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The Coptic Christians of Egypt: Dhimmitude and Discrimination

Patrick Alexander Younan

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I. Who are the Copts?

In August of 2013, after the ouster of democratically elected Egyptian president, Muhammed Morsi, supporters of the ousted president set fire to dozens of churches across Egypt in a series of mob attacks.¹ It was the latest vivid reminder of a continuous assault on non-Muslim minorities in the country. It was the latest chapter in a conflict that dates back to the first millennium that still plays out today.

The Coptic Christians of Egypt are a minority group that identifies itself as one of the earliest sects of Christianity in the world.² The Copts have lived and survived in Egypt through the centuries, under the rule of various conquerors, and from a place of political power to their current position of powerlessness. As a minority the Copts have had to adapt to survive.

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.³

The Copts are Egyptian Orthodox Christians with their own set of religious beliefs, their own liturgical language, and history.⁴ Many Copts consider themselves the descendants of the ancient Egyptians. Copts have lived alongside Muslims, Jews, and other Christians in Egypt for centuries, but in recent decades as Egypt has become more religiously polarized, other minority

¹ See Liam Stack, *Witness Accounts of Sectarian Attacks Across Egypt*, N.Y. TIMES BLOG (Aug. 16, 2013, 1:09 PM), <http://thelede.blogs.nytimes.com/2013/08/16/witness-accounts-of-sectarian-attacks-across-egypt>.

² See WIKIPEDIA, *Copts*, <http://en.wikipedia.org/wiki/Copts> (describing history and culture of the Copts) (as of Nov. 9, 2013, 18:45 GMT) [hereinafter WIKIPEDIA].

³ Ryan Rowberry & John Khalil, *A Brief History of Coptic Personal Status Law*, 3 BERK. J. MIDDLE E. & ISLAMIC L. 81, 138 (2010).

⁴ WIKIPEDIA, *Supra* note 2.

religions have abandoned Egypt. In these decades the Copts have gone from a relative position of wealth and power, to persecution and underrepresentation. The Islamic Egyptian government claims to be tolerant of non-Muslim religious minorities, yet many of the current laws place severe restrictions on what Copts can and cannot do.

Of the one dozen separate Christian denominations that reside in the Middle East today, the largest and most consistently persecuted are the two Coptic Churches, found in both Catholic and Christian Orthodox forms. Constituting about 10% of the population of Egypt, with smaller communities in Ethiopia and the Sudan, the Copts are extremely endogamous, insisting on a separate existence in order to maintain their pre-Muslim, non-Arab, ancient Egyptian lineage.⁵

As a result, scores of Copts have immigrated out of Egypt. It seems there is very little opportunity for Egyptian Christians to make progress within the framework of political Islam. Political Islam appears to make very little effort to include and incorporate religious minorities, whether Muslim or non-Muslim.⁶ The trend in the last 30 years has been one of exclusion, which is particularly troubling to Egypt's Christians, since they have been increasingly persecuted and marginalized for almost 50 years.⁷ The last 2 years has left Egypt's political landscape in flux, with no clear sense of where things are heading.

This note will discuss the Copts, their history within Egypt, and within the framework of Islam. Historically, Islam addressed the non-Muslim as a lesser but protected class in a complex relationship called dhimmitude. This note will discuss how that structure still exists today, though changed by our modern times, and instructs the Copts place in Egyptian society. Finally, opinions on how Egypt and the Copts can move forward towards a more equitable future will be examined.

⁵ Donna E. Arzt, *Religious Human Rights in Muslim States of the Middle East and North Africa*, 10 EMORY INT'L L. REV. 139, 155 (1996) [hereinafter *Arzt Human Rights*].

⁶ *Id.*

⁷ *Id.*

II. A Historical Perspective - The Copts in Egypt

Though there are many theories of etymology of the word “Copt,” there seems to be a consensus that it originates from a variation of the Greek word for Egyptians, “Aigyptos.”⁸ Aigyptos was shortened to “Qibt” by Arab rulers of Egypt to distinguish native Egyptians from foreigners.⁹ Later, the English language adopted “Copt” as a synonym for Egyptian Christians.¹⁰ Copt and Egyptian are now interchangeable in meaning.¹¹

Copts trace the founding of their church to between A.D. 55 and A.D. 61 by Saint Mark in Alexandria, Egypt.

