled "Personal Status Law" in *The Coptic Encyclopedia*.<sup>8</sup> There is also a single nineteenth-century article in French comparing Coptic marriage laws to those of the French Civil Code.<sup>9</sup> Such a meager bibliography is remarkable considering that for well over a millennium the ruling Muslims in Egypt granted religious minorities (Christians, Gnostics, Jews) the status of *dhimmis* (protected), "with rights of ritual religion and personal legal status, under political submission, in the 'community (*millet*) system.'"<sup>10</sup> In other words, the Coptic Church in Egypt has administered and adjudicated personal status law matters for its members in fora separate from Shari'a law courts for over a thousand years. Nevertheless, Coptic personal status law has garnered scant attention.<sup>11</sup>

Studying the history of Coptic personal status law at this time is critical because the framework of traditional protections afforded by Islam to adherents of minority religions in Egypt is crumbling. President Mubarak's government has repeatedly stated that it wants to create a universal right of divorce for *all* Egyptians modeled on Shari'a law.<sup>12</sup> These declarations trouble members of the Coptic Church because they

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7. See, e.g., A. Schiller, *Coptic Law*, 43 JURIDICAL REVIEW 211-40 (1931); Artur Steinwenter, *Das Recht der Koptischen Urkunden* [Law According to Coptic Documents], in 2 RECHTSGESCHICHTE DES ALTERTUMS [History of Ancient Laws] 1-66 (1955).

8. Iskandar Ghattas, *Personal Status Law*, in 6 THE COPTIC ENCYCLOPEDIA, 1941-43 (Aziz Atiya ed., 1991). See also Adel Guindy, *Family Status Issues Among Egypt's Copts: A Brief Overview*, 11 MIDDLE E. REV. INT'L AFF. 1-7 (2007).

9. Eugène Révillout, *Les régimes matrimoniaux dans le droit égyptien et par comparaison dans le code civil français*, 1 REVUE ÉGYPTOLOGIQUE 98, 101-08 (1880).

10. CHAILLOT, *supra* note 2, at 12.

11. For example, the International Encyclopedia of Comparative Law groups Copts with Ethiopians, Armenians, Jacobites, West Syrians, and the Christians of India and elides important differences between these groups by saying that "they live according to various ancient sources of law, as well as customary law." Paul Heinrich Neuhaus, *Christian Family Law*, in 6 THE INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW ch. 11, 6-7 (Mary Ann Glendon ed., 2006).

12. Interview with Father Maximus, *supra* note 6; Interview with Dr. Nash, *supra* note 6; Interview with Bishop Paula, *supra* note 6; Interview with Fathers John and Paul, priests, Shubra al Kheima, in Cairo, Egypt (Jan. 15, 2007).

espouse traditional Christian beliefs in the sanctity and inviolability of marriage, whereas marriage in Islam is predicated upon principles akin to secular contracts.<sup>13</sup> Thus, to appreciate the current tension between the majority Muslim government and the minority Coptic Egyptians, one must understand the long history and importance of Coptic personal status law to the Copts.

This Article provides the first detailed chronological history in English of the development of Coptic personal status law. Through interviews conducted with Coptic clergy and members of the Coptic faith in Egypt, examination of unpublished primary sources, published primary sources such as the Bible, Canons of Church Fathers, papyri, ostraca (limestone fragments used for writing) and the *Fetha Nagast* (a medieval Coptic law code), translations of published primary sources from Arabic to English, and a multitude of secondary sources, this Article will chart the distinctive phases of Coptic personal status law over the past two millennia.

The discussion of the modern code governing Coptic personal status law, the *Bill of Personal Affairs for Copts*, is particularly noteworthy. In January 2007, the authors had the privilege of traveling to the Coptic Patriarchate in Cairo to discuss the background, formulation, and substantive provisions of the current tenets of Coptic personal status law with Bishop Paula, the presiding ecclesiastical authority for personal status matters in the Coptic Church and the primary author of the *Bill of Personal Affairs for Copts*. The comprehensive analysis of the *Bill* in this Article marks the first examination of the current Coptic personal status law code in English. The authors hope that this brief chronological history will provide an impetus for legal scholars to investigate particular epochs and topics within Coptic personal status law more thoroughly.

This Article is divided into five Sections. Section I analyzes the etymology of the term “Copt” as well as its eventual transmission into the English lexicon during the Renaissance. The remaining four Sections chart the development of Coptic personal status law in chronological fashion. Section II examines Coptic personal status law during the first millennium, including the foundation and spread of the Coptic Church throughout the Nile Valley, the seminal sources governing Coptic personal status law, the isolating effects of the Coptic Church’s schism

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13. Interview with Father Maximus, *supra* note 6; Interview with Dr. Nash, *supra* note 6; Interview with Bishop Paula, *supra* note 6; Interview with Fathers John and Paul, *supra* note 13.

with the Roman and Byzantine Christian communities in 451 CE, the effect of the Muslim invasions during the seventh century, and an analysis of the archaeological evidence for the actual practice of Coptic personal status law during its first thousand years. Section III describes the substantive reforms made to Coptic personal status law during the medieval and early modern periods (974–1855 CE), concentrating largely on the initial codification of Coptic personal status laws in 1238 CE by Safi ibn al-Assal. Section IV describes the state restrictions placed on Coptic personal status law in the nineteenth and twentieth centuries. Finally, Section V contains a description and analysis of the *Bill of Personal Affairs for Copts*, the legal code governing Coptic personal status law today.

### I. WHO ARE THE COPTS?

The etymology of the term “Copt” and its transmission into the English language are not entirely clear. One theory suggests that “Copt” derives from Coptos (modern *Qift*), a settlement northeast of Luxor where Copts form a significant proportion of the population. However, Coptos has never been identified as a prominent center for Coptic activity, as were more northern cities like Asyut.<sup>14</sup> Other, less credible theories for the etymology of the word “Copt” include that the term stems from the Greek *kopto* “to cut,” a reference to the practice of circumcision, or from the name of Noah’s great-grandson Caphtorim, or from the final two syllables of the word “Jacobite,” referring to Jacob, the patriarch of the Twelve Tribes of Israel who died in Egypt.<sup>15</sup>

The predominant theory among current scholars is that the appellation “Copt” stems from an Arabic corruption of the Greek *Aigyptos* that over centuries attracted several meanings and eventually entered into the English lexicon.<sup>16</sup> Following the Arab conquest of Egypt in the seventh century, the Muslim rulers arabized *Aigyptos* to *Qibt*, a term used to distinguish native Egyptians from Greeks, Jews, or other foreigners inhabiting the Nile Delta, thus distinguishing in both

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14. See Pierre du Bourguet, *Copt*, in 2 THE COPTIC ENCYCLOPEDIA 599-600 (Aziz Atiya ed., 1991).

15. See ALASTAIR HAMILTON, THE COPTS AND THE WEST, 1439-1822: THE EUROPEAN DISCOVERY OF THE EGYPTIAN CHURCH 24 (2006) [hereinafter HAMILTON, COPTS AND THE WEST]. Jacob’s embalming in Egypt and subsequent burial in Canaan can be found in the Old Testament at *Genesis* ch. 50 (New International Version).

16. See ATIYA, COPTS AND CHRISTIANS, *supra* note 5, at 1; du Bourguet, *supra* note 14, at 599.

geographic and ethnic terms the native people who are descended from the Pharaohs.<sup>17</sup> As Islam spread throughout Egypt, the term *Qibt* also attracted a categorical religious meaning, identifying Christians as separate from the ruling Muslim Arabs.<sup>18</sup> Over the next several hundred years, many native Egyptians who practiced Christianity converted to Islam due to extreme fiscal, political, and social pressure. Native inhabitants who remained Christian were identified as *Qibts*, and the term gradually assumed a “meaning that is inseparably ethnic [Egyptian] and Christian.”<sup>19</sup>

Intermittent contact between European Crusaders and Christian *Qibts* from the eleventh to fourteenth centuries helped solidify the religious and ethnic connotations associated with the term. Ironically, however, the majority of this Christian to Christian contact was antagonistic. Although Crusaders conquered Jerusalem in 1099 CE, Muslim chroniclers recount that “[o]ne of the first measures” taken by the victors “was to expel from the Church of the Holy Sepulchre all the priests of Oriental rites—Greeks, Georgians, Armenians, Copts, and Syrians—who used to officiate jointly, in accordance with an old tradition respected by all previous conquerors.”<sup>20</sup> In addition, all adherents of Eastern Christian churches, including Copts, were prohibited from pilgrimage to the holy sites because the Crusaders believed that they were heretics.<sup>21</sup> As the colonial grip of the Crusaders on the Holy Land started to loosen in the late twelfth century, sporadic Crusader raids on Egyptian coastal cities, notably Damietta in 1249 CE and Alexandria in 1365 CE, also brought Copts and the European Christian warriors into close contact on opposite sides of the battlefield.<sup>22</sup> That European Crusaders identified the *Qibts* as Christian

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17. See BARBARA WATTERSON, *COPTIC EGYPT* ix (1988); ATIYA, *COPTS AND CHRISTIANS*, *supra* note 5, at 1; du Bourguet, *supra* note 14, at 599; CHAILLOT, *supra* note 2, at 9.

18. Although the majority of Christians in Egypt during the first millennium were Copts, Melkite, Ethiopian, and later Armenian Christians also lived in Egypt in small numbers. See HAMILTON, *COPTS AND THE WEST*, *supra* note 15, at 24-25.

19. Du Bourguet, *supra* note 14, at 599; see also CHAILLOT, *supra* note 2, at 9; WATTERSON, *supra* note 17, at ix.

20. AMIN MAALOUF, *THE CRUSADES THROUGH ARAB EYES* 51 (1984).

21. See Aziz Atiya, *Crusades, Copts and the West*, in 3 *THE COPTIC ENCYCLOPEDIA* 664 (Aziz Atiya ed., 1991) [hereinafter Atiya, *Crusades*]; HAMILTON, *COPTS AND THE WEST*, *supra* note 15, at 49-50.

22. At Damietta, Crusaders attacked and pillaged textile factories primarily run and inhabited by Coptic craftsmen. Almost a century later, European Crusaders under the

and not Muslim is clear—just as clear as the fact that from the Crusader’s perspective, these Egyptian Christians were believers in a heterodox Christian tradition and had fallen from the true faith.

Continued communication between Egyptian and European Christians in the fifteenth and sixteenth centuries further cemented the religious and ethnic meaning of *Qibt*. During the Council of Florence (1438–1445 CE), attempts were made to unify the Eastern and Western Christian churches. By 1439 CE, the Popes of Constantinople and Rome had signed a bull of union between their churches, and the Roman pontiff, Eugenius IV, invited his Egyptian contemporary, Pope John XI, to join. Years of discussions, traveling delegations, and dialogue ensued, but in 1442 CE Pope John XI refused to ratify the bull of union, and the possibility of any meaningful union between the Eastern and Western churches was utterly eradicated by the Turkish conquest of Constantinople in 1453 CE.<sup>23</sup> Although the churches remained separated, travel between Christian Europe and Egypt revived, with a few European pilgrims visiting sites in Egypt associated with the flight of the Holy Family.<sup>24</sup> During the sixteenth century, ancient Christian texts from Egypt appeared in European libraries, a few *Qibts* migrated into European cities, and antiquarian-minded Europeans along with missionaries ventured into Egypt.<sup>25</sup>

By the early seventeenth century, the term *Qibt* (anglicized to “Coptics” or “Cophtes” by contemporaries) was synonymous with a native Christian Egyptian in English texts.<sup>26</sup> The English spelling and meaning of this word was probably influenced by Josephus Abudnacus (Yusuf ibd Abu Dhaqn), a Cairene and Copt who taught Arabic and other oriental languages at Oxford University during the early seventeenth century.<sup>27</sup> Abudnacus’s small pamphlet on the history of the Copts, the

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Order of the Passion of Jesus Christ pillaged Alexandria and massacred Muslim and Copt alike. See Atiya, *Crusades*, *supra* note 21, at 665. For a contemporary Crusader account of the battle at Damietta, see JOINVILLE AND VILLEHARDOUIN: *CHRONICLES OF THE CRUSADES*, 202–10 (M. R. B. Shaw ed. and trans., 1963).

23. See HAMILTON, *COPTS AND THE WEST*, *supra* note 15, at 51–56.

24. See *id.* at 107–15.

25. *Id.* at 2; du Bourguet, *supra* note 14, at 599. For the various European missions undertaken to Egypt during this period, see HAMILTON, *COPTS AND THE WEST*, *supra* note 15, at chs. 4, 5.

26. Online Oxford English Dictionary, available at: <http://www.oed.com> (enter keyword: “Copt”).

27. Alastair Hamilton, *Josephus Abudnacus*, in *ONLINE OXFORD DICTIONARY OF NATIONAL BIOGRAPHY*, available at: <http://www.oxforddnb.com/public/index.html?>



*Historia Jacobitarum* printed in the 1620s, is one of the few writings about Copts in a European language authored by a Copt.<sup>28</sup>

By the late seventeenth century, “Copt” engendered several specific interwoven meanings that largely remain to the present day. “Copt” signifies an ethnic, geographical, liturgical, and religious heritage confined to descendants of the pharaohs or native Egyptians. The Coptic personal status laws discussed in this Article are concerned with the laws, doctrines, and procedures that have governed and continue to inform familial relationships within this Egyptian Christian group.

## II. COPTIC PERSONAL STATUS LAW IN THE FIRST MILLENNIUM: C. 40–972 CE

### A. Foundation and Dissemination of the Coptic Church

According to tradition, Saint Mark—the evangelist, apostle, and author of the oldest canonical Gospel—established Christianity in Egypt sometime around 40 CE. Mark is therefore revered as the first Patriarch of the Coptic Church, and he is credited with the conversion of the first Egyptian, Anianus the cobbler, into the Christian faith.<sup>29</sup> Following the crucifixion in Rome of Christ’s chief apostle, Peter, Mark traveled to Alexandria. As Mark walked along Alexandria’s stony paths, “the strap of his shoe was torn, and he went to a cobbler by the name of Anianus to have it fixed. When the cobbler took the awl to work on it, he accidentally pierced his hand and cried aloud, ‘God is one.’”<sup>30</sup> Mark, overjoyed at this exclamation by the cobbler, miraculously healed Anianus’s hand and preached Christ to him and then to his entire household. Anianus and his whole family converted, and Mark ordained

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url=%2Findex.jsp (enter keyword: “Abudnacus”). Abudnacus also taught Arabic in the Netherlands in the early seventeenth century. See CHAILLOT, *supra* note 2, at 83.

28. HAMILTON, COPTS AND THE WEST, *supra* note 15, at 127-36; CHAILLOT, *supra* note 2, at 83. In 1693, out of curiosity and contemporary political circumstances, Sir Edwin Sadleir translated the *Historia Jacobitarum* into English in order to show the English populace that the Copts (sometimes termed “Jacobites”) were not at all similar to the Jacobites of England who supported the return of the Stuarts to the throne. See EDWIN SADLEIR, THE HISTORY OF THE COPTS, COMMONLY CALLED JACOBITES, UNDER THE DOMINION OF THE TURK AND ABYSSIN EMPEROR (1693).

29. OTTO MEINARDUS, TWO THOUSAND YEARS OF COPTIC CHRISTIANITY 29 (1999); see also CHAILLOT, *supra* note 2, at 17.

30. MEINARDUS, *supra* note 29, at 29.

him as bishop, establishing the See of Alexandria before receiving martyrdom on 8 May 68 CE.<sup>31</sup>

Over the next 200 years, Christianity spread slowly to the native Egyptian-speaking populace, apparently because little effort was made to preach to them in their native tongue. This policy changed under Patriarch Dionysius (247–264 CE), and Christianity began to flourish throughout all of Egypt, particularly in the Nile Valley and Fayyum.<sup>32</sup> By around 320 CE, the Bishop of Alexandria presided over an estimated ninety to 100 bishoprics in Egypt and Libya, with the greatest concentration being in the Nile Delta.<sup>33</sup>

Little is known about how primitive Christianity affected the familial relations of converted Egyptians in this early period, but Egypt's soil quickly proved fertile for this burgeoning faith. Mark, or other early Christian missionaries to Egypt, must have introduced some form of liturgy and portions of the Bible to these followers, as archaeologists have discovered "Biblical papyri in [the] Coptic language," which "predate the oldest authoritative Greek versions of the Scripture in the fourth and fifth centuries including the *Codex Sinaiticus*, the *Codex Alexandrinus*, the *Vaticanus*, and the *Codex Ephraemi Syri Rescriptus*."<sup>34</sup> And with the foundation of the Catechetical School in Alexandria, circa 200 CE, Christian scholars like Pantænus, first president of the school, and his successors, like Origen, a "scholar of pure Coptic stock," quickly subjected Christianity and the Bible "to very rigorous studies which generated the first systematic theology and the

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31. *Id.* at 28–29; see also CHAILLOT, *supra* note 2, at 17. Watterson gives a different date for the martyrdom of Mark: 25 April 63 CE. WATTERSON, *supra* note 17, at 23. For a detailed examination of the ancient texts and traditions surrounding Mark's establishment of Christianity in Egypt, see STEPHEN DAVIS, *THE EARLY COPTIC PAPACY: THE EGYPTIAN CHURCH AND ITS LEADERSHIP IN LATE ANTIQUITY* ch. 1 (2004); C. WILFRED GRIGGS, *EARLY EGYPTIAN CHRISTIANITY: FROM ITS ORIGINS TO 451 C.E.* ch. 2 (1990).