According to legend, on entering the city [Alexandria] by the eastern gate, [Saint Mark] broke the strap of his shoe. So he went to a cobbler to mend it. When the cobbler took an awl to work on it, he accidentally pierced his hand and cried aloud: ‘Heis ho Theos’ (God is one). Mark rejoiced at this utterance and, after miraculously healing the man's wound, took courage and gave the lesson to the hungry ears of his first convert.¹²

The cobbler and his family were then baptized by Mark. The cobbler, Anianus, became Mark’s successor and the second patriarch of the Alexandrian church. Mark was later martyred in Alexandria, around A.D. 68, but Anianus and the Coptic Church continued on in relative secret. Around A.D. 202 the Roman rulers of Egypt attempted to destroy all Christian churches and literature. The Copts resisted and were persecuted and killed by the thousands. It wasn’t until

⁸ See Rowberry, *supra* note 3, at 85.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Scott Kent Brown II, *The Coptic Church in Egypt: A Comment on Protecting Religious Minorities from Nonstate Discrimination*, 2000 B.Y.U. L. REV. 1049, 1051-52 (2000).

Constantine the Great adopted Christianity in A.D. 323, that the Coptic Church became a legitimate leader of the Christian world.¹³

Early in the Coptic Church's life it was weakened by schisms within Christianity. As a result the Coptic Church is now separated into the Orthodox Coptic Church and the Catholic Coptic Church.¹⁴ Before Islam was ever a factor, the Copts met resistance within Christianity over differing interpretations of the nature of the divinity of Christ, creating further antagonism between the Coptic and Byzantine Churches. The end result was the isolation of the Copts from overall Christendom and oppression by Byzantine rulers.¹⁵

In A.D. 640 Egypt was invaded by the Arabs. Because of persecution by Byzantium, many Copts welcomed Muslim Arab invaders.¹⁶ However, Muslim occupiers quickly instituted the "jizya", a per capita tax levied on non-Muslims. The Muslim rulers gave three choices, pay the jizya tribute, convert to Islam, or pay with your life. If one paid the tax, then one became "dhimmis", or a protected non-Muslim.¹⁷ Sharia, or Islamic jurisprudence that purports to cover all facets of Muslim life, came to govern Egypt, though not as strictly as in other Muslim territories. Protected Copts were able to flourish, by many accounts, during this time and establish themselves in government offices and magistrates.¹⁸ Finally, in 1855, after successive Muslim rulers that oppressed non-Muslims to varying degrees, the Copts gained equal status

¹³ *Id* at 1053. The Coptic Church became a major source of Christian theology and thinking as a result of contributions to monasticism.

¹⁴ See Rowberry, *supra* note 3, at 99.

¹⁵ *Id.*

¹⁶ See Brown, *supra* note 12, at 1054.

¹⁷ *Id.*

¹⁸ *Id.*

under the law and were no longer required to pay the jizya.¹⁹ During this time European interests in the Suez Canal brought Egypt under British and French control.²⁰ European favor for Christians and made this a period of relative stability for Copts. In 1923 the first Egyptian constitution was ratified, which lasted until 1953.²¹ It read in part:

All Egyptians are equal before the law. They enjoy impartially civil and political rights, and are equally subject to public duties and responsibilities, without any distinction of race, language or religion. They alone are eligible for public office, civil and military; foreigners are not eligible for these offices save in exceptional cases determined by law.²²

This was a period of flourishing for the Copts. Many became professionals, landowners, and government officials. However, in 1952 things changed drastically.²³ That year, a military coup led by a Lt. Colonel Gamal Abdel Nasser overthrew the monarchy and proclaimed Egypt a republic.²⁴ British occupation was ended, the Suez Canal was nationalized, and the 1923 Egyptian Constitution was abrogated. Nasser became president and proceeded to rewrite the Constitution, and further nationalize private property, including that of the Copts.²⁵ Nasser was succeeded by Mohammed Anwar El-Sadat in 1970. In 1971, Sadat adopted a new Constitution which stated that sharia would be the main source of legislation in Egypt.²⁶

Coptic protest of the 1971 Constitution led to a swift response from Sadat. The Coptic pope at the time, Shenouda III, was swiftly accused of rebellion, and a scheme to convert

¹⁹ See Rowberry, *supra* note 3, at 118.