32. WATTERSON, *supra* note 17, at 30; CHAILLOT, *supra* note 2, at 9. The city of Fayyum was an ancient Pharonic city named after the crocodile god, Sebek. Romans called the city Crocodilopolis, and the Greeks, Arsinoities, after the wife of Ptolemy II. A Coptic bishop was established in Fayyum sometime near the middle of the third century, and it later became a thriving monastic center. Randall Stewart, *Fayyum, City of*, in 4 *THE COPTIC ENCYCLOPEDIA* 1100 (Aziz Atiya ed., 1991).

33. See 1 *COPTIC DOCUMENTARY TEXTS FROM KELLIS* 17 (I. Gardners, A. Alcock, and W. Funk eds., 1999).

34. ATIYA, *COPTS AND CHRISTIANS*, *supra* note 5, at 3–4. The earliest fragment so far discovered is that from the New Testament Gospel of John dating from the early second century. See *COPTIC DOCUMENTARY TEXTS FROM KELLIS*, *supra* note 33, at 16.

most extensive exegetic enquiry into the Scripture.”<sup>35</sup> The voluminous writings of those in the Catechetical School laid the foundation for the later ecumenical movement under the first Christian Emperor Constantine (306–337 CE), in which “the hierarchy of all churches met to decide what was canonical and what was uncanonical in Christian beliefs and traditions.”<sup>36</sup>

### *B. Sources of Coptic Personal Status Law*

Given the amorphous and varied traditions surrounding early Christian sources in Egypt, Father Salib Sourial, a prominent Coptic historian and theologian, concluded that the early Coptic Church did not endorse any one particular canon of writings as definitive for personal status issues.<sup>37</sup> However, a hierarchy of sources for Coptic personal status law did exist. The chief source for Coptic personal status law was the Bible (Old and New Testaments).<sup>38</sup> The Bible was supplemented by the Apostolic canons, decisions of ecumenical councils and synods, and the writings of significant Church Fathers. That the Bible was granted a preeminent position is unremarkable considering the apostolic calling of Mark, the founder of the Coptic Church.

The Bible is the foundational text for Coptic personal status laws. The authority of the Coptic Church over personal status issues among its adherents is grounded in Christ’s delegation of authority to his apostles (including Mark): “I tell you the truth, whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in

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35. ATIYA, COPTS AND CHRISTIANS, *supra* note 5, at 5.

36. *Id.* at 7.

37. FATHER SALIB SOURIAL, DERRASAT FI QAWANEEN AL-AHWAL AL-SHAKHSIA [Studies in the Personal Status Laws for the Contracts of Engagement and Marriage, Along with Annulment and Breach] 10 (3d ed. 2004); *see also* René-Georges Coquin, *Canon Law*, in 2 THE COPTIC ENCYCLOPEDIA 449 (Aziz Atiya ed., 1991).

38. At the beginning of the twentieth century, Pope Cyril V ordered that the following books be removed from the Old Testament: Judith, Tobit, the Wisdom of Solomon, Ecclesiasticus, the Epistle of Jeremiah, the Complement of Esther, Baruch, the Books of Maccabees, and the Complement of Daniel. No changes were made to the New Testament. A complete list of the Biblical books currently accepted by the Copts can be found in MEINARDUS, *supra* note 29, at 40-41.

heaven.”<sup>39</sup> Similarly, the scope and matters pertaining to Coptic personal status laws are also based upon Biblical precedent. Where Old Testament principles conflicted with those in the New Testament, which they often did, Copts followed the New Testament, as Christ was deemed to have fulfilled the ancient covenants and his word superseded old traditions.<sup>40</sup>

Christ’s teachings on the formation and dissolution of marriage are the most important principles of Coptic personal status law. Responding to a query from some Pharisees (adherents of a Jewish religious sect who emphasized meticulous observance of ceremonial rules) concerning the efficacy of the Mosaic law of divorce, Christ referenced the creation story when expounding on the nature and sanctity of marriage:

Haven’t you read that at the beginning the Creator ‘made them male and female,’ and said, ‘For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh’? So they are no longer two, but one. Therefore what God has joined together, let man not separate. Why then, [the Pharisees] asked, did Moses command that a man give his wife a certificate of divorce and send her away? Jesus replied, Moses permitted you to divorce your wives because your hearts were hard. But it was not this way from the beginning. I tell you that anyone who divorces his wife, except for marital unfaithfulness, and marries another woman commits adultery.<sup>41</sup>

Thus, Christ taught that marriage was a divine sacrament between man and woman, a union ordained and originally performed by God. Given the holy nature of this union, its dissolution was only proper on grounds of sexual infidelity. These two intertwined concepts—that (1) marriage between a man and a woman is a divine sacrament, and (2) dissolution of marriage is permissible only on the basis of adultery—form the foundation upon which Coptic personal status law is built.<sup>42</sup>

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39. *Matthew* 18:18 (New International Version); see also Ghattas, *supra* note 8, at 1942. All Biblical quotations in this article are from the Online New International Version (NIV) of the Holy Bible, which is a translation made by more than 100 scholars using the earliest and best Greek, Hebrew, and Aramaic texts. See Online Holy Bible, New International Version, available at: <http://www.biblegateway.com/versions/New-International-Version-NIV-Bible/>.

40. See *Matthew* 5:17.

41. *Matthew* 19:4-9; see also *Mark* 10:11-12.

42. Bishop Gregorios also notes that Christ’s appearance at the marriage feast in Cana (*John* 2:1-11) is important to viewing marriage as a sacrament. Here, Christ performed his first miracle of turning water into wine. Christ’s acceptance of the invitation to the marriage and his subsequent miracle reflect the importance he attached to marriage as “a sacrosanct institution in the structure of society.” Bishop Gregorios, *Marriage*, in 5 *THE COPTIC ENCYCLOPEDIA* 1542, 1542 (Aziz Atiya ed., 1991). For an excellent synopsis of the procedures surrounding the sacrament of marriage in the Coptic

The Apostle Paul, following his miraculous conversion while traveling to Damascus,<sup>43</sup> clarified and expanded on the nature of the Christian familial relationship in numerous missives to fledgling Christian communities scattered around the Mediterranean. Like Christ, Paul taught that marriage was a divine union between man and woman instituted by God.<sup>44</sup> He also introduced the doctrine that, along with adultery, the death of a spouse dissolves the marital union.<sup>45</sup> Paul further instructed nascent Christians that marriage was designed to unify husband and wife, with the man leading the family,<sup>46</sup> and he reaffirmed Old Testament traditions that husband, wife, and children each held reciprocal duties to the others of love, fidelity, and faith.<sup>47</sup> In contrast to the Old Testament, however, in which polygamy was occasionally sanctioned,<sup>48</sup> Paul taught that followers of Christ should practice celibacy or monogamous marriage.<sup>49</sup> And, given the divine, sacramental nature of Christian marriage, Paul advised Christians not to marry non-Christians, as interfaith marriage might lead to apostasy.<sup>50</sup>

In sum, Christ's and Paul's teachings in the New Testament reveal the following principles about the Christian family: (1) marriage is a divine sacrament instituted by God; (2) marriage is a lifelong union between one man and one woman, with the patriarch at the head; (3) husband, wife, and children each have reciprocal duties to other members of the family; (4) Christians should marry Christians; and (5) marriage is dissolved by adultery or death.

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Church, see CHAILLOT, *supra* note 2, at 114-15. For a more extended legal explication of the importance Copts place on the sacrament of marriage, see AWNY R. BARSOUM, ORTHODOX MARRIAGE (2005).

43. See *Acts* chs. 9:1-31; 22:1-21.

44. See, e.g., *Ephesians* 5:30-33; *1 Corinthians* 11:11-12; *2 Corinthians* 6:14-16.

45. See, e.g., *1 Corinthians* 7:39; *Romans* 7:2-3.

46. See, e.g., *1 Corinthians* 11:3; *Ephesians* 5:23-29.

47. For duties of the husband to the wife, see *Exodus* 20:17; *Malachi* 2:14-15; *1 Corinthians* 7:3-4, 29-33; *Ephesians* 5:25-28; *Colossians* 3:19. For duties of the wife to the husband, see *Proverbs* 31:10-31; *1 Corinthians* 11:7-12; *1 Corinthians* 14:34-35; *Ephesians* 5:22-24; *Colossians* 3:18; *1 Timothy* 2:11-15; *1 Timothy* 3:11. For the duties of children to parents, see *Exodus* 20:12; *Deuteronomy* 4:10, 11:19-21; *Proverbs* 4:1; *Isaiah* 54:13; *Matthew* 18:10; *1 Thessalonians* 2:11; *1 Timothy* 3:4; *Titus* 2:4.

48. See, e.g., *Genesis* 16:1-16; *Exodus* 21:10; *Deuteronomy* 17:17; *1 Kings* 11:1-4; *2 Chronicles* 13:21.

49. See, e.g., *1 Corinthians* 6:16; *1 Corinthians* 7:1-2; *1 Timothy* 3:2.

50. See, e.g., *2 Corinthians* 6: 14-17.

After the Bible, the most important Coptic sources informing Coptic personal status law are the Apostolic Canons, the decisions of ecumenical councils and synods, and the writings of significant Church Fathers. The Apostolic Canons find their foundation in the Bible. In 48 CE the apostles met in Jerusalem to enact regulations concerning recent Gentile converts.<sup>51</sup> In the next few centuries, “the church was forced on many occasions to enact such laws to establish correct belief, to regulate performance of the Divine Liturgy and the administration of sacraments, and to control the conduct of the clergy and laity alike.”<sup>52</sup> Copts compiled these canons into two authoritative collections: (1) *The 127 Canons of the Apostles*, concerned primarily with church structure and order; and (2) the *Didascalia*, a compilation of regulations from a Jerusalem Council in 48 CE for fasting, the canonical hours, treatment of orphans and widows, and the duties of bishops, along with moral and spiritual guidelines for clergy and the laity in general.<sup>53</sup> The *Didascalia* contains the first reference to bishop’s courts being used as a forum for lawsuits between Christians.<sup>54</sup>

Decisions of ecumenical councils and synods, until the schism with the Catholic Church in 451 CE, also significantly influenced the development of Coptic personal status law. The earliest synodal canons dealing with personal status issues are those of Ankara in 314 CE. Along with canons regulating the re-introduction of members who had succumbed to recent persecution, the Ankara canons imposed penitential periods for men who committed bestiality and thus disgraced their families (Canon 16), for men and women who committed adultery (Canon 20), and for women who had abortions (Canon 21).<sup>55</sup> Such penances generally involved a prohibition on receiving the Eucharist for a number of years.<sup>56</sup> In the case of abortion, penance was eventually

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51. See Acts ch. 15.

52. MEINARDUS, *supra* note 29, at 45.

53. See René-Georges Coquin, *Canons, Apostolic*, in 2 THE COPTIC ENCYCLOPEDIA 451, 452-53 (Aziz Atiya ed., 1991); C. Wilfred Griggs, *Didascalia*, in 3 THE COPTIC ENCYCLOPEDIA 899, 899-900 (Aziz Atiya ed., 1991); MEINARDUS, *supra* note 29, at 46; see also Coquin, *Canon Law*, *supra* note 37, at 449-51; SOURIAL, *supra* note 37, at 14-15.

54. Griggs, *Didascalia*, *supra* note 53, at 899.

55. See MEINARDUS, *supra* note 29, at 47. An English text of the canons of Ankara (Ancyra) can be found at *The Council of Ancyra, Historical Note & Canons*, available at: [http://www.synaxis.org/canon/ECF37THE\\_COUNCIL\\_OF\\_ANCYRA\\_HISTORICAL.htm](http://www.synaxis.org/canon/ECF37THE_COUNCIL_OF_ANCYRA_HISTORICAL.htm) [hereinafter *Ancyra Canons*].

56. See MEINARDUS, *supra* note 30, at 47.

shortened from a death-bed communion ceremony to a period of ten years.<sup>57</sup>

Canons relating to personal status were also promulgated at the synod in Gangra around 345 CE. These reaffirmed the sanctity and sacramental nature of monogamous marriage (Canons 1, 14) and charged that parents should not forsake their children, nor children their parents, under the pretence of asceticism (Canons 25, 26);<sup>58</sup> while canons at Neocaesarea (315 CE) and Laodicea (c. 343–381 CE) established penances for polygamy (Canon 2)<sup>59</sup> and for marrying a heretic (Canon 10), respectively.<sup>60</sup> These synodal canons are only a few of the numerous early Christian canons that helped shape Coptic personal status law; a full examination warrants its own study. However, the common principles running throughout these conciliar canons mirror those taught by Christ and Paul: that a Christian family is formed and sustained through fidelity within a monogamous marriage, entailing reciprocal duties between spouses and between parents and children.

Writings of early Church Fathers also played an integral role in the formation of Coptic personal status law. Otto Meinardus, a Coptic scholar, lists over twenty-five different Church Fathers whose writings are considered authoritative by most Coptic theologians, but he is quick to add that “there is no consensus of opinion” and that “there are discrepancies as to the application of the various canons.”<sup>61</sup> Among these early Church Fathers are broadly familiar names like Origen, Eusebius, and Tertullian. Our examination will focus on selected writings of a different triumvirate, who, for their zeal, wisdom, and general authoritativeness, were each granted the title “Doctor of the Church”: St. Hippolytus of Rome (d. 230 CE), St. Athanasius (c. 295–

57. Canon 21 of the *Ancyra Canons*, *supra* note 55.

58. MEINARDUS, *supra* note 29, at 48. An English text of the canons of Gangra can be found at: <http://www.newadvent.org/fathers/3804.htm>.

59. That polygamy was considered a sin to early church councils may be surprising because polygamy was often practiced by God’s servants in the Old Testament (e.g., *Genesis* 30:1-4; 1 *Samuel* 25:39-44; 2 *Samuel* 5:13; 2 *Chronicles* 24:3). However, early church councils, and consequently the Copts, decided to follow the New Testament tradition which makes marriage a union of one man and one woman. The current Coptic Pope, Shenouda III, has even published a small book on the matter. See HIS HOLINESS POPE SHENOUDA III, *MONOGAMY* (11th ed. 2004).

60. MEINARDUS, *supra* note 29, at 48; An English text of the canons of Neocaesarea is available at: <http://www.newadvent.org/fathers/3803.htm>. An English text of the canons of Laodicea is available at: <http://www.newadvent.org/fathers/3806.htm>.

61. MEINARDUS, *supra* note 29, at 42-45, 51.

373 CE), and St. Basil (330–379 CE).<sup>62</sup> The canons of these men were particularly critical in shaping early Coptic personal status law.

St. Hippolytus was born a Christian slave sometime in the latter half of the second century and eventually rose, under St. Irenaeus's tutelage, to become a great theologian and teacher in Rome.<sup>63</sup> His primary treatise, *The Apostolic Tradition*, was written in the first few decades of the third century as an anti-papal reaction to gradual changes in church liturgy and practice that St. Hippolytus felt departed from traditional Christianity.<sup>64</sup> In three parts, St. Hippolytus records the long-established rituals and customs dealing with local Christian spiritual leadership, initiation of the laity, and how to live a devout Christian life. One of the rites with which St. Hippolytus deals specifically is the marriage relationship. Part II, Canon VI reads, "If a man have a wife or a woman a husband, let them be taught the man to be contented with his wife and the woman to be contented with her husband."<sup>65</sup> While succinct, this canon suggests that by the early third century, notions that a Christian couple should be committed to a monogamous, faithful relationship—implicitly denying the practices of polygamy, adultery, and divorce—were firmly rooted in tradition.

St. Athanasius (c. 295–373 CE), the twentieth Coptic Pope of Alexandria, was a great defender of the Orthodox faith against Arianism—the belief that God the Father and Christ were separate beings rather than united in one entity—and was the first Patriarch of Alexandria to use Coptic as well as Greek in his writing.<sup>66</sup> Of St. Athanasius's 107 Canons, four of them (Canons 6, 8, 45, and 46) renew

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62. *Id.* at 42–45, 49; Eric Segelberg, *Hippolytus*, in 4 *THE COPTIC ENCYCLOPEDIA* 1235, 1235 (Aziz Atiya ed., 1991). SS. Hippolytus, Athanasius, and Basil were not the only men on whom the appellation "Doctor of the Church" was bestowed. Gregory of Nyssa, Cyril, John Chrysostom, Peter of Alexandria, and Timothy of Alexandria were also so honored. The canons and writings of these men, along with other early Church Fathers, and their impact on the early formation of Coptic family law has not been studied, but would prove fruitful ground for further research.

63. See ST. HIPPOLYTUS OF ROME, *THE TREATISE ON THE APOSTOLIC TRADITION* xii–xiii (Gregory Dix & Henry Chadwick trans., 2d ed., 1968); Segelberg, *supra* note 62, at 1235–56.

64. HIPPOLYTUS, *supra* note 63, at xi–xii.

65. *Id.* at 24.