²⁰ *Id.*

²¹ *Id.*

²² Egypt Const. (Royal Rescript No. 42 of Apr. 30, 1923) art. 3, *reprinted* in Amos J. Peaslee, *Constitutions of Nations* 721-22 (1950).

²³ See Brown, *supra* note 12, at 1057.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Muslims to Christianity.²⁷ As result, there were widespread demonstrations and violence perpetrated against the Copts. Churches were burned, dozens of Copts died, and Pope Shenouda was exiled.²⁸ Copts were caught up in the tide of change to push Egypt towards a more fundamentalist, more sharia-based, state. As a change to laws was being instated, so was a general social movement among some Muslim groups creating a more fundamentalist trend.²⁹ Islamists came to control much of the government positions and university positions, ousting Copts and pushing for further implementation of sharia.³⁰ Throughout the 1970s there was a push for more sharia in Egyptian law which was met by strong opposition by Copts. When the Copts voiced their protest, attacks on their churches and people would increase. Islamists were eventually victorious in strengthening sharia in the Egyptian Constitution. However, this, as well as the peace accords with Israel, only angered more hard-lined Islamist elements, who in turn assassinated Sadat on October 6, 1981.³¹

Mohammed Hosni Mubarak succeeded Sadat and immediately instituted a state of emergency under the auspices of national security that would be maintained for the next thirty years of his presidency.³²

²⁷ See *Arzt Human Rights*, *supra* note 5, at 154-56.

²⁸ *Id.*

²⁹ See Rowberry, *supra* note 3, at 119. "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." 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."

³⁰ *Id.*

³¹ *Id.* at 1061.

³² *Id.*

Under Mubarak the situation for the Copts was neutral. Copts gained a minimal amount of representation in the government, but were also the victims of institutional and de facto discrimination. Violence against Copts was periodic and bloody but Mubarak succeeded in stamping down violent Islamists including the Muslim Brotherhood.³³

Mubarak was virtually unchallenged in all presidential elections. Widespread accusations of oppression of opposing candidates and vote-rigging plagued each of the presidential elections.³⁴ Egypt was a de facto dictatorship under Mubarak, though some token concessions were made. In May of 2005, the Egyptian Parliament approved much touted changes to the Constitution that purported to open the presidential elections to multiple candidates.³⁵ However, the requirements to become a candidate were so stringent that no reasonable opposition to Mubarak was mustered.³⁶ Mubarak had secured his position as President for life, and was allegedly grooming his son to take over the presidency upon his retirement.³⁷

³³ *Id.* at 1062.

³⁴ Neil MacFarquhar, *Egypt Approves Election Law That Critics Say Favors Mubarak*, N.Y. TIMES (May 10, 2005), <http://www.nytimes.com/2005/05/10/international/africa/10cnd-egypt.html>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Hosni Mubarak's Path From Presidency to Prison and Beyond*, N.Y. TIMES (Aug. 22, 2013), http://www.nytimes.com/interactive/2013/08/21/world/middleeast/Mubarak_timeline.html?ref=egypt##/time139_4635.

A. The Arab Spring

On January 25, 2011, Egyptians took to the streets in protest, partially inspired by a popular uprising in Tunisia, demanding the resignation of President Mubarrak.³⁸ Later known as The Arab Spring, the protests spurred demonstrations across the Mideast.³⁹ The Mubarak regime responded with a violent police crackdown on protestors, who occupied and held Tarir Square in Cairo.⁴⁰ After days of pitched battle between regime forces and demonstrators, it became clear that popular support was with the demonstrators. The occupiers of the square were a mixture of liberal and conservative, Christians and Muslims, who found common ground in their struggle. After continued pressure and the eventual urging of the army, Mubarak stepped down from power on February 11, 2011.⁴¹ The Egyptian army stepped in to the power vacuum and set a timetable for Egypt to amend its Constitution and elect a new government. This move at once gave hope to minority opponents of the Mubarak regime, while also cementing the Army's role as the behind-the-scenes force in Egyptian politics.⁴²