66. MEINARDUS, *supra* note 29, at 49; see also Aziz Atiya, *Athanasius I*, in 1 *THE COPTIC ENCYCLOPEDIA* 298, 298, 300–01, 302 (Aziz Atiya ed., 1991).



the familiar injunctions that Christians should practice monogamy and should not seek divorce except in cases of adultery.<sup>67</sup>

It is in elaborating the reciprocal duties between parents and children, however, that St. Athanasius breaks new ground. In Canon 75, for instance, we learn that if the son of a priest is caught attending the theater, the priest must perform penance for a week because he has failed to train his son properly.<sup>68</sup> Canon 94 warns parents that if they deny marriage to their son who is fit for marriage due to pecuniary concerns (i.e., the bride's family is not wealthy enough) and he loses his virginity before marrying, the judgment is upon the parents. Parents also have the duty to teach the value of abstinence to their children.<sup>69</sup> Canon 96 charges parents to teach their children mild and holy behavior. To instill this, fathers are supposed to care for their sons during church services, and mothers their daughters.<sup>70</sup> The duty of the children towards their parents, on the other hand, is bound up in gratitude and obedience. Canon 95 admonishes children to "obey your parents in all godly behaviour" and praise them, because they have born them in a Christian household, "begotten them a second time in the baptism of the faith," and children have "received of their parents knowledge to worship God."<sup>71</sup> Thus, while reminding the faithful of what a Christian marriage is—a unified, monogamous, lifelong relationship between man and woman—the Canons of St. Athanasius also offered Coptic parents more detailed guidance on how to conduct relationships with their children.

St. Basil (330–379 CE), archbishop of Caesarea in Cappadocia and companion to St. Athanasius in denouncing Arianism, produced two series of canons, one of which profoundly influenced Coptic personal status law.<sup>72</sup> St. Basil's first set of canons (thirteen in number) is concerned with the treatment of relics and of immoral priests and deacons. His second series of canons (106 in number) ranges widely

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67. SAINT ATHANASIUS, *THE CANONS OF ATHANASIUS OF ALEXANDRIA: THE ARABIC AND COPTIC VERSIONS* 12-14, 16, 35 (Wilhelm Riedel & W. E. Crum eds. and trans., 1904).

68. *Id.* at 48.

69. *Id.* at 60-61.

70. *Id.* at 61-62.

71. *Id.* at 61.

72. See C. Detlef Mueller, *Basil the Great*, in 2 *THE COPTIC ENCYCLOPEDIA* 351-52 (Aziz Atiya ed., 1991). St. Basil's fame in Christian kingdoms was far reaching, as is testified by a relic list from a monastery in Exeter, England which claimed to have received one of his teeth and his pastoral staff from the Anglo-Saxon king, Athelstan. See *ANGLO-SAXON PROSE* 19-23 (Michael Swanton ed. and trans., 1993).

from prayer, to fasting, to the conjugal life, to the sinfulness of magic, and to the values of asceticism.<sup>73</sup> Several of St. Basil's 106 canons repeat familiar Biblical injunctions: Canons 23 and 24 intone the prohibition on adultery,<sup>74</sup> even offering specific grooming guidelines for women (Canon 26) and men (Canon 27) to protect their holiness.<sup>75</sup> Canon 25 forbids polygamy,<sup>76</sup> and Canons 9 and 71 take a strong line on divorce for both the laity and clerics. Canon 9 reads, "If someone has divorced another they should both be shut out from the church; unless they purify themselves."<sup>77</sup> Canon 71 states, "If a man wants to divorce a woman and a cleric writes a letter of divorce for him, the cleric shall be shut out of the church, until the marriage between the two of them is reunited."<sup>78</sup> Like SS. Hippolytus and Athanasius, St. Basil counseled strongly against divorce.

St. Basil strongly discouraged divorce in part because he saw in marriage a relationship that produced both temporal and spiritual fruits. In Canon 3, St. Basil describes marriage as a state that God ordained to those in the flesh for more than just procreation. Marriage also provides a way to follow the unfathomable (God) through temperance and righteous observance.<sup>79</sup> Thus, through children (the temporal fruits of marriage) and through meekly following God in the treatment of one's spouse (the spiritual fruits of marriage), the union of man and woman is able to help both transcend this earthly sphere. This deeper, dual purpose of marriage appears to be unique to St. Basil.

73. MEINARDUS, *supra* note 29, at 49; see René-Georges Coquin, *Canons of St. Basil*, in 2 THE COPTIC ENCYCLOPEDIA 459 (Aziz Atiya ed., 1991). St. Basil was also a prominent ascetic, founding many monasteries, a practice that grew deep roots among the Copts in Egypt. Mueller, *supra* note 72, at 351. For an examination of some Coptic fragments of St. Basil's canons, see W. E. Crum, *The Coptic Version of the Canons of S. Basil*, 26 PROC. SOC'Y BIBLICAL ARCHAEOLOGY 57-62 (1904).

74. WILHELM RIEDEL, *DIE KIRCHENRECHTSQUELLEN DES PATRIARCHATS ALEXANDRIEN* [The Sources of Church Law from the Patriarchate of Alexandria] 244 (1968).

75. Women should dress modestly, keeping their hair bound up, and should not wear gold or silver jewelry, nor rouge their cheeks. Men should also dress modestly, not wearing red or purple clothes, nor should they let their hair grow long, get tattoos, or wear finger rings. *Id.* at 244-45.

76. *Id.* at 244.

77. *Id.* at 240 [Translated from the German text of Wilhelm Riedel by Ryan Rowberry].

78. *Id.* at 267.

79. *Id.* at 238.

St. Basil also offers additional insight into the adjudicatory process that bishops followed when dealing with disputes. Canon 82 reads: “No bishop shall judge someone without witnesses, nor shall he admit one man as a witness against another. Instead, testimony shall be determined by two or three men who are honest and take no pleasure in lies. If one of these [witnesses] was heretofore embroiled in a dispute, you should not admit his accusation. If one accuses someone after a long period of time, he shall receive a great punishment: how can one bring a case forward when the statute of limitations has run?”<sup>80</sup> The procedural safeguard of having several witnesses establish the truth is a well-known tradition in both the Old and New Testaments, and St. Basil surely knew of this custom.<sup>81</sup> However, the mention of a statute of limitations for disputes is intriguing, as no clear Biblical precedent for the amount of time needed to achieve finality in a dispute is recorded.<sup>82</sup> Custom probably played a significant role in determining these temporal limitations.

### C. Coptic Isolation, Subjection, and Self-Governance

The Council of Chalcedon (451 CE), convened in part to settle the issue of whether Christ possessed a dual nature (diphysite) or singular nature (miaphysite), proved a pivotal turning point for the Coptic Church and Coptic personal status law. Disagreement about the true nature of Christ divided the burgeoning Christian churches into two camps. On one side stood the Roman, Melkite, Byzantine, and Greek Orthodox churches (“Western” churches), that believed that Christ was diphysite; that is, that Christ was endowed with “two natures, the divine and the

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80. *Id.* at 269.

81. See *Numbers* 35:30; *Deuteronomy* 17:6, 19:15; *John* 5:31; *John* 8:17; 1 *Timothy* 5:19; 1 *John* 5:8. *Deuteronomy* 19:15 reads, “One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses shall the matter be established.”

82. The closest Biblical precedent to the concept of a statute of limitations may well be the laws governing sanctuary among the Levitical cities of refuge. Under these laws any person who unintentionally killed another could flee to one of six cities that were designated as refuges from reprisal. To take advantage of the cities’ safety, the suppliant had to remain in the city of refuge until the death of the current high priest, at which time he could return to his lands without judgment or penalty. Whether the death of the high priest effectively atoned for the unintentional slaying, or whether the passage of time between entrance into the city of refuge and the death of the high priest made the unintentional killing too attenuated to receive judgment is unclear. It was probably a combination of both factors. See *Numbers* ch. 35.

human, permanently united, though unconfused and unmixed.”<sup>83</sup> Arguing the opposite position—that the human and divine elements of Christ were “united in the mystery of the Incarnation”—were the Coptic, Syrian, and Armenian churches (“Eastern” churches).<sup>84</sup> The Western churches supporting the diphysite position ultimately carried the majority vote. Rather than adhering to the doctrine of diphysitism, however, the Eastern churches, including the Copts, separated themselves from their Western brothers—creating the first great schism in Christianity. As a result, from 451 CE, the theology and, consequently, the practices of the Coptic Church diverged significantly from those of the Greek, Roman, or Byzantine churches. For Coptic personal status law, this segregation meant that only the precepts promulgated by the Pope of Alexandria were followed, ignoring completely his northern Mediterranean counterparts in Rome and Constantinople.<sup>85</sup> In reality, however, Coptic personal status law seems to have changed little during the next 200 years, as Coptic leaders were primarily concerned with defending their miaphysite beliefs from the theological attacks of pro-Chalcedonian authors rather than instituting new reforms. But this separation from the European Christian community signaled a critical initial step toward Coptic isolation.

With the Arab conquest of Egypt starting in 639 CE, the Coptic Church became even more isolated from other Christian churches and kingdoms.<sup>86</sup> Although social and financial opportunities waxed and waned depending on the policies of the current ruler and contemporary circumstances, the Coptic Church was allowed to retain juridical control

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83. MEINARDUS, *supra* note 29, at 53; *see also* HAMILTON, COPTS AND THE WEST, *supra* note 15, at 17-20.

84. MEINARDUS, *supra* note 29, at 53-54; *see also* W. H. C. Frend, *Chalcedon, Council of*, in 2 THE COPTIC ENCYCLOPEDIA 512-15 (Aziz Atiya ed., 1991).

85. The schism of Christian churches at the Council of Chalcedon is a rift which has yet to be fully reconciled.

86. Due to the isolation of the Copts from outside influences, some scholars refer to “Coptic Law” as those laws written in Coptic from the Arab conquest through the tenth century, when Arabic had almost totally replaced Coptic as the primary language for Egyptian Christians. *See, e.g.*, Leslie S. B. MacCoull, *Law, Coptic*, in 5 THE COPTIC ENCYCLOPEDIA 1428-32 (Aziz Atiya ed., 1991); TEN COPTIC LEGAL TEXTS 3-4 (A. Schiller ed. and trans., 1932). The problem with defining “Coptic Law” in this manner is that it oversimplifies a complex process. As scholars generally recognize, by the seventh century Coptic Law had already been influenced by Roman, Byzantine, and other Christian laws. However, between the seventh and ninth centuries, Arab legal practices may have crept into “Coptic Law” and been recorded in Coptic, thus disguising their influence. This is a field of study that deserves further inquiry.

over all personal status issues.<sup>87</sup> In return for property taxes (*kharag*) and poll taxes (*gizya*), Copts, like other non-Muslims in Egypt, were granted the Islamic status of *ahl al-dhimma* (protected), which allowed family issues of the minority religious group, such as marriage, divorce, or custody, to be handled internally.<sup>88</sup> Over the next 400 years, Arabic gradually replaced Coptic as the dominant oral and written legal language,<sup>89</sup> while financial and social pressures drove some Copts to rebellion, others to convert to Islam, and still others to marry Muslims.<sup>90</sup>

#### D. Practice of Coptic Personal Status Law in the First Millennium CE

The manner in which Biblical guidance, canons of church councils, and writings of Church Fathers actually affected Coptic family relations and the operations of church courts in the first millennium is largely obscure. That Copts had the right to invoke the provisions of their faith and settle family disputes in ecclesiastical courts governed by canon law rather than Roman law is clear, as Emperor Constantine granted this privilege in 318 CE.<sup>91</sup> In addition, the *Didascalia* encouraged Christians to bring their disputes before an ecclesiastical leader, who, according to St. Basil, was supposed to follow the Biblical law of witnesses in determining the appropriate course of action. What is unclear—and deserves more study than this article allows—is how deeply early Christian beliefs on the sanctity of marriage and family penetrated and

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87. For a concise socio-economic view of Copts under different Arab dynasties, see Gladys Frantz-Murphy, *Umayyads, Copts under the*, in 7 THE COPTIC ENCYCLOPEDIA 2286-89 (Aziz Atiya ed., 1991); Aziz Atiya, *Tulunids and Ikhshids, Copts under the*, in 7 THE COPTIC ENCYCLOPEDIA 2280-81 (Aziz Atiya ed., 1991); Andre Ferre, *Fatimids and the Copts*, in 4 THE COPTIC ENCYCLOPEDIA 1097-1100 (Aziz Atiya ed., 1991); MEINARDUS, *supra* note 29, at 64-65.

88. See Ghattas, *supra* note 8, at 1941; HAMILTON, COPTS AND THE WEST, *supra* note 15, at 26.

89. The first Arabic document found in the Nile Valley is from 709 CE, but the fact that tenth century contract documents show that the Arabic language in the contract still needed to be explained in Coptic gives some idea of the gradual shift from Coptic to Arabic. See MEINARDUS, *supra* note 29, at 64; Frantz-Murphy, *supra* note 87, at 2289.

90. For an example of financial strain imposed by Arab taxes, see the communal agreement between the inhabitants of Jeme about the regulation of taxes c. 725-40 CE in TEN COPTIC LEGAL TEXTS, *supra* note 86, at 56-63; see also MEINARDUS, *supra* note 29, at 64; HAMILTON, COPTS AND THE WEST, *supra* note 15, at 26-28; Frantz-Murphy, *supra* note 87, at 2288-89.

91. Ghattas, *supra* note 8, at 1941.

influenced local Coptic behavior.<sup>92</sup> In the absence of a comprehensive study, we may surmise that the Coptic Church's local influence and linguistic continuity with its parishioners make it highly probable that during the first millennium CE, Copts were more aware of religious rules governing family affairs than they were of imperial or Arab decrees.<sup>93</sup>

From an examination of extant evidence, it appears that Biblical guidelines and Coptic canons expounding marital unity, familial duties, and the anathema of divorce were not rigidly followed by the laity, nor tightly enforced by the clergy. Indeed, the repeated injunctions from various Church Fathers, like SS. Hippolytus, Athanasius, and Basil, about the need for fidelity, love, and the perils of divorce imply that church teachings were not rigorously followed. Furthermore, letters written to Bishop Pisentius of Coptos on papyri and ostraca during the early seventh century reveal that some Coptic inhabitants of Jeme (modern Thebes) abandoned their children and committed adultery.<sup>94</sup> This correspondence also shows, however, that Pisentius vigorously insisted on reconciliation between estranged or adulterous spouses rather than divorce. When reconciliation ultimately failed, however, divorce was granted.<sup>95</sup>

Other sources note that Biblical injunctions against the dissolution of marriage were not followed with exactness. Despite threats of excommunication, divorces were granted for a number of reasons besides adultery, including incompatibility, and both divorced parties often had the right to choose monastic life or remarriage.<sup>96</sup> Till's studies of Coptic documents relating to marriage and divorce in Thebes during the eighth

92. Particularly helpful in this regard would be a complete English translation of Walter Crum and Georg Steindorff's transcriptions of Coptic papyri from eighth century Thebes. See WALTER CRUM AND GEORG STEINDORFF, *1 KOPTISCHE RECHTSURKUNDEN DES ACHTEN JAHRHUNDERTS AUS DJEME (THEBEN)* [Coptic Legal Documents from Thebes in the Eighth Century] (1912).

93. From his study of the imperial law codes of late Roman Egypt and their effect on regulating social mobility, Keenan concludes that "the average Egyptian could, at best, only have had an indirect familiarity with the imperial laws that influenced his life." See J. G. Keenan, *On Law and Society in Late Roman Egypt*, in 17 *ZEITSCHRIFT FUER PAPYROLOGIE UND EPIGRAPHIK* [Journal of Papyrology and Epigraphy] 247 (1975).

94. T.G. WILFONG, *WOMEN OF JEME: LIVES IN A COPTIC TOWN IN LATE ANTIQUE* 38-41 (2002).

95. *Id.* at 43-45. Wilfong makes the interesting observation that when judging women, Bishop Pisentius frequently used Old Testament law; whereas when judging the behavior of men, Pisentius often used the Gospels and Pauline epistles as guidelines. See *id.* at 38-39.

96. See *id.*; MacCoull, *supra* note 86, at 1428.

century reveals that divorces could be initiated by either party.<sup>97</sup> More often, however, it appears that men took the initiative to either begin divorce proceedings or simply abandoned their wives.<sup>98</sup> Divorced women occasionally received alimony—generally consisting of a combination of clothing, money, and food—but men did not always meet, make, or fulfill their payments.<sup>99</sup>

Eighth century ostraca and papyri from Thebes and the Monasteries of Epiphanus and Phiobamman also record the accepted practice of male child oblation.<sup>100</sup> Out of gratitude for what parents perceived as divine healing for their sick male child, a desperate financial situation, or in the hopes that a sick child would survive, Copts donated male children to serve in monasteries for the duration of their lives.<sup>101</sup> This donation ensured that a child would be raised in the Christian faith with the appropriate rites. Church leaders, therefore, did not view child oblations as an abrogation of Christian parental duty vis-à-vis the child. This does not mean, however, that such a gift was given without remorse or

97. W.C. TILL, 3 *DIE KOPTISCHE RECHTSURKUNDEN AUS THEBEN* [Coptic Legal Documents from Thebes] 244 (1964); W. C. Till, *Die Koptische Ehevertraege* [Coptic Marriage Contracts], in *DIE OESTERREICHISCHE NATIONALBIBLIOTHEK: FESTSCHRIFT HERAUSGEGEBEN ZUM 25 JAHRIGEN DIENSTJUBILAEUM DES GENERALDIREKTORS UNIV. PROF. DR. JOSEF BICK* [The Austrian National Library: Journal Promulgated for the 25 Year Service Jubilee of General Director University Professor Dr. Josef Bick] 627-38 (J. Stummvoll ed., 1948).