By June of 2011, it became clear that of all the political parties now in the running to have a voice in the government, the Muslim Brotherhood was the most organized, the most persuasive, and headed for control. The Brotherhood, which was outlawed as a political party, and whose leaders were imprisoned by Mubarak as terrorists, was able to position itself as the

³⁸ Kareem Fahim & Mona El-Naggar, *Violent Clashes Mark Protests Against Mubarak's Rule*, N.Y. TIMES (Jan. 26, 2011), <http://www.nytimes.com/2011/01/26/world/middleeast/26egypt.html>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ David Kirkpatrick, *Egypt Erupts in Jubilation as Mubarak Steps Down*, N.Y. TIMES (Feb. 12, 2011), <http://www.nytimes.com/2011/02/12/world/middleeast/12egypt.html?pagewanted=all>.

⁴² David Kirkpatrick, *Egypt Army Sets 6-Month Blueprint, but Future Role Is Unclear*, N.Y. TIMES (Feb. 15, 2011), <http://www.nytimes.com/2011/02/15/world/middleeast/15egypt.html?pagewanted=all>.

more moderate and most willing to meet the needs of the masses of Egyptians. Muhammed Morsi was elected on June 30, 2012 as the first Islamist Arab head of state.⁴³ Early on it became clear that Morsi and the army generals were competing for power. Morsi forced the retirement of several key military chiefs while claiming more powers for the presidency.⁴⁴ The Muslim Brotherhood and the more fundamentalist Islamic Salafist party took the majority of the Parliamentary seats in the election of 2012, giving Morsi little opposition to imposing a stricter Islamist interpretation of Egyptian law.⁴⁵ By November of 2012, Morsi and the Islamists in Parliament had drafted and approved a new constitution that pushed Egypt towards becoming a stricter Islamic state, while ignoring the more secular opposition and minority voices, including the Copts.⁴⁶ Throughout 2012 and the beginning of 2013, protestors took to the streets to decry Morsi's alleged power grab, the struggling economy, and the lack of improvement in the lives of most Egyptians.⁴⁷ In June of 2013, popular resistance took to the streets this time with the demand that President Morsi resign.⁴⁸ Swiftly and within days the military moved to oust Morsi, arrested him along with his top advisers, and swore in an interim president, Adli Mansour.⁴⁹ Morsi supporters took to the streets to protest, but were violently opposed by police and army

⁴³ Kareem Fahim, *In Upheaval for Egypt, Morsi Forces Out Military Chiefs*, N.Y. TIMES (Aug. 13, 2012), <http://www.nytimes.com/2012/08/13/world/middleeast/egyptian-leader-ousts-military-chiefs.html?pagewanted=all>.

⁴⁴ *Id.*

⁴⁵ David Kirkpatrick, *Egyptian Islamists Approve Draft Constitution Despite Objections*, N.Y. TIMES (Nov. 30, 2012), <http://www.nytimes.com/2012/11/30/world/middleeast/panel-drafting-egypts-constitution-prepares-quick-vote.html>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ David Kirkpatrick, Kareem Fahim & Ben Hubbard, *By the Millions, Egyptians Seek Morsi's Ouster*, N.Y. TIMES (July 1, 2013), <http://www.nytimes.com/2013/07/01/world/middleeast/egypt.html>.

⁴⁹ Ben Hubbard, David Kirkpatrick & Mayy El Sheikh, *Crackdown on Morsi Backers Deepens Divide in Egypt*, N.Y. TIMES (July 5, 2013), <http://www.nytimes.com/2013/07/05/world/middleeast/egypt.html?pagewanted=all>.

forces. Hundreds of Morsi supporters were killed or injured. Each protest against the military's actions was met by more violence and muted outcry both outside and inside of Egypt.⁵⁰ Many welcomed the military's intervention, while others questioned its motives and timing.⁵¹ The military continued to remove the Muslim Brotherhood from the government and eventually outlawed the Brotherhood as a political party.⁵² By the time of this writing, Morsi was on trial for alleged corruption and the Muslim Brotherhood was in hiding.⁵³ However, it should be noted that as recently as November 14, 2013, the interim government had lifted the state of emergency and the nighttime curfew in a display of confidence in the security of the country.⁵⁴

This security does not apply to the nation's Copts, however. In reprisal and amongst accusations of complicity with the military takeover, Copts became targets of Islamist anger.⁵⁵ Coptic churches throughout Egypt were attacked and burned.⁵⁶ Dozens of Copts were killed in

⁵⁰ David Kirkpatrick, *Hundreds Die as Egyptian Forces Attack Islamist Protesters*, N.Y. TIMES (Aug. 15, 2013), <http://www.nytimes.com/2013/08/15/world/middleeast/egypt.html?ref=world>.