98. See WILFONG, *supra* note 94, at 80-81, 140-41.

99. In one petition, a divorced woman pleads with a religious leader to help her obtain the alimony payment promised to her by her ex-husband, consisting of an annual amount of barley, oil, and wine, along with a dress and a cloak. See W.C. Till, *Eine Koptische Alimentsforderung* [A Coptic Alimony Order], in 4 *BULLETIN DE LA SOCIETE D'ARCHEOLOGIE COPTE* 71-78 (1938).

100. In their transcription of papyri from Thebes, Crum and Steindorff record twenty-five cases of child oblations. See CRUM AND STEINDORFF, *supra* note 92, at 253-320. For an excellent overview of child oblations and child abandonment in ancient and medieval Western Europe, see JOHN BOSWELL, *THE KINDNESS OF STRANGERS: THE ABANDONMENT OF CHILDREN IN WESTERN EUROPE FROM LATE ANTIQUITY TO THE RENAISSANCE* (1988).

101. Sickness was sometimes viewed as demonic possession or as a punishment for the sins of the parents. Consequently, the placement of the child in a monastery was thought to protect the child from such evil. See WILFONG, *supra* note 94, at 73-74. Some scholars have compared the life of donated children to a state resembling semi-servitude, but Wilfong notes that where duties of child oblates are listed, they are most likely to be found tending the lamps of the monastery. See, e.g., Artur Steinwerter, *Kinderschenkungen an Koptische Kloester* [Child Oblates in Coptic Monasteries], in 42 *ZEITSCHRIFT SAVIGNY ST. KANONICAL* [The Savigny Journal of Canon Law] 175-207 (1921); Artur Steinwerter, *Kinderschenkungen an Koptische Kloester*, in 43 *ZEITSCHRIFT SAVIGNY ST. KANONICAL* 385-86 (1922); WILFONG, *supra* note 94, at 100.

thought. For instance, sources from the late eighth century depict the touching stories of three single mothers, Tachel, Kalisthene, and Staurou, who offered their sons to the Monastery of Phiobammon. In their contracts with the monastery, these women reveal the inner conflict they feel about donating their child to the church and state that their greatest hope is for the life and safety of their young child.<sup>102</sup> While the situations of these three mothers are especially gripping, most child oblations were made by fathers, or parents acting together.<sup>103</sup>

Sources from the first millennium also demonstrate that Coptic clergy often participated in matters relating to civil law. For instance, an ostrakon from the middle of the seventh century shows a man named Gideon asking Apa Elisha, the local priest, to persuade the shepherd Azarias to pay his tax of eighteen *artabs* of grain.<sup>104</sup> And a seventh century papyrus from Thebes states that the priest, along with other chief men in the village of Thebes, certified the results of a tax before sending it to their civil superiors.<sup>105</sup> Another papyrus from Thebes at this time also shows that Coptic clergy were involved in land disputes, allowing opposing parties to swear oaths in church about the true amount previously paid for the parcel in question.<sup>106</sup> These sources suggest that immediately after the Arab conquest of Egypt, the Coptic Church and its clergy frequently acted as arbiters, negotiators, and chief legal figures in civil as well as familial disputes, revealing the fluid social discourse that existed between the secular and religious jurisdictions at this time.

In sum, analysis of the evidence of Coptic life from the first millennium suggests several broad conclusions about the practice of Coptic personal status law during this period. First, that Coptic clergy acted as arbiters and authorities for their flock in a range of personal and

102. WILFONG, *supra* note 94, at 100-04.

103. See, e.g., W. E. CRUM, CATALOGUE OF THE COPTIC MANUSCRIPTS IN THE BRITISH MUSEUM 176-84 (1905); WILFONG, *supra* note 94, at 104.

104. See COPTIC TEXTS IN THE UNIVERSITY OF MICHIGAN COLLECTION 228-29 (William Worrell ed., 1942). The *artab*, like the English bushel, was "measure of capacity and not of weight, and whatever it measures may vary in weight from one year to the next." Philip Mayerson, *The Sack is the Artaba Writ Large*, in 122 ZEITSCHRIFT FUER PAPYROLOGIE UND EPIGRAPHIK 189, 189 (1998). One scholar has calculated that a "standard" *artab* of milled wheat in Roman Egypt consisted of almost thirty-nine liters of grain and weighed approximately thirty kilograms, or sixty-six pounds. See ALAN BOWMAN, EGYPT AFTER THE PHARAOHS 332 BC – AD 642: FROM ALEXANDER TO THE ARAB CONQUEST 237 (1986).

105. See CRUM, CATALOGUE OF THE COPTIC MANUSCRIPTS, *supra* note 103, at 454.

106. See *id.* at 204.



civil disputes, from marriage to the enforcement of secular land contracts, suggests that clerical authority readily permeated both religious and secular spheres. Indeed, Copts probably made no sharp distinction between the two. Second, although the Bible, Apostolic and conciliar canons, and writings from Church Fathers stressed that marriage may only be dissolved due to adultery or death, local clerics were more lenient in their allowance of divorce. However, these same clerics appear to have vigorously pushed for reconciliation between the parties rather than a quick and simple separation. Third, the relationship between parent and child was complex. Some parents abandoned their children, in violation of church teachings. On the other hand, donating a child to act as a servant in a monastery was socially and religiously acceptable to church leaders and the community at large. Child oblates, it was thought, were being given to God's servants, and that act performed by parents was viewed as saving rather than shameful.

### III. MEDIEVAL AND EARLY MODERN REFORMS TO COPTIC PERSONAL STATUS LAW: 972–1250 CE

#### A. *The Coptic Renaissance*

During the Fatimid and Ayyubid dynasties (972–1250 CE), Copts and their rulers generally co-existed in peace.<sup>107</sup> Amicable relations with their rulers, and the fact that Copts occupied several important government positions, eventually led to a medieval renaissance in Coptic writing and literature, along with a gradual but sweeping reassessment of Coptic personal status law.<sup>108</sup> These reforms began with the sixty-sixth

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107. Somewhat paradoxically, the threat to the Copts during the medieval period generally came from European Christian Crusaders, not their Muslim rulers. See Atiya, *Crusades*, *supra* note 21, at 663-65; HAMILTON, COPTS AND THE WEST, *supra* note 15, at 49-51. European Christians would have also encountered Copts on trading expeditions to Alexandria. Benjamin Tudela, a wandering Spanish Jew, recounts in his diary in 1173 CE that Alexandria had become a commercial market for "all nations," including the Christian kingdoms. Tudela specifically mentions the presence of traders from kingdoms in Spain, France, Germany, Italy, and Wales, along with merchants from the kingdoms of England, Ireland, and Norway. Merchants from each of these kingdoms had their own inns within Alexandria. See THE ITINERARY OF BENJAMIN OF TUDELA 76 (Marcus Nathan Adler ed. and trans., 1907).

108. See Ferre, *supra* note 87, at 1097-1099; Aziz Atiya, *Ayubbid Dynasty and the Copts*, in 1 THE COPTIC ENCYCLOPEDIA 314-15 (Aziz Atiya ed., 1991); Carl F. Petry, *Copts in Late Medieval Egypt*, in 2 THE COPTIC ENCYCLOPEDIA 618-35 (Aziz Atiya ed., 1991).

patriarch of Alexandria, Christodoulus (1047–77 CE). He decreed that infants of different genders were not allowed to be baptized in the same water, re-emphasizing the distinct roles of male and female within church life.<sup>109</sup> His successor, Cyril II (1078–92 CE) promulgated thirty-four canons admonishing, among other things, that both lay and clerical members should take all disputes to their bishops, not to governmental authorities.<sup>110</sup> Cyril II thus reasserted the primacy of the church as the authorized arbiter of justice in both civil and criminal matters, including personal status law. About fifty years after Cyril II, Gabriel II (1131–45 CE), the seventieth patriarch of Alexandria, issued thirty-two canons, some of which were general rules regarding the laws of inheritance and prohibitions on marrying during particular Holy Fasts.<sup>111</sup>

A century later, Cyril III (1235–43 CE), also known as Cyril III ibn Laqlaq, was instituted as seventy-fifth patriarch of Alexandria. The canons of Cyril III “furnish us with a complete record of the canon law of the Coptic Church”<sup>112</sup> up to that time, and it is his canons that “form the foundation for the personal status law” among Copts.<sup>113</sup> Cyril III’s canons were divided into five chapters: On Baptism, On Marriage, On Wills, On Inheritance, and On the Priesthood.<sup>114</sup> Although Cyril III was the author of these canons, it is the redaction and codification of Cyril III’s canons by his secretary and juridical counselor, Safi ibn al-Assal, that enabled them to have such a profound effect.<sup>115</sup>

### *B. Initial Codification of Coptic Personal Status Law*

Safi ibn al-Assal (c. 1205–1265) was a member of the Awlad al-Assal family who played a crucial role in the “intellectual renaissance of

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109. MEINARDUS, *supra* note 29, at 50. Under Christodoulus, the Coptic Patriarchate moved from the bustling seaside metropolis of Alexandria to Cairo, further isolating Copts from other Christian faiths. *See id.* at 65.

110. *See id.* at 65.

111. Marriage was prohibited during the forty days of the Holy Fast, Easter, and on the Eve of Pentecost. Banning marriage during certain fasting periods seems to be as much a practical matter as spiritual, because Coptic marriages are traditionally accompanied by a wedding feast. *See id.* at 50–51.

112. *Id.* at 51, 58.

113. *Id.* at 52.

114. *See id.* at 51.

115. René-Georges Coquin, *Nomocanons, Copto-Arabic*, in 6 THE COPTIC ENCYCLOPEDIA 1799 (Aziz Atiya ed., 1991) [hereinafter Coquin, *Nomocanons*].

the Coptic Church.”<sup>116</sup> Safi was a keen student of Coptic canon law, and had an excellent command of Arabic language, literature, and history, as well as Greek philosophy and theology.<sup>117</sup> He used his literary skills both as an effective apologist for the Coptic Church against Islam and “to purify the church from within and place it upon the solid spiritual tradition of the church fathers.”<sup>118</sup> Besides summarizing and revising homilies from Saint John Chrysostom on the Gospels of Matthew and John, Safi authored eleven apologetic works in response to attacks by Muslim scholars.<sup>119</sup> Safi’s *Nomocanon*, completed in 1238, is his most famous and far-reaching work, as it “remains today the basis of ecclesiastical law for the Coptic church of Egypt.”<sup>120</sup>

The *Nomocanon* of Safi ibn al-Assal is a collection of canonical documents arranged by subject rather than by chronology. This topical form facilitates consultation on a singular subject, and was likely introduced to the Copts by the Greeks.<sup>121</sup> Safi’s *Nomocanon* is divided into two sections. The first section deals with the ecclesiastical structure of the church and religious matters. It is based primarily on the Bible (Old and New Testaments), the councils of Nicaea and Antioch, the

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116. Khalil Samir, *Safi ibn Assal, al*, in 7 THE COPTIC ENCYCLOPEDIA 2075-79 (Aziz Atiya ed., 1991); Meinardus also has a high opinion of the al-Assal family, stating that the “nucleus of thirteenth-century Coptic theology is composed of three brothers with the family name of Ibn al-Assal.” While Safi is undoubtedly the most famous of the three brothers, his two younger brothers also produced important pieces of work. Safi’s younger brother, Abu al-Farag Hibat Allah ibn al-Assal, wrote a *Treatise on the Soul* that ruminates over the “psychological and eschatological nature of the soul.” And his *Compendium of Inheritance Law* provided a handy survey to the permissible degrees of marriage. Safi’s younger stepbrother, al-Mu’tama Abu Ishaq Ibrahim al-Assal, studied a wide range of subjects—from philosophy to linguistics to homiletics. He was the author of a five part, seventy chapter *Compendium of the Foundations of Religion* that is notable for its systematic structure and non-reliance on historical ecclesiastical material. In addition to his *Compendium*, Mu’tama penned the *Introduction to the Pauline Epistles*, “with a concordance and cross-references regarding theology and ethics.” Thus, the work of Safi’s siblings also had profound effect on the theology of the Coptic Church during the medieval period. See MEINARDUS, *supra* note 29, at 59.

117. See Samir, *supra* note 116, at 2075.

118. *Id.* Samir also states that Safi ibn al-Assal was “the greatest Coptic apologist of the Middle Ages, and one of the greatest Christian apologists in the Arabic language.” Safi continued to be attacked by Muslim apologists into the eighteenth century. See *id.* at 2079.

119. See *id.* at 2075.

120. *Id.* at 2076; see also CHAILLOT, *supra* note 2, at 81.

121. Coquin, *Nomocanons*, *supra* note 115, at 1799.

writings of early church Fathers like SS. Hippolytus and Basil, and the canons of Safi's medieval contemporaries, including Pope Cyril III.<sup>122</sup>

The second section of the *Nomocanon* covers secular interests. Safi consulted all of the aforementioned Christian sources in creating this second section, but appears to have relied most heavily on a collection of laws divided into four books known as *The Canons of the Kings*.<sup>123</sup> Scholars have identified these four books as: (1) the *Procheiros Nomos*, "a handbook of Roman-Byzantine law enacted between 870 and 878 by the Byzantine Emperor Basilus the Macedonian"; (2) an Arabic version of a work known as *The Syro-Roman Law Book*, which dealt with ancient Roman civil law; (3) an Arabic version of another compendium of Roman-Byzantine laws known as the *Ecloga of the Emperors Leo III and Constantine V* published in Constantinople in 726; and (4) a text called *Precepts of the Old Testament* containing an anthology of principles and rituals from the Pentateuch along with Christian textual interpretations.<sup>124</sup> The secular section of Safi's *Nomocanon*, therefore, is firmly grounded on a Roman-Byzantine Law tradition that matured after the Copts split from the Roman and Byzantine Christian churches.

Although Arabic manuscripts of Safi's *Nomocanon* are extant, they have never been translated directly into English.<sup>125</sup> There is, however, an indirect English translation of Safi's *Nomocanon* from Ge'ez (Ethiopian) manuscripts. During the reign of Zar'a Ya'qob (1434–1468 CE), an Arabic version of the *Nomocanon* was introduced into Ethiopia and translated into Ge'ez by an Egyptian, Petros Abda Sayed.<sup>126</sup> Sayed's

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122. See THE FETHA NAGAST: THE LAW OF THE KINGS xv (Peter L. Strauss ed., Abba Paulos Tzadua trans., 1968); Samir, *supra* note 116, at 2076; Meinardus also mentions that the canons of Pope Christodoulos (1047–77 CE) were synthesized by Safi in his *Nomocanon*. See MEINARDUS, *supra* note 29, at 50.

123. THE FETHA NAGAST, *supra* note 122, at xv.

124. *Id.* at xv–xvi. For an individual analysis of the *Ecloga*, see Stefan Leder, DIE ARABISCHE ECLOGA: DAS VIERTE BUCH DER KANONES DER KOENIGE AUS DER SAMMLUNG DES MAKARIOS [The Arabic Ecloga: The Fourth Book of the Canons of the Kings from the Collection of Makarios] (1985).

125. Murqus Jirjis edited an Arabic edition of the *Nomocanon*, called the *Kitab al-Qawanin*, in 1927, but this has not yet been translated into English. See Coquin, *Nomocanons*, *supra* note 115, at 1799. Given the importance of the *Nomocanon* to the history and culture of the Copts in both Egypt and Ethiopia, an English translation of Jirjis's edition would prove valuable to a wide range of people, including legal and religious scholars.

126. The story of the introduction of Safi's *Nomocanon* into Ethiopia is apocryphal yet touching. One day Peter Abda Sayed finds the the Emperor, Zar'a Ya'qob, in a sad mood. Sayed inquires into the reason for the Emperor's sadness and learns that the source

translation of Safi's *Nomocanon* is called the *Fetha Nagast*, or *The Law of the Kings*, after the secular section of the *Nomocanon*.<sup>127</sup> The *Fetha Nagast* guided Ethiopian civil and criminal matters until the first modern Ethiopian penal code was promulgated in 1930, and it was subsequently translated from Ge'ez into English in 1968.<sup>128</sup>

The English version of Safi's *Nomocanon* analyzed here, therefore, is admittedly marginally corrupted; some meaning and nuance was certainly lost during its translation from Arabic into Ge'ez, and again from Ge'ez into English.<sup>129</sup> However, as the *Fetha Nagast* is the only English translation of Safi's *Nomocanon* currently available, its use is a necessity. Furthermore, it is highly probable that the principles underlying personal status law in the *Fetha Nagast* were not so severely altered through translation as to be completely erroneous.

### 1. Substantive Law

Coptic personal status laws are found in both the religious and secular sections of the *Fetha Nagast*, underscoring the fluid boundaries between ecclesiastical and civil law. The religious section of the *Fetha Nagast* contains the familiar injunctions that parents should teach their children the word of God and obedience, marry them to suitable partners, and nourish their souls by guiding them to professions suitable for

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of his displeasure is that the justice system of his realm is based on the Old Testament, but that they are living in the era of the New Testament. Wanting to help, Sayed informs the Emperor that a book of laws created by the 318 Fathers of the Council of Nicaea and later promulgated by the Emperor Constantine had been translated into Arabic and was to be found in Alexandria (Safi's *Nomocanon*). Upon hearing this, the Emperor commanded Sayed to go and retrieve a copy of this book of laws. Sayed traveled to Alexandria, obtained a copy of Safi's *Nomocanon*, returned to Ethiopia, and translated it into Ge'ez. According to the story, the *Nomocanon* was introduced in the middle of the fifteenth century, but the first recorded instance of the *Fetha Nagast* being used in Ethiopia is during the reign of Sarsa Dengel (1563–1597 CE). See THE FETHA NAGAST, *supra* note 122, at xvii.

127. See *id.* at xix.

128. See *id.* at xxvii–xxx. Although the *Fetha Nagast* was superseded by the modern Ethiopian penal code in 1930, it continued to be referenced as a valid source of law in Ethiopia into the 1960s. See *id.* at xviii–xxix. Previous to the English translation, the *Fetha Nagast* had been translated into Italian by Ignazio Guidi in 1899. The title of his work is *Il Fetha Nagast o "Legislazione del Re"*, *Codice Ecclesiastico e Civile de Abissinia*, Roma (1899). See *id.* at xv.

129. The editors to the *Fetha Nagast* make special mention of the difficulties Sayed had in translating from Arabic into Ge'ez as well as the linguistic challenges they faced in translating from Ge'ez into English. See *id.* at xix, xxx–xxi.

Christians.<sup>130</sup> Parents also have the duty to reprimand their children physically if need be. For Solomon stated, “Reproach thy son so that he may refresh thee and may be of use to thee, for he is thy hope and if thou beatest him with a rod, thou will deliver his soul from death.”<sup>131</sup> Children, on the other hand, are admonished to obey their parents according to the commandment given to Moses, and a gloss in the text discloses that if the father of a family were to die, the responsibility for the family rests upon the firstborn son who should be honored and obeyed as the father would have been.<sup>132</sup> Thus, the *Fetha Nagast* reaffirmed and further solidified the patriarchal nature of the Coptic family.

The religious section of the *Fetha Nagast* also discusses the relationship between husband and wife. These rules, excerpted from epistles of Peter and Paul, highlight the unity of the couple, with the patriarch as family leader.<sup>133</sup> The husband is the head of the home, and wives, as the “weaker vessels,” are to obey their husbands.<sup>134</sup> Husbands, on the other hand, are to love their wives as they love themselves. Both parties are to clothe themselves modestly so as not to attract the attention of the opposite sex; husband and wife are to concentrate on inward beauty rather than outward adornment.<sup>135</sup> Wives are also not supposed to give their children to wet-nurses, presumably because this was a sign of vanity and would serve to weaken the bond between mother and child.<sup>136</sup>

Personal status regulations in the secular section of the *Fetha Nagast* dwarf those of the religious section in number, scope, and detail because the secular section was based both on religious texts and previously compiled Roman-Byzantine law codes. For example, the *Fetha Nagast* deals specifically, and in depth, with betrothal, marriage, and divorce. Betrothal, according to the *Fetha Nagast*, “is a pact and promise which precedes marriage.”<sup>137</sup> Betrothal was generally a family affair and could be made by letter, in person, or through an intermediary. The pact, however, had to be concluded “in the presence of two elder priests” who bless the couple with the cross and seals and place rings on their

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130. *See id.* at 79.

131. *Proverbs* 23:14, quoted in THE FETHA NAGAST, *supra* note 122, at 79.

132. *See* THE FETHA NAGAST, *supra* note 122, at 79-80.

133. *See Ephesians* 5:22-23; 1 *Peter* 3:1.

134. *See* 1 *Peter* 3:7.

135. THE FETHA NAGAST, *supra* note 122, at 80.

136. *See id.* at 81.

137. *Id.* at 138.

fingers.<sup>138</sup> The betrothal was then registered and, if the couple had not fixed a date for marriage, the marriage had to take place before two years had passed, unless the groom was on a journey out of the country, in which case the marriage had to be finalized within three years.<sup>139</sup> Girls under the age of seven could not be betrothed, but women who were mourning for their husbands were allowed.<sup>140</sup> Parents could break the betrothal of their children who were in their minority, but had no such power if their child had reached majority. The age of majority differed for men and women and among social classes. Thus, a son of a wealthy family reached majority at twenty, while a son of a poor family reached majority at twenty-five. A daughter of a wealthy family reached majority at age twelve, while a daughter from a poor family had to reach age fifteen.<sup>141</sup> Gifts (usually called “earnest”) between man and woman were exchanged at betrothal and before marriage, but if one of the parties decided to break off the marriage, the gifts given to the other were forfeited.<sup>142</sup>

The purposes of marriage described in the *Fetha Nagast* were based squarely on Biblical teachings: procreation, preservation of lineage, and that both husband and wife might slake their carnal desires (termed avoiding the “fire of concupiscence”).<sup>143</sup> Prohibition of polygamy was reaffirmed, as was the increasing social displeasure towards second and third marriages. Beyond the third marriage, the *Fetha Nagast* relates, “there is no lawful marriage among us.”<sup>144</sup>

Impediments to marriage were also covered. Degrees of acceptable levels of consanguinity were elaborated. Copts could marry from the fourth degree onwards, with the degrees calculated as follows:

The daughter of a paternal uncle in the fourth degree is like saying my father begot me, my grandfather begot my father, and these are two

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138. *Id.*; see also Ceres Wissa Wassef, *Betrothal Customs*, in 2 THE COPTIC ENCYCLOPEDIA 379-80 (Aziz Atiya ed., 1991).

139. See THE FETHA NAGAST, *supra* note 122, at 138-39.

140. See *id.*

141. The different ages of majority corresponding to social class were based on the presumption that children from wealthier families were learned earlier than their poorer counterparts and were thus able to manage their affairs earlier in life. See *id.* at 139-40.

142. See *id.*

143. *Id.* at 130-32. See, e.g., *Genesis* 1:28, 2:18; 1 *Corinthians* 7:8, 1 *Timothy* 5:14.

144. THE FETHA NAGAST, *supra* note 122, at 132.

degrees; my grandfather begot the brother of my father, and the brother of my father begot this daughter, and that makes four degrees.<sup>145</sup>

Thus, it was legally acceptable for a Copt to marry his first cousin. In addition to consanguinity restrictions, it was forbidden to marry a godchild, to marry relatives who lived in the same dwelling, to marry one's guardian until after the age of twenty-six, to marry a manumitted slave, to marry an unbeliever, or to marry someone physically incapable of procreation (eunuchs, hermaphrodites), mentally insane, or disabled by sores.<sup>146</sup> Furthermore, Coptic men could not marry nuns, marry more than one woman simultaneously, marry a woman over sixty years old, marry a woman during the period of mourning, or marry a woman whose consent was extracted by violence.<sup>147</sup> Women who were justly condemned for adultery and divorced were allowed to remarry, but the suitor had to wait until her penance was complete, and only a single priest, not a bishop, could officiate in the ordinance.<sup>148</sup>

The *Fetha Nagast* also draws clear distinctions between the sacramental nature of first marriages and any subsequent marriages, which were deemed less holy. First marriages were performed publicly in the church, with a priest offering prayers over the couple and giving them the Holy Eucharist "by which both become united and become but one body, as Our Lord."<sup>149</sup> Without the prayers and Eucharist, the couple was not considered married, "since it is the prayer which hands over the woman to the man, and the man to the woman."<sup>150</sup> Those who married for the second time did not receive the full nuptial blessing of the church. And if they already had children by the first marriage, they would have to ensure that the property rights of the children from this first marriage were safeguarded.<sup>151</sup> The *Fetha Nagast* strongly discouraged third marriages, even calling a person who marries for the third time "a dirty vessel of the Church."<sup>152</sup> A fourth marriage signified open fornication and was not considered lawful.<sup>153</sup>

145. *Id.* at 135.

146. Those afflicted with leprosy were not automatically barred from marriage. It was left to the couple to decide what they would do in this instance. *See id.* at 135-37.

147. *See id.* at 137-38, 144.

148. *See id.* at 137.

149. *Id.* at 142.

150. *Id.*

151. *See id.* at 142-43.

152. *Id.* at 143.

153. *See id.*



Guidelines for sexual relations within marriage are also contained in the *Fetha Nagast*. Following the Epistle of Paul to the Corinthians, the *Fetha Nagast* states, “[t]he man must give the love which is due to his wife from him, and the woman shall do the same with her husband. . . . None of you shall refuse to another the love which is due to him, except by mutual consent to fasting and prayer.”<sup>154</sup> Though couples generally governed their own sexual relations, certain sexual practices were forbidden. For instance, while intercourse during pregnancy was permissible,<sup>155</sup> the couple was not supposed to have intercourse when the woman was menstruating or directly after childbirth.<sup>156</sup> In addition, ejaculation outside of the woman was prohibited due to Biblical precedent<sup>157</sup> since this act was viewed as intentionally subverting one of the primary purpose of marriage—procreation.<sup>158</sup>

Despite the sacramental nature of marriage, sometimes marriages were dissolved.<sup>159</sup> In describing appropriate grounds for divorce, the secular section of the *Fetha Nagast* is particularly reliant upon the *Novellae Constitutiones*—a collection of imperial edicts issued by the Roman Emperor Justinian (527–565 CE)—for guidance, rather than Biblical sources.<sup>160</sup> Consequently, the *Fetha Nagast*, and by association the medieval Coptic Church, expanded the scope of permitted divorce beyond the Biblical principles of adultery or death.

A divorce, according to the *Fetha Nagast*, could be granted for a variety of reasons. For instance, if both husband and wife choose the religious life (i.e., to become a monk and nun respectively), a divorce may be granted. Furthermore, if the husband is unable to copulate with his wife due to a physical ailment, the wife could lawfully divorce him after three years. Divorces might also be obtained if a spouse had been separated from his or her partner through imprisonment, war, or travel, and there had been no news about the missing partner for many years (usually at least five years). And if one of the spouses had committed

154. 1 *Corinthians* 7:3-10; *id.* at 145.

155. See THE FETHA NAGAST, *supra* note 122, at 133.

156. See *id.* at 146.

157. In the Biblical story, Onan, the son of Judah, had intercourse with his sister-in-law. Before he ejaculated, he removed himself from the woman and “spilled his seed upon the ground.” God detested Onan’s actions and slew him. See *Genesis* 38:9-10.

158. See THE FETHA NAGAST, *supra* note 122, at 146.

159. See *id.* at xvi.

160. See *id.* at xvi. The *Novellae Constitutiones*, along with the *Code*, the *Digest*, and the *Institutes* form what is known as the *Corpus Juris Civilis*.

adultery, the other may receive a divorce.<sup>161</sup> Adultery, however, did not necessarily mean sexual intercourse with someone besides one's spouse. The *Fetha Nagast* defines an adultress as "a woman who drinks against the advice of her husband with another man, or bathes or jokes or goes to a hunting place or to a gathering while her husband is absent, or who passes the night out of her home in another house" excluding her father's house.<sup>162</sup> A definition for male adultery is not given. This expansive definition of adultery pertaining to women suggests that Coptic men could gain a divorce far easier than could Coptic women.

Divorce was also permitted for a range of situations involving physical or mental instability. For example, if a man discovers immediately after his marriage that his wife is "found wanting in feminine nature—of a structure different from a woman's nature and not suitable for a man" (presumably some form of hermaphroditism)—then he could reveal this to the bishop and be granted a divorce.<sup>163</sup> Additionally, if one of the couple is "thrown to the earth by the devil" (probably epilepsy), and this is a new phenomenon, the non-afflicted spouse could receive a divorce. If this sickness was known to the healthy partner beforehand, however, the couple must remain together.<sup>164</sup> If one of the couple schemes to take the life of the other, a divorce is also appropriate.<sup>165</sup> And if one of the couple contracts leprosy following marriage, the healthy partner may choose to leave the other, but forfeits the dowry.<sup>166</sup>

The *Fetha Nagast* also sanctioned divorce for a woman if her enmity towards her husband could not be reconciled. Before a woman could receive divorce on these grounds, she had to attempt to reconcile with her husband. If the woman's enmity and malicious acts toward her husband continued to increase, the couple had to seek reconciliation through the senior priest. If his counsel failed, the couple had to bring their case to the bishop, who "shall judge between them." Should this high-level intervention not promote reconciliation, the bishop could divorce the couple. On the other hand, if it was known that the man is the unjust party in the relationship, divorce was not allowed, and he had to

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161. See THE FETHA NAGAST, *supra* note 122, at 148-51.

162. *Id.* at 152.

163. *Id.* at 150.

164. *Id.*

165. See *id.* at 152.

166. See *id.*

live with his wife.<sup>167</sup> While the latter case seems to unfairly keep a woman strapped to her disgruntled husband, the former case may have allowed women some leverage in the marital relationship.

## 2. *Procedural Law*

Aside from elaborating on substantive Coptic personal status law provisions, the secular section of the *Fetha Nagast* provides a template for judicial personnel and procedure. Coptic judges had to meet several qualifications, and senior clerical judges chose and appointed judges of a lower rank, vetting candidates for their capability.<sup>168</sup> Judges had to hold at least the office of priest and to have attained their majority.<sup>169</sup> In addition, Coptic judges had to have impeccable character, sound hearing and sight, the ability to speak clearly, no physical illness such as leprosy, and a thorough understanding of the laws and procedures contained in the Bible, the apostolic canons, and the writing of the Church Fathers. A judge had to be able to analogize between all of these written sources to “facilitate the process of arriving at the proper decision of questions that arise, each in its own way.”<sup>170</sup> Once chosen, judges were expected to rule fairly, treat wealthy and poor litigants the same, express his ruling with equanimity not anger, and deny bribes or gifts, except those from immediate family over whom he could not adjudicate.<sup>171</sup> Judges remained in office until they were unfit to continue, which meant almost a total dissolution in health.<sup>172</sup> Judges could also resign their post with the consent of the cleric who appointed them or be dismissed for cause.<sup>173</sup>

A Coptic judge’s letter of appointment defined his jurisdiction both by subject matter and geography. Some judges presided over family matters, such as marriage or appointing a guardian for minors, while others ruled on property disputes or executed wills.<sup>174</sup> In theory, a Coptic

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167. *Id.* at 152-53.

168. *See id.* at 251.

169. *See id.* at 249-50.

170. *Id.* at 250-51.

171. *See id.* at 252-54.

172. Occasional sickness or lapses of consciousness did not merit removal of a judge. In these instances, litigants were counseled to be patient and pray for a cure. *See id.* at 263.

173. *See id.* No grounds for dismissal of judges are listed. This was likely left to the discretion of the judge’s clerical superiors.

174. *See id.* at 251-52.

judge could be competent in several areas, and in more remote areas this was likely the rule. To alleviate what must have been, at times, a heavy caseload, judges were also authorized to confer jurisdiction for particular matters to deputies.<sup>175</sup> In all areas of law, the judge was expected to help settle the dispute amicably through negotiation, avoiding oath-taking if possible.<sup>176</sup> And, unlike modern judges, it was especially advantageous if Coptic judges were extremely familiar with the witnesses so they could discern between those to be trusted and those who were false.<sup>177</sup>

Adjudicative procedure, whether commercial or familial, is also outlined in the secular section of the *Fetha Nagast*. First and foremost, Copts were commanded to bring their claims to their Christian court, rather than Muslim tribunals.<sup>178</sup> The judicial assembly met on Monday, and any lawsuits were decided by Saturday, so that the litigants were reconciled by the Sabbath.<sup>179</sup> The judge sat in a place where his full attention could be paid to the litigants. Priests and deacons, as well as experienced laymen and assistant judges, might also be present, and it was appropriate for the judge to confer with these “assistant judges” on difficult issues.<sup>180</sup> Each case was tried individually, but the judge was encouraged to acquaint himself with similar cases.<sup>181</sup> Opposing parties had to stand in the center of the assembly and plead their case to the judge, answering questions when asked. Each side could bring a minimum of two or three competent witnesses to support their claim, but this was not necessary for the defendant, because he could stand alone on his oath.<sup>182</sup> Witnesses were interrogated individually and in private by the judge to determine their veracity and to discern whether their accounts of the events were similar or varied.<sup>183</sup> After all testimonies were heard, the judge rendered a decision, read it publicly to the

175. *See id.* at 252.

176. The general anathema toward oath-taking stems from the New Testament, in which Christ taught that people should not swear oaths (*Matthew* 5:34-37). The principle behind this is that through many words people may be flattered or deceived, but through simple assent or dissent, the truth of minds is laid bare. *See id.* at 252-57.

177. *See id.*

178. *See id.* at 262-63.

179. *See id.* at 258.

180. *Id.* at 257-58.

181. *See id.* at 254.

182. Anyone who is under twenty years of age, mentally deranged, in wardship, deaf, dumb, a slave, condemned as a fornicator, a beggar, or known for riotous and unholy living was disqualified from serving as a witness. *See id.* at 260-61, 264-65.

183. *See id.* at 262, 269.

assembly, and recorded this judgment in a separate book of judgments that was submitted to his superior.<sup>184</sup>

*C. Rise of the Mamluks and the Twilight of the Coptic Renaissance*

Unfortunately, the *Nomocanon*'s practical effect on Coptic personal status law and Coptic judicial proceedings is a matter of conjecture. Shortly after the *Nomocanon* was compiled in 1238 CE, the Mamluk dynasty (1250–1517 CE) gained control of Egypt and, through a series of purges, expelled a significant proportion of Copts from influential bureaucratic posts. Those who converted to Islam were sometimes able to preserve their position.<sup>185</sup> This subjugation had a devastating effect on Coptic culture, and “recorded Coptic history came to an end by the fourteenth century.”<sup>186</sup> Aside from ordination rites for bishops and metropolitans from 1364 CE that admonish men in both of these posts to act as responsible and fair judges for their flocks, no other Coptic records relating to Coptic personal status law exist until the nineteenth century.<sup>187</sup>

Contemporary Muslim and European sources offer sporadic observations of Coptic personal status law and Coptic culture, but these

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184. See *id.* at 259-60.

185. Many Copts who converted to Islam held high government offices. Those of record are outlined in Petry, *supra* note 108, at 618-35. For a recent study of Coptic conversions in Cairo during this period using archival sources, see Tamer el-Leithy, *Coptic Culture and Conversion in Medieval Cairo, 1293–1524 A.D.* (June 2005) (unpublished Ph.D. dissertation, Princeton University) (available on ProQuest dissertation database).

186. MEINARDUS, *supra* note 29, at 65; see also HAMILTON, COPTS AND THE WEST, *supra* note 15, at 29-30; M. Perlmann, *Notes on Anti-Christian Propaganda in the Mamluk Empire*, in 10 BULLETIN OF THE SCHOOL OF ORIENTAL AND AFRICAN STUDIES, UNIVERSITY OF LONDON 843-61 (1942).

187. See ORDINATION RITES OF THE COPTIC CHURCH 16, 115, 119 (O.H.E. Burnester ed. and trans., (1985); MEINARDUS, *supra* note 29, at 65. While it is certainly plausible that some Arabic records relating to Coptic personal status law during this period remain extant, our research has not uncovered any.

accounts are often plagued with prejudices and misconceptions.<sup>188</sup> From one account, however, it appears that Coptic clerical judges took seriously the stringent restrictions on divorce and remarriage, but some of the laity did not. Richard Pococke, an Englishman who traveled through Egypt in 1737 CE, observed that some lay Copts took advantage of the long-standing legal pluralism that existed in Egypt. He noted that Copts who could not obtain a divorce from the church turned for relief to Muslim *qadis* who would issue them a divorce as well as remarry them.<sup>189</sup> In sum, until further research is conducted, the effect, if any, of the *Nomocanon* on Coptic family life in the medieval and early modern periods must remain a mystery. Most likely, the *Nomocanon* was looked to as an ideal; a guide for the proper way to order Christian family relationships. Conformity to its provisions, however, was probably mixed, with some Copts adhering rigidly to these standards, and others ignoring them.

#### IV. COPTIC PERSONAL STATUS LAW IN THE MODERN ERA: 1855–1978 CE

Reforms to Coptic Personal Status Law in the nineteenth century were largely a result of political changes. Under Sa'id Pasha, Copts were granted equal rights of citizenship in 1855. As a result Copts were no longer required to pay the poll tax (*jizyah*) required of non-Muslims, but nor were they any longer “protected” through *dhimmi* status.<sup>190</sup> The Coptic Church’s governance over Coptic personal status law, however, was preserved. Article 9 of the Treaty of Paris, which concluded the Crimean War in 1856, “confirmed the jurisdiction of patriarchs and spiritual leaders over their own subjects in all cases of personal

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188. One of the most common European assertions during the Renaissance was that the Coptic Church sanctioned polygamy. Although some Copts may have practiced polygamy due to Muslim example or the ability to acquire female servants, the Coptic Church during the Ottoman period vehemently attacked this practice. In the beginning of the eighteenth century a French scholar, Sollierius, also refuted the allegations that Copts practiced polygamy. See, e.g., HAMILTON, *COPTS AND THE WEST*, *supra* note 15, at 2, 41–44, 118, 159–62. For a generally unfavorable view of the Copts from the middle of the nineteenth century, see LUCIE GORDON DUFF, *LETTERS FROM EGYPT* (1997). For first-hand accounts of Coptic betrothal ceremonies and marriage feasts from the late nineteenth century, see E. L. BUTCHER, *EGYPT AS WE KNEW IT* 89–113 (1911).

189. See HAMILTON, *COPTS AND THE WEST*, *supra* note 15, at 44.

190. See Samirah Bahr, *Modern Egypt, Copts in*, in 5 *THE COPTIC ENCYCLOPEDIA* 1636–37 (Aziz Atiya ed., 1991); CHAILLOT, *supra* note 2, at 19.

status.”<sup>191</sup> However, in response to petitions by lay Copts in 1874, Butrus Ghali Pasha issued a khedivial decree allowing laymen the right to form a *Maglis al-milli* (Coptic Community Council). This elected lay council, composed of twelve members and twelve sub-members, was supposed to assist the clergy in supervising church finance and was authorized to hear cases related to personal status issues.<sup>192</sup>

The Coptic Community Council and church leaders often came into conflict because church leaders felt that their authority and prerogatives were being unfairly abridged.<sup>193</sup> For example, in 1938, the Coptic Community Council adopted an ordinance that expanded the scope of permissible divorce in their community courts beyond that sanctioned by the church. According to the Coptic Community Council, suitable reasons for divorce included: (1) adultery; (2) conversion to another religion; (3) absence for five consecutive years with no news of whereabouts; (4) judged and sentenced to seven or more years imprisonment; (5) mental illness, a contagious illness, or impotence—with no recovery for at least three years; (6) serious domestic violence; (7) joining a monastic order; (8) a three year period of separation due to untenable marriage conditions; (9) immoral or debauched behavior by either spouse; and (10) incompatibility.<sup>194</sup> Although this ordinance was the first modern attempt to codify Coptic personal status law, church leaders disagreed with its expansive justifications for divorce. In reaction to the “liberal attitude” of the Coptic Community Council, Pope Macarius III, in 1945, restricted the grounds for divorce to adultery only in accordance with the Gospels. This literal reading of the New Testament was confirmed by Pope Cyril VI in 1962, and reaffirmed by the current Pope, Shenouda III, in 1971.<sup>195</sup>

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191. Ghattas, *supra* note 8, at 1941.

192. *See id.*; MEINARDUS, *supra* note 29, at 71; CHAILLOT, *supra* note 2, at 19.

193. *See* Muhammed Afifi, *The State and Church in Nineteenth-Century Egypt*, 39 DIE WELT DES ISLAMIS [The Islamic World], 279-84 (1999); IBRAHIM SAAD ET AL., THE COPTS OF EGYPT, MINORITY RIGHTS GROUP, 14 (1996), available at: <http://www.minorityrights.org/978/reports/the-copts-of-egypt.html>; MEINARDUS, *supra* note 29, at 71-73.

194. *See* Ghattas, *supra* note 8, at 1943; Guindy, *supra* note 8, at 3.

195. *See* Ghattas, *supra* note 8, at 1943; Guindy, *supra* note 8, at 4. For an in-depth legal analysis of the expansion and the contraction of marriage and divorce in Coptic personal status law during the twentieth century, see Jacqueline Saad, *Vicious Circle: Coptic Divorce between Positive Law and Canon Law* (2006) (unpublished LL.M. thesis, American University in Cairo) (on file with author).

Sweeping legal reforms initiated by the Egyptian government in the 1950s quickly ended the feud between the Coptic Community Council and church leadership but began to erode Coptic Church's jurisdiction over personal status law issues. In 1955, Egypt passed Family Status Law 462, applicable to all Egyptians.<sup>196</sup> This law eradicated *Maglis al-Milli* courts, replacing them with state-run personal status courts based upon Shari'a law for Muslims and corresponding religious laws for Egypt's many non-Muslim communities.<sup>197</sup> Law 462 also constrained the scope of cases that could be heard in personal status courts using non-Muslim law and procedurally shuttled litigants of mixed denominational marriages into courts based on Shari'a law.<sup>198</sup> Ghattas gives a concise summary of the marked restrictions placed on Coptic personal status law by the adoption of Law 462:

Whereas it [Coptic personal status law] had formerly embraced all issues relevant to marriage, divorce, separation, alimony, inheritance, financial rights, guardianship, tutelage, and custody of children, it now became restricted to matter of betrothal, marriage, and the dissolution of marriage through divorce or separation. The provisions of [Coptic] personal status law became applicable only in cases where the litigants were of the same faith and denomination. Thus, in the event of either spouse being converted to Islam, Islamic law has to be enforced. This undermines the principle of the sanctity of Christian marriage, which is of supreme importance to the Coptic church.<sup>199</sup>

Severe restrictions placed on Coptic personal status law by Law 462 were further exacerbated by actual implementation of this law. Given the general Egyptian constitutional stipulation that "Islam is the religion of State and principles of Shari'a are the main source of legislation," and the fact that over 90% of Egypt's judges are Muslim, judges in personal status courts liberally applied the rules set in Law 462.<sup>200</sup> Rather than working towards saving marriages, divorces were readily granted, as judges appeared to lean more on their cultural understandings of Shari'a

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196. See Guindy, *supra* note 8, at 1.

197. Non-Muslim communities in Egypt include the Coptic Orthodox Church (which comprises 90% of Egypt's Christians), Coptic Evangelicals, Coptic Catholics, Greek Orthodox, Assyrian Orthodox, Armenian Catholics, Roman Catholics, Maronite Catholics, Caidian Catholics, Anglicans, and Jews. See Guindy, *supra* note 8, at 1.

198. See Ghattas, *supra* note 8, at 1941; CHAILLOT, *supra* note 2, at 24; Guindy, *supra* note 8, at 1-7.

199. Ghattas, *supra* note 8, at 1941.

200. See Guindy, *supra* note 8, at 3. For an in-depth analysis of the relationship between Shari'a and the state law of Egypt, see CLARK LOMBARDI, *STATE LAW AS ISLAMIC LAW IN MODERN EGYPT* (2006).



law rather than strictly apply Coptic personal status laws.<sup>201</sup> This situation posed a significant challenge to the Coptic Church as well as the other non-Muslim groups in Egypt who espoused marriage as a divine sacrament. In response, Pope Shenouda III issued Papal Decree Number 7 in 1971, allowing remarriage to those whose divorce rulings in personal status courts were based on adultery.<sup>202</sup>

Religious tensions between the Egyptian government and the Coptic Church escalated in the mid-1970s, which led to significant revisions in Coptic personal status law. After Egypt's victory in the Yom Kippur War in 1973, Egyptian President Anwar El Sadat aligned his government more strongly with Islam in an effort to quell protests emerging from the poorer ranks in Egypt.<sup>203</sup> As religious discourse grew increasingly tense, Islamic groups formed significant political coalitions, and religiously motivated violence spread. Al Azhar, a world-renowned Islamic university that plays a large role in Islamic jurisprudence and creating Islamic legal policy, "presented a draft law to Parliament, calling for the execution of apostates and enforcing the *huddud* (Islamic penal) system."<sup>204</sup> Understandably, Al Azhar's proposal created powerful anxieties among Copts, and the Coptic Church felt directly targeted, since its existence posed the largest challenge to an Egyptian Islamic state. In reaction, Copts launched a concerted political effort, and the Patriarchate called for a Christian religious conference in Alexandria—only the second pan-Christian conference in Egypt's history.<sup>205</sup>

This conference took place on January 17, 1977, and a detailed statement was issued by the Coptic Church. Although government officials prohibited the statement's publication and circulation, the influence of the Alexandria conference was immediate, and Copts quickly began circulating and discussing the document among themselves.<sup>206</sup> The Alexandria conference statement discussed several

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201. See Guindy, *supra* note 8, at 3.

202. See *id.*

203. See SAAD ET AL., *supra* note 193, at 18; LOMBARDI, *supra* note 200, at 126-29; Guindy, *supra* note 8, at 9-11.

204. SAAD ET AL., *supra* note 193, at 18. *Huddud* is one of four classes of punishment under Islamic penal law. Specifically, *huddud* refers to "sanctions prescribed for a limited number of severe violations or crimes," including theft, murder, apostasy, fornication, and alcohol consumption. Salah-Eldin Abdel-Wahab, *Meaning and Structure of Law in Islam*, 16 VAND. L. REV. 115, 118 (1962-1963).

205. See SAAD ET AL., *supra* note 193, at 18-19; Guindy, *supra* note 8, at 9-11.

206. See G. BADAWI, AL FITNA AL TAEFEYA FI MISR: GOZOOREHA, ASBABEHA [Sectarian Strife in Egypt: Causes and Rationale] 80-88 (1977).

key issues relevant to the Coptic community: freedom of belief and of rites, freedom to publish Christian history and heritage, protection of family and of Christian marriages, equality of opportunity for state offices, representation of Christians in local councils, warnings of extremist trends, and an end to Ottoman laws that restricted the building of churches.<sup>207</sup> The statement also called for dismissal of the Al Azhar draft law and cessation of all talks regarding the application of Shari'a law to non-Muslim populations of Egypt—as this would essentially signify the end of traditional Christian rites.<sup>208</sup> Although the Egyptian government did not respond to Coptic demands, the influence of the Alexandria conference was far-reaching: Copts in Australia, Canada, and the United States organized their own conferences, drafted similar statements to those of the Alexandria conference, and sent these statements to the Egyptian government, marking the first Coptic protest from the Diaspora.<sup>209</sup>

Despite vigorous protests by Copts in Egypt and abroad, Al Azhar's proposal of enforcing *huddud* moved forward. After a general conference of Islamic institutions held in July 1977 under the auspices of the Sheik of Al Azhar University, the Council of the Egyptian Ministry of Justice accepted the draft law. Punishments for stealing were outlined, and the law also defined "apostates" as every Muslim, male or female, over the age of 18 who "deliberately leaves the Islamic religion."<sup>210</sup> If any apostate from Islam had not recanted within 30 days, they could be hanged.<sup>211</sup> Furthermore, the *huddud* demanded that an apostate "had no right to handle or administer their own money, and the court would appoint a custodian over their property."<sup>212</sup> These actions outraged the Coptic Church, as these laws essentially undermined the Church's efforts to preach freely and gain converts.

Simmering tensions between Copts and Muslims eventually erupted in early 1978. Several churches, including the Cairene church Abu Zaabel, were burned; Coptic priests were attacked and beaten; one priest was murdered. Coptic reaction was swift, with 90 priests leading a

207. See SAAD ET AL., *supra* note 193, at 18.

208. See *id.*

209. S. BAHR, AL AKBAT FI AL HAYAT AL SEYASEYA AL MISREYA [Copts in Egyptian Political Life] 157 (1984).

210. SAAD ET AL., *supra* note 193, at 18.

211. See *id.* at 18-19.

212. See *id.* at 19.

protest demonstration in Cairo.<sup>213</sup> As frictions between the two sides increased, some Islamic writers called for “immediate implementation of the apostasy law.” Pope Shenouda, however, issued a statement “objecting to the fact that the *sharia* was the basis on which laws were formed in Egypt for non-Muslims.”<sup>214</sup> He also expressed anxiety about the “replacement of nationalism by religion,” and instructed Copts to continue in silent protest.<sup>215</sup>

#### V. CURRENT COPTIC PERSONAL STATUS LAW—*BILL OF PERSONAL AFFAIRS FOR COPTS: 1978–TODAY*

Religious tension between Copts and Muslims also had a significant impact on Coptic personal status law. In light of the political and legal climate of Egypt in 1978, Pope Shenouda commissioned a group of church leaders to revise Coptic personal status laws using the Bible and the *Nomocanon*. In 1980, a draft of these revised laws was sent to Egypt’s Ministry of Justice for approval and ratification, but was shelved for almost two decades. This draft was revisited by the Coptic Church and modified again in 1998.<sup>216</sup> Personal status of Copts in Egypt has again emerged as a hotly debated issue, as the Egyptian government continues to apply pressure on the Coptic Church to adopt principles for divorce akin to those in Islamic law.<sup>217</sup> Pope Shenouda has continued to refuse any such changes, citing Biblical foundations for Coptic personal status laws.

The following is a description and analysis of the most recent version of the *Bill of Personal Affairs for Copts*. The *Bill* was given to the authors by Bishop Paula, who is the primary author of the *Bill* and who was ordained by Pope Shenouda as the chief Bishop for family matters in the Coptic Church.

##### A. *The Bill of Personal Affairs for Copts*

The *Bill of Personal Affairs for Copts* (“*Bill*”) is divided into eight chapters and includes a total of 72 articles. The chapters are organized as

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213. *Id.*

214. *Id.*

215. *Id.*

216. See Interview with Bishop Paula, *supra* note 6.

217. See Interview with Dr. Nash and Dr. Shady, *supra* note 6; Interview with Bishop Paula, *supra* note 6; Interview with Father Maximus, *supra* note 6.

follows: (1) Engagement; (2) The Principles and Conditions of Marriage; (3) Marriage Prohibitions; (4) The Proceedings of the Marriage Contract; (5) Nullity of Marriage; (6) The Rights and Duties of the Married; (7) Divorce; and (8) Custody.

### *1. Engagement*

Engagement is not required as a precursor to marriage. An official engagement, as recognized by the Coptic Church, occurs in the presence of a priest and is defined as a “mutual agreement for marriage within a limited period of time, between a man and a woman.”<sup>218</sup> While engagement is not a church sacrament, it is understood as the “appropriate” method for a couple to formally and legitimately declare their mutual interest in each other in a public fashion.<sup>219</sup> Engagement is prohibited if any of the circumstances mentioned in chapter 3, Marriage Prohibitions, are present.<sup>220</sup> These prohibitions will be discussed when Marriage Prohibitions are considered in greater depth.

The Church also imposes a minimum age for engagement. A man must be seventeen years of age, and a woman fifteen years of age, to get engaged.<sup>221</sup> While both ages may be considered quite young, the existence of a minimum age at all is significant in light of the historical cultural norms within Egypt, particularly in Upper Egypt, where it was considered quite normal for a girl who had just reached puberty to be married.<sup>222</sup> However, this minimum age requirement for engagement may be waived if the legal guardian (i.e., the father or a male relative of the father) to the underage party agrees to it.<sup>223</sup> Women are not allowed to be legal guardians, underscoring the traditional paternalism in the Coptic Church. If there is no legal guardian, the court decides for a legal guardian “whether from the relatives or otherwise.”<sup>224</sup>

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218. The Bill of Personal Affairs for Copts, ch. 1, arts. 1, 4-5 (Jan. 2007) (unpublished manuscript, on file with the authors). The Coptic Church only recognizes an engagement between a man and woman, and homosexual marriages or unions are fully opposed. The Church believes the foundation for this opposition is Biblical and has taken an uncompromising stance on this issue. Interview with Bishop Paula, *supra* note 6.

219. Interview with Bishop Paula, *supra* note 6.

220. Bill of Personal Affairs, *supra* note 218, at ch. 1, art. 2.

221. *See id.* at ch. 1, art. 3.

222. *See* Interview with Bishop Paula, *supra* note 6.

223. *See* Bill of Personal Affairs, *supra* note 218, at ch. 1, art. 4.

224. *Id.*

The priest performing the engagement must also document it by issuing a certificate. The certificate must include: (1) the names, surnames, ages, occupations and addresses of both of the betrothed; (2) the names, surnames, occupations and addresses of the fathers of both of the betrothed, or of the legal guardian of either or both of the betrothed if either or both is under age; (3) a confirmation that both of the betrothed, and the legal guardians if the situation calls for it, have agreed to the upcoming marriage; (4) a confirmation that at least two Christian witnesses who are of age have attended the engagement, along with the witnesses' names, occupations and addresses; (5) a confirmation that the betrothed are not prohibited in any way from marrying; (6) the date appointed for the wedding; and (7) any financial agreements agreed upon by the families of the betrothed, if these exist.<sup>225</sup> This certificate is kept in the local church, but both parties to the engagement receive a copy.<sup>226</sup>

While the wedding date must be decided prior to the engagement for purposes of the certificate, the parties may mutually agree to change the date if necessary. Again, the change of date requires mutual assent, and the basis must be deemed reasonable by the priest responsible for issuing the certificate. If the priest feels that either party has acted unreasonably in requesting a change of date, that party will be considered to be effectively ending the engagement.<sup>227</sup>

Once an engagement is finalized, the responsible priest must make the engagement public in the church where the engagement was performed. This takes place within a week of engagement. The announcement must also be made in writing, and this document must be viewable by the public for a month.<sup>228</sup> The purpose behind this rule seems to be to allow anyone with a credible reason to protest the engagement, to have a reasonable chance to do so. If a protest does occur, the priest decides on the merits of the protest before the date of marriage.<sup>229</sup> And, if for some reason the wedding does not occur within a year of the public announcement, the priest certifying the engagement must renew the announcement.<sup>230</sup>

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225. *See id.* at art. 5.

226. *See id.*

227. *See id.* at art. 6.

228. *See id.* at art. 7.

229. *See id.*

230. *See id.*

Either party to an engagement may decide to end the engagement for any reason.<sup>231</sup> However, the party terminating the engagement must return any gift given in view of marriage to the other party.<sup>232</sup> Engagement terminations are a frequent occurrence as the Church recognizes the engagement period as the only “legitimate” way for a couple to begin to “date.”<sup>233</sup> Postponing dating until after engagement, however, is not always strictly followed, especially by Copts in Diaspora who are certainly influenced by the cultures surrounding them.<sup>234</sup> The termination of an engagement is documented by a priest, and the refraining party must sign the document.<sup>235</sup> Moreover, the engagement is void if any prohibition to marriage (e.g., consanguinity) is discovered during an engagement, if either party becomes a priest, monk or nun, and, of course if either party passes away prior to the wedding.<sup>236</sup>

Bishop Paula emphasized that the families of the betrothed play a pivotal role in the engagement proceedings. That is, if family members of either party are opposed to the engagement, it generally does not happen.<sup>237</sup> Engagement, like marriage, is more an exercise in the “union of families” rather than a union of two individuals. Whether this focus on merging families, as opposed to individuals, should be primarily attributed to Egyptian cultural norms or religious tradition is unclear.

## 2. *The Principles and Conditions of Marriage*

Marriage is one of the seven sacraments of the Coptic Church and is taken “very seriously.”<sup>238</sup> Marriage is considered a life-long commitment, and divorce is granted in very limited circumstances, as will be discussed later. The *Bill* defines “Christian marriage” as “a continuous, sacred and religious bond” that “takes place in public” between “one Christian man and one Christian woman who are fit for marriage” and must be solemnized by a priest who is authorized to perform the ceremony.<sup>239</sup> The purpose of marriage is “to form a family

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231. *See id.* at art. 9.

232. *See id.* at art. 10.

233. Interview with Bishop Paula, *supra* note 6.

234. *Id.*

235. *See Bill of Personal Affairs, supra* note 218, at ch. 1, art. 9.

236. *See id.* at art. 12.

237. *See* Interview with Bishop Paula, *supra* note 6.

238. *Id.*

239. *Bill of Personal Affairs, supra* note 218, at ch. 2, art. 1.

whose members support each other in a mutual family life.”<sup>240</sup> Given this purpose and the need for at least a minimal level of maturity in both husband and wife, a man is not allowed to marry until he is eighteen years of age, and a woman may not marry until she is sixteen years old, and both parties must agree to the marriage.<sup>241</sup> Like engagement proceedings, however, a legal guardian may assent to the marriage on behalf of a party who is underage.<sup>242</sup>

The term “fit for marriage” has several meanings within the Coptic Church. First, it refers to the fact that those desiring to be wed must be of age and must be “fit” with regards to physical and mental health. Though the Church obviously does not preclude those who are not in good physical or mental health from marrying, it will require that the relevant conditions are made known to the other party before performing the sacrament.<sup>243</sup> Furthermore, the Coptic Church believes that in order to be “fit for marriage,” both parties must understand their obligations towards each other, one of which is to “support each other in a mutual familial life.”<sup>244</sup> While this phrase conceptually suggests the support provided by the stability of a social framework, the Church also views this “support” as spiritual. That is, each party to the marriage, and collectively as parents, has an obligation to support one another and to raise their children in the Coptic faith, teaching them to adhere to and continue its practices.<sup>245</sup>

Although the *Bill* does not explicitly address the topic, civil marriages and civil unions are not acknowledged as valid by the Church. Thus, those who are not married within the Church, such as inter-faith couples, are not recognized by the Church as having marital status.<sup>246</sup>

### 3. *Marriage Prohibitions*

The Coptic Church prohibits marriage in a variety of situations, one of which is when the parties wishing to marry stand within certain degrees of consanguinity. Specifically, a person may not marry his or her direct lineal ancestors or descendants, the direct lineal ancestors or

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240. *Id.*

241. *See id.* at arts. 3-4.

242. *Id.* at art. 5.

243. *See* Interview with Bishop Paula, *supra* note 6.

244. Bill of Personal Affairs, *supra* note 218, at ch. 2, art. 1.

245. *See* Interview with Bishop Paula, *supra* note 6.

246. *See id.*

descendants of his or her spouse, or the children of any lineal ancestors or descendants.<sup>247</sup> For purposes of calculating degrees of consanguinity, step-children and adopted children are treated as if they were originally born into the family, and two adopted children in the same family may not marry each other because they are viewed as siblings.<sup>248</sup> Children of siblings, however, are permitted to marry, meaning that Copts may marry any relative who is a first-cousin or more remotely related.<sup>249</sup> Whether consanguinity restrictions for Copts are attributable to custom, religion, health, or some combination of these factors, these provisions in the *Bill* mirror almost exactly those from the *Nomocanon*, revealing a remarkable continuity on the issue of consanguinity from at least the medieval era to the present.

The Coptic Church also prohibits, and refuses to recognize, certain types of marriages for reasons rooted in traditional Christianity. For instance, marrying someone who is already married is forbidden because “polygamy is prohibited in Christianity.”<sup>250</sup> In addition, a husband or wife who was divorced because of adultery is not permitted to marry again in the Church.<sup>251</sup> And, perhaps echoing the lessons learned from the Old Testament story of David and Bathsheba about the destructive nature of crimes of passion,<sup>252</sup> the Coptic Church will not allow a man or woman who deliberately killed someone to marry the surviving spouse.<sup>253</sup>

Another marital restriction placed on Copts by the Church is that marriage must be a union of two people who espouse the same faith.<sup>254</sup> For Copts, this means that marriage is limited to members of the Coptic Church or one of its sister churches from the Oriental Orthodox family of churches: the Armenian Orthodox Church of All Armenians; the Ethiopian Orthodox Tewahedo Church; The Eritrean Orthodox Tewahedo Church; The Indian Orthodox Church; and The Syrian Orthodox Church of Antioch. These churches are doctrinally linked by their rejection of the Council of Chalcedon in 451 CE and, therefore, are in full communion with each other, each accepting all of the others’

247. See Bill of Personal Affairs, *supra* note 218, at ch. 3, arts. 1-2.

248. See *id.* at arts. 2-3.

249. See *id.* at art. 2.

250. *Id.* at art. 4.

251. See *id.* at art. 5.

252. See 2 *Samuel* chs. 11-12.

253. See Bill of Personal Affairs, *supra* note 218, at ch. 3, art. 6.

254. See *id.* at art. 7.



sacramental rites.<sup>255</sup> The Coptic Church thus refuses to honor marriages between a Copt and any other Christian or non-Christian denomination. In practical terms, this drastically limits the pool of eligible marriage partners for Copts, reserving the marriage sacrament for those belonging to the faith or those who accept the Coptic faith through baptism. The Church's strict view on marriage reflects its adherence to the Biblical notion of matrimony as the union of two individuals into one familial entity under God. Such a union cannot occur unless both parties share the same faith.<sup>256</sup>

Marriage is also prohibited if one of the parties has certain physical or mental ailments. For instance, if a man is impotent or castrated, he cannot receive marriage.<sup>257</sup> But a woman who is incurably barren may get married.<sup>258</sup> The contrast between these laws regulating different sexes probably rests upon the Biblical precedent that God can, and has cured barrenness, as in the case of Abraham's wife Sarah.<sup>259</sup> Other maladies that would prevent the Church from allowing one to marry include insanity and terminal diseases, which would render one incapable of living a "normal" life, unless the healthy partner who knows of the terminal disease consents to the marriage.<sup>260</sup>

Finally, a woman whose husband has passed away, or whose marriage was terminated, is not allowed to remarry until ten months have passed since the end of her first marriage, unless she gives birth before these ten months are over.<sup>261</sup> This precaution was deemed necessary by the Church in order to ensure that a new potential husband had time to possess full knowledge of the woman's previous marital situation.<sup>262</sup>

#### 4. *The Proceedings of the Marriage Contract*

This chapter of the *Bill* is technical in nature, describing the details that need to be included in the written marriage contract for it to be considered valid. All marriages are registered in contracts that are issued

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255. See Interview with Bishop Paula, *supra* note 6.

256. *Id.*

257. See Bill of Personal Affairs, *supra* note 218, at ch. 3, art. 8.

258. See *id.* at art. 10.

259. See *Genesis* chs. 18-21.

260. See Bill of Personal Affairs, *supra* note 218, at ch. 3, art. 8.

261. See *id.* at art. 9.

262. See Interview with Bishop Paula, *supra* note 6.

by priests.<sup>263</sup> These contracts must include the following information: (1) the names, surnames, work, addresses, and dates of birth of both parties; (2) the names, surnames, work, and addresses of the parents of both parties, or legal guardian(s) if necessary; (3) a confirmation that both the husband and wife, and the legal guardian(s) if necessary, have attended the wedding; (4) confirmation that both parties, and legal guardian(s) if necessary, have fully agreed to the marriage thus ensuring that no coercion has been used; (5) the names, surnames, ages, work, and addresses of the two compulsory Christian witnesses; (6) confirmation that a public announcement has been made by the priest conducting the matrimonial rites; (7) confirmation that no opposition has been lodged against the marriage, or if such opposition has taken place, that the requisite authorities have exercised their sound judgment in allowing the marriage to proceed; and (8) confirmation that the necessary religious rituals for marriage have taken place.<sup>264</sup>

Upon the finalization of the actual rituals constituting the sacrament of matrimony, the priest, or authorized registrar, enters the marriage contract into the local church register designed specifically for marriage contracts.<sup>265</sup> Three copies of the original marriage contract are produced: one for the husband, one for the wife, and one copy sent to the Coptic Patriarchate for record keeping.<sup>266</sup> Once these copies have been entered, copied, and delivered, the marriage contract is read aloud to the congregation of the church.<sup>267</sup>

The primary function of the Coptic marriage contract is to avoid mistakes or confusion and to precisely account for practicing Copts in Egypt. The Coptic Church developed these meticulous record-keeping procedures precisely because it cannot rely on the Egyptian government to produce accurate or trustworthy records of its members.<sup>268</sup> These marriage contract procedures also afford church officials at a local or diocesan level a simple way to keep track of the members of any given local congregation, lending support to the proposition that Coptic estimates of its population may be more reliable than official government sources.

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263. See Bill of Personal Affairs, *supra* note 218, at ch. 4, art. 1.

264. See *id.*

265. See *id.* at arts. 2-4.

266. See *id.*; Interview with Bishop Paula, *supra* note 6.

267. See Bill of Personal Affairs, *supra* note 218, at ch. 4, art. 2.

268. See Interview with Bishop Paula, *supra* note 6.

### 5. Nullity of Marriage

While marriage is considered a life-long commitment sanctioned by God to live within the Coptic Church, there are some situations significant enough to nullify a marriage (i.e., to treat the marriage as if it were never solemnized). According to the *Bill*, marriages may be nullified under the following situations: (1) when one of the parties has not completely and willingly agreed to the marriage; (2) when the marriage rituals were not properly performed or witnessed; (3) if one or both parties are underage and their legal guardian(s) did not give consent;<sup>269</sup> (4) consanguinity; (5) bigamy or polygamy; (6) if one party marries a person whose religion or sect is not Christian (i.e., not a member of one of the Oriental Orthodox Churches);<sup>270</sup> (7) if it can be proved that a killer who marries the wife or husband of the killed committed the crime with the intent to marry the person; (8) if the husband is proven impotent after the wife, who did not know of the affliction, has lived with him for 40 days;<sup>271</sup> (9) if either party was under any of the Marriage Prohibitions discussed in Chapter 3; (10) if either party was previously divorced due to adultery; (11) if a woman is married while she has been kidnapped;<sup>272</sup> or (12) if either party has been deceitful regarding a reasonably substantial issue (e.g., false claim of virginity, false claim of no previous pregnancy).<sup>273</sup> These numerous grounds for nullity underscore the importance of the meticulous record-keeping described above. If Church marriage procedures have been properly followed, documents proving or disproving many allegations pertaining to the cases above may be easily identified.

According to Bishop Paula, the Church takes claims of deceit (number 12, above) very seriously, especially those relating to a woman's chastity. While similar concerns might be voiced over a man's

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269. In this case the legal guardian who was initially deceived must petition for the nullity within one month of its discovery. *See Bill of Personal Affairs, supra* note 218, at ch. 5, art. 5.

270. *See Interview with Bishop Paula, supra* note 6.

271. As premarital sexual intercourse is forbidden in the Coptic faith, the woman should have no reason to know whether or not her husband is impotent. *See id.*; *Bill of Personal Affairs, supra* note 218, ch. 5, art. 1.

272. This appears to be a relic from the early days of the Church, as any type of abduction, regardless of purpose, is now outlawed by the Egyptian government and condemned by the Coptic Church.

273. *See Bill of Personal Affairs, supra* note 218, at ch. 5, arts. 1-3. In the case involving deceit, only the victim may petition for a nullity. *See id.* at ch. 5, art. 4.

chastity, it is clear that to the Coptic Church a woman's chastity is more important.<sup>274</sup> Since there seems to be no Biblical foundation for valuing a woman's "purity" more highly than that of a man, such a hierarchy suggests that this greater concern for women is an example of traditional regional norms influencing religion.

The Church has also imposed a statute of limitations on petitions for nullity. The relevant provision states that the "issue for nullity of marriage is to be accepted in case the previous articles were achieved, only in one month from the time the harmed husband/wife has learned about the deceit or corruption of his/her partner."<sup>275</sup> The Church feels that this rule protects the institution of marriage, as well as the parties involved, because the longer a marriage is allowed to continue, the less likely either party will be successful in finding a future spouse.<sup>276</sup> For instance, a man may be hesitant to marry a woman who was previously married for a long period of time, regardless of whether or not nullity for that marriage was granted. This statute of limitations is also designed to reduce chances of pregnancy, after which a nullity will not be granted because the union and health of the family supersedes the previous deceit or corruption.<sup>277</sup>

There are, however, petitions for nullity that will be rejected. If a husband or wife who was married during his or her minority has reached his or her majority (e.g., age eighteen for a man, age sixteen for a woman), a petition for a nullity will be denied.<sup>278</sup> Similarly, if a woman who was married as a minor becomes pregnant, a nullity will not be issued.<sup>279</sup> These precautions, the Church believes, protect the sanctity of marriage and of the family unit, especially if children are part of the picture.

Finally, the party responsible for the marriage being nullified must compensate the other party for any harms she or he has caused. It is unclear how such harms are valued, or even which harms require compensation, but it is apparent that the Church's discretion and supervision in such an evaluation is central.<sup>280</sup> However, given that

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274. See Interview with Bishop Paula, *supra* note 6.

275. See Bill of Personal Affairs, *supra* note 218, at ch. 5, art. 4.

276. See Interview with Bishop Paula, *supra* note 6.

277. *Id.*

278. See Bill of Personal Affairs, *supra* note 218, at ch. 5, art. 6.

279. See *id.*

280. See *id.* at art. 8.

Coptic marriage arrangements generally involve the active participation of families from both spouses, the precise harms requiring compensation and the compensation amounts are probably settled through inter-familial negotiation.

#### 6. *Rights and Duties of the Married*

The Church's prescribed duties for those who are married begins with the notion that a marriage entails honesty, respect, and support in health and in sickness, for the duration of the lives of the married couple.<sup>281</sup> The *Bill* then goes on to describe more specific duties for the husband and the wife.

According to the *Bill*, the woman's role in marriage is primarily focused on domestic responsibilities. "The wife," the *Bill* states, shall "keep his [the husband's] money, take care of their home, and take good care of their children."<sup>282</sup> Women are also expected to obey their husband, so long as such obedience does not contradict the "commandments of God."<sup>283</sup> For instance, if a husband tells his wife that she must convert to another religion, or commit any kind of sin, the wife is not expected to obey.<sup>284</sup> Nor should a wife obey her husband under threat of "force."<sup>285</sup> Bishop Paula did not offer any examples of how to detect such "force," but he clarified the purpose of this provision: the ultimate decision from any disagreement between what a husband desires of his wife and what the wife desires for herself should be reasonable and decided upon with the best interests of both parties in mind.<sup>286</sup> Although a wife's primary responsibilities are in the home, she does have "the right to study, continue her studies or work after marriage," unless there was an agreement otherwise prior to the marriage.<sup>287</sup> Women also have the right to handle their own finances and are not expected to combine any financial gains with those of her husband.<sup>288</sup>

The husband's obligations in marriage are to preside, protect, and provide. A man's obligation to his wife is to "protect his wife, love her,

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281. See *id.* at ch. 6, art. 1.

282. *Id.* at art. 2.

283. *Id.* at art. 4.

284. See Interview with Bishop Paula, *supra* note 6.

285. See Bill of Personal Affairs, *supra* note 218, at ch. 6, art. 4.

286. See Interview with Bishop Paula, *supra* note 6.

287. Bill of Personal Affairs, *supra* note 218, at ch. 6, art. 6.

288. See *id.* at art. 7.

and treat her well.”<sup>289</sup> Although the husband is expected to lead the family, Father Maximus explained that a man’s goal in marriage should be to love his wife “as Jesus Christ loves the Church.”<sup>290</sup> According to Coptic priests, this duty is a demanding, and perhaps impossible, task—for Jesus’ love “knows no end.”<sup>291</sup> In addition to loving and protecting his family, the husband is expected to financially provide for the family and accommodate his wife in all capacities, while seeing to it that the family’s foremost aspiration is the pursuit of knowledge of God.<sup>292</sup> The husband chooses where the couple will live, but the Church may allow either party to temporarily live elsewhere if it determines that such an arrangement would somehow benefit the family in some measurable fashion.<sup>293</sup> Parents of either the husband or the wife, however, should not live in the couple’s home unless both husband and wife agree to such an arrangement, or the parents are incapable of living alone due to physical or mental sickness.<sup>294</sup> The Church is concerned about parents interfering with a couple’s relationship, recognizing that parental proximity may cause undue stress for the couple.<sup>295</sup>

Reviewing these duties of husband and wife, one may question why the Church appears to sanction male dominance in a marital relationship. According to Bishop Paula, such a view is inaccurate. Both the husband and wife are given central roles within the family framework, and the Church views these roles as equal in importance, with all decisions to be made in unison. The assigned roles to husband and wife have both Biblical and cultural foundations and are intended to complement each other.<sup>296</sup> Bishop Paula was insistent that the Church views the marital relationship as a “union between equals,” and that male dominance within a marital relationship was not tolerated.<sup>297</sup> Given this ecclesiastical perspective, an analysis of how Coptic couples actually structure their marital relationship would prove fruitful ground for further research.

289. *Id.* at art. 2.

290. Interview with Father Maximus, *supra* note 6.

291. *Id.*

292. See Bill of Personal Affairs, *supra* note 218, at ch. 6, art. 5; Interview with Bishop Paula, *supra* note 6.

293. See Bill of Personal Affairs, *supra* note 218, at ch. 6, art. 3.

294. See *id.* at art. 3.

295. See Interview with Bishop Paula, *supra* note 6.

296. See *id.*

297. *Id.*

### 7. Divorce

The *Bill* states that a valid marriage may be terminated in two ways: (1) the death of the husband or wife, be it an actual death or a situation in which the husband or wife is considered legally dead; and (2) divorce.<sup>298</sup> While divorce may end a marriage, the Church grants divorce only under very limited circumstances. If a marriage has been properly solemnized and the parties are living “a proper sexual life” (no adultery), the Church will not grant a divorce, even if one or both parties desires to end the marriage, because of the sanctity attached to the institution of marriage.<sup>299</sup> Thus, unless a “valid” reason for a divorce exists, the Church will insist that the couple work through their differences.

According to the *Bill*, there are two valid reasons for which a divorce will be granted. The first is apostasy. This occurs when either husband or wife “leaves the Christian faith to atheism, to any other religion, or to any sect that is not admitted by Christian churches in Egypt.”<sup>300</sup> The purpose for this rule, beyond the impossibility of pursuing a marriage in God where “God” means something different for each party, is rooted in protecting the Coptic faith. Since Copts in Egypt form a small and often embattled minority, this law reflects some notion of ensuring that Copts remain Copts.<sup>301</sup>

The second reason for divorce is adultery. Any of the following constitutes adultery: (1) sexual perversion (i.e., any kind of unnatural sex act—for example, homosexuality); (2) if the wife is pregnant at a time when there is no possibility that the husband could be the father; (3) if the husband or wife urges his or her spouse to commit adultery; (4) if letters from the husband or wife to a stranger prove that there is an illicit relationship between them; (5) if a stranger is found with the husband or wife in a suspicious situation within the home; (6) if either party runs away with an unrelated member of the opposite sex, or spends the night with that person without the spouse’s knowledge.<sup>302</sup>

If either the husband or the wife have apostatized or committed adultery, the innocent spouse must file for divorce.<sup>303</sup> But if the husband and wife were reconciled prior to the case being filed, or during the

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298. See Bill of Personal Affairs, *supra* note 218, at ch. 7, art. 1.

299. *Id.* at arts. 1-2.

300. *Id.* at art. 3.

301. See Interview with Bishop Paula, *supra* note 6.

302. See *id.*; Bill of Personal Affairs, *supra* note 218, at ch. 7, art. 5.

303. See *id.* at art. 4.

proceedings of the case, the Church will refuse to honor the request for divorce.<sup>304</sup> Moreover, if either spouse dies before a final judgment is entered, the request for divorce automatically expires, as the Church sees no practical reason for allowing the proceedings to continue.<sup>305</sup>

Once the Church grants a request for divorce, the marriage terminates at the date of the verdict. Accordingly, all marital obligations cease to exist from that point on, but neither party is allowed to remarry until the verdict has been finalized.<sup>306</sup> This occurs when the Church's verdict granting the divorce is made public, using procedures similar to those for announcing a marriage as described above.<sup>307</sup> However, if the couple chooses not to divorce despite the Church's consent to the divorce, they are permitted to reconcile and thus continue their marriage. In this case, the reconciliation is registered in a contract stating both parties have chosen not to divorce but to continue their marriage, and this contract is made public as well.<sup>308</sup> As is evident, the Church affords married couples every opportunity for reconciliation and reconnection, rather than divorce.

The *Bill* also contemplates compensation for the innocent party of the dissolved marriage. The party who caused the divorce is required to compensate the innocent party in some fashion, and the *Bill* unmistakably assumes that the guilty party is the husband. A wife, therefore, is entitled to a: "monthly allowance from the divorcee until she dies or re-marries. She is even entitled to receive his pension as long as she stays unmarried."<sup>309</sup> The Church is clearly concerned with the fate of a woman who requested and received a divorce because despite her innocence, she will probably encounter substantial financial and social hardship in attempting to remarry. In Egypt there is an extremely negative stigma attached to women who have already been married, likening them to "used goods." Although women's rights in Egypt have improved dramatically in recent years, this stigma certainly remains.<sup>310</sup>

The penalties for the party guilty of causing the divorce are severe. The Church does not allow this person to remarry within the Church, nor

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304. *See id.* at art. 6.

305. *See id.* at art. 7.

306. *See id.* at art. 8.

307. *See id.* at art. 9.

308. *See id.* at arts. 8-9.

309. *Id.* at art. 10.

310. Interview with Bishop Paula, *supra* note 6.



partake of its sacraments. While the guilty party may obtain a civil marriage from a *qadi*, this civil marriage will not be recognized by the Church.<sup>311</sup> Furthermore, the party at fault is not allowed to retain custody of any children, unless a court deems otherwise.<sup>312</sup> Regardless of the custody rights, a divorce does not sever the parent's obligations towards his or her children, effectively negating the possibility that a parent might use a divorce to avoid his or her parental duties.<sup>313</sup>

#### 8. *Custody*

"Custody" is defined in the *Bill* as "keeping the child, bringing him/her up and taking care of all his/her financial and moral affairs in a particular age, and its main goal is the benefit of the child."<sup>314</sup> Care and rearing of a child is viewed as a sacred duty, one in which parents and the Church act in close collaboration and always with the best interests of the child in mind.<sup>315</sup>

By default, custody of a child is vested in the child's mother unless there is reason to believe she is unfit for motherhood. This default custody right ends when a male child is ten years of age, or twelve for a female. At this point the Church, examining the best interests of the child, appoints a custodian (which is usually the mother if she is capable).<sup>316</sup> Custody is also automatically granted to the mother if the father has not fulfilled his duties to the child prior to this point. For example, if the parents are divorced and the father has routinely delayed making alimony payments as required by the Church, the mother will be granted custody. Furthermore, if the father has neglected the child in any way, or has shown any sort of animosity towards the child, the mother receives custody.<sup>317</sup>

If the mother of a child is unable or unfit to act as custodian, the *Bill* delineates a detailed line of custodial succession, favoring the lineal maternal line.<sup>318</sup> If the child has no female relatives fit to be custodian,

311. *See id.*

312. *See Bill of Personal Affairs, supra* note 218, at ch. 7, art. 11.

313. *See id.* at art. 12.

314. *Id.* at ch. 8, art. 1.

315. *See Interview with Bishop Paula, supra* note 6.

316. *See Bill of Personal Affairs, supra* note 218, at ch. 8, art. 2.

317. *See id.* at arts. 1-2.

318. *See id.* at art. 3.

custody passes to his or her male relatives.<sup>319</sup> Custody will be passed to the next in the line of custodial succession, if the person granted custody is unfit or unable to take appropriate custody of the child.<sup>320</sup> Should litigation arise as to the suitability of the custodian, however, the Church court may choose an appropriate custodian without following the line of succession.<sup>321</sup>

Alternatively, if the mother has not provided the child with enough care, the Church can decide to grant custody to the father, should the best interests of the child warrant it. For example, if the mother has not acted in “appropriate” fashion with respect to her personal life, has allowed the child to falter in school, or has allowed the child’s health to diminish in some way that could have been avoided if not for her negligence or indifference, the Church may grant custody to the father.<sup>322</sup> Similarly, if a mother who holds custody of a child dies, the father of the child has the right to choose another custodian from the mother’s female relatives, if there was not a history of strife between the couple. Of course, the child’s benefit in the appointment of this new custodian is paramount, and the Church must be satisfied that the father’s decision reflects this principle.<sup>323</sup>

Should none of the child’s relatives be fit to take custody of the child, or if the child does not have any relatives, the Church takes an even more proactive role. In this case, the Church appoints an “honest trustworthy woman” who is “Christian” and “fit for that purpose.”<sup>324</sup> Choosing a suitable Christian woman is deliberate: the Church believes that such a family allows the child the best chance of “attaining salvation” (i.e., going to heaven). Bishop Paula reiterated that the Church takes these custodial decisions extremely seriously, and that the decision makers will be held accountable before God.<sup>325</sup>

A non-custodial parent still retains some rights. Non-custodial parents have visitation rights, which must occur twice monthly, and the Church court determines the date, place, and duration of the visits. However, should the non-custodial parent violate the rules surrounding

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319. *See id.* at art. 6.

320. *See id.* at arts. 3, 8.

321. *See id.* at art. 10.

322. *See id.* at art. 4.

323. *See id.* at art. 5; Interview with Bishop Paula, *supra* note 6.

324. Bill of Personal Affairs, *supra* note 218, at ch. 8, art. 11.

325. Interview with Bishop Paula, *supra* note 6.

the visitation rights, he or she may lose these rights.<sup>326</sup> In addition, a non-custodial parent cannot take the child out of the city in which the child lives unless the custodian grants permission. And a divorced mother holding custody of a child may not remove the child from Egypt, unless the child's health or welfare dictates that she must.<sup>327</sup>

### CONCLUSION

A casual tourist in Egypt would be hard-pressed to differentiate Copts from Muslims with respect to language, physical characteristics, or mannerisms. Indeed, for more than one thousand years, Copts, in many ways, have been socially, economically, and culturally integrated within an Egypt ruled under Islam. Despite such acculturation, fundamental religious divisions between Copts and Muslims remain that have dramatically shaped their respective laws governing marriage and family relations in different ways.

Although the form of Coptic personal status law has changed dramatically over two millennia—from a loose collection of New Testament passages, wide-ranging church council edicts, and statements by early Christian leaders, to a Romano-Byzantine-influenced medieval law code, that, in turn, informed the current, streamlined *Bill of Personal Affairs for Copts*—certain core principles have remained fixed. At the heart of Coptic personal status law is the principle of divine marriage: marriage is a divine sacrament instituted by God consisting of the union of one man and one woman, which may be dissolved only in limited circumstances. This powerful unifying doctrine, its effect on Coptic familial relations, and ultimately Coptic world view, cannot be overestimated. Related to this principle of divine marriage is the concept that God has invested Coptic clergy with exclusive authority over family affairs. Thus, it is the sacred duty of Coptic priests to create or dissolve the marriage bond, to sit in judgment over familial disputes, and to counsel and guide Coptic families in truth and righteousness.

However, these core principles of divine marriage and exclusive Coptic clerical jurisdiction over family matters that fundamentally shape Coptic identity and world view are threatened. Should the Egyptian government create a right of divorce for all Egyptians based upon Shari'a law, it would dissolve the traditional barriers that allow non-Muslim

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326. See Bill of Personal Affairs, *supra* note 218, at ch. 8, art. 14.

327. See *id.* at art. 13.

religious groups to independently govern family matters pertaining to its members, a move that would devastate Coptic personal status law. Such a decree would effectively eliminate the Coptic Church's jurisdiction over the dissolution of marriage, supplanting the judgments and decisions of the Coptic clergy with those of Muslim *qadis*. Furthermore, it would pressure Coptic clergy to re-marry individuals whom the Church did not divorce. Perhaps most significantly, by overtly sanctioning a legal process whereby marriages and families can be easily dissolved, the expanded availability of divorce would erode the fundamental Coptic principle of divine marriage, a principle central to a unique Coptic identity.

The gravity of the Egyptian government's proposal to establish a universal right of divorce for all Egyptians has understandably created tension with the Coptic minority. Thus far, the Coptic Church has responded to government pressure with implacable resilience, publicly stating that it will not eviscerate its traditions and laws.<sup>328</sup> To yield would be blasphemous. Copts, as has been their custom, have banded together for strength and unity, using tattoos and other markers to identify themselves as Christians.<sup>329</sup> This refusal to acquiesce, combined with long-standing social, economic, and political tensions, has periodically sparked violence between Copts and Muslims.<sup>330</sup> And an ongoing dispute between the Egyptian government and the Coptic Church regarding the custody of a child from a Muslim-Coptic marriage suggests that the inherent tension between these two personal status law regimes will continue to remain a flashpoint.<sup>331</sup>

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328. See Interview with Bishop Paula, *supra* note 7.

329. Many Copts have a small blue cross tattooed on the inside of their wrist to identify themselves as Christian. See Christian Fraser, *Egypt's Coptic Christians battle for ID cards*, BBC, Dec. 26, 2009, available at: [http://news.bbc.co.uk/2/hi/middle\\_east/8424599.stm](http://news.bbc.co.uk/2/hi/middle_east/8424599.stm).

330. See, e.g., SAADET AL., *supra* note 193, at 22; *Three Killed in Egypt Church Riot*, BBC, Oct. 22, 2005, available at: [http://news.bbc.co.uk/2/hi/middle\\_east/4366232.stm](http://news.bbc.co.uk/2/hi/middle_east/4366232.stm); Michael Slackman, *As Tensions Rise for Egypt's Christians, Officials Call Clashes Secular*, N.Y. TIMES, Aug. 2, 2008, available at: <http://www.nytimes.com/2008/08/02/world/middleeast/02egypt.html?ex=1218340800&en=46a22c3b26376212&ei=5070&emc=eta1>; Michael Slackman, *In Egypt, Religious Clashes Are Off the Record*, N.Y. TIMES, Jan. 31, 2010, available at: <http://www.nytimes.com/2010/02/01/world/middleeast/01egypt.html>.

331. See Fraser, *supra* note 329.