⁵¹ Ben Hubbard & David Kirkpatrick, *Sudden Improvements in Egypt Suggest a Campaign to Undermine Morsi*, N.Y. TIMES (July 11, 2013), <http://www.nytimes.com/2013/07/11/world/middleeast/improvements-in-egypt-suggest-a-campaign-that-undermined-morsi.html?ref=world>.

⁵² David Kirkpatrick, *Egyptian Court Shuts Down the Muslim Brotherhood and Seizes Its Assets*, N.Y. TIMES (Sept. 24, 2013), <http://www.nytimes.com/2013/09/24/world/middleeast/egyptian-court-bans-muslim-brotherhood.html>.

⁵³ Kareem Fahim and Mayy El Sheikh, *In Statement From Prison, Morsi Accuses Egypt's Military Leaders of Treason*, N.Y. TIMES (Nov. 14, 2013), <http://www.nytimes.com/2013/11/14/world/middleeast/morsi-letter-from-prison.html?ref=egypt>.

⁵⁴ Kareem Fahim, *Government in Egypt Eases Restrictions*, N.Y. TIMES (Nov. 15, 2013), <http://www.nytimes.com/2013/11/15/world/middleeast/government-in-egypt-eases-restrictions.html?ref=egypt>.

⁵⁵ Kareem Fahim, *Islamists Step Up Attacks on Christians for Supporting Morsi's Ouster*, N.Y. TIMES (Aug. 21, 2013), <http://www.nytimes.com/2013/08/21/world/middleeast/attacks-rise-against-egypts-christians.html>.

⁵⁶ *Id.*

attacks in Cairo and more rural areas of Egypt. This level of violence against the Copts had not been seen in decades.⁵⁷

According to officials in the Coptic Church, there have been attacks on 73 churches, in addition to scores of Coptic-owned homes and businesses, since the end of June. The Copts have been persecuted for joining the demonstrations that led to the removal of President Mohamed Morsi in early July. Supporters of Mr. Morsi were incensed that the Coptic pope, Tawadros II, supported the army's plan for ending the Brotherhood's rule.⁵⁸

Copts accused the police and military of doing nothing to protect them or their churches.⁵⁹ All the hope of the Arab Spring for Copts, the hope for equality in Egypt, has been lost and replaced with a fight for survival among the chaos. As one commentator put it, "the seeds of the recent escalation in violence against the Copts were sown long before the current turmoil in Egypt."⁶⁰

III. Egypt, Islam and the Copts — Dhimmitude and the Jizya

A. De jure dhimmitude

Many Copts were cautiously optimistic during the initial days of the Arab Spring. However, their hopes were dashed when it became clear that the Muslim Brotherhood was taking power in the country. After the Brotherhood's ouster from power, it's remarkable how little has changed for the Copts, or how much has changed for the worse. The reason for this is that the

⁵⁷ Kareem Fahim, *Gunmen Fire at Church in Egypt; At Least 3 Die*, N.Y. TIMES (Oct. 21, 2013), <http://www.nytimes.com/2013/10/21/world/middleeast/gunmen-fire-at-church-in-egypt-at-least-3-die.html>.

⁵⁸ Alaa Al Aswany, *Egypt's Two-Front War for Democracy*, N.Y. TIMES (Nov. 11, 2013), <http://www.nytimes.com/2013/11/11/opinion/aswani-egypts-two-front-war-for-democracy.html>.

⁵⁹ Liam Stack, *Egyptian Police Failed to Defend Churches, Rights Group Says*, N.Y. TIMES BLOG (Aug. 22, 2013, 5:14 PM), <http://thelede.blogs.nytimes.com/2013/08/22/egyptian-police-failed-to-defend-churches-rights-group-says>.

⁶⁰ Barry Curtiss-Lusher & Abraham Foxman, *War on Egypt's Christians*, N.Y. TIMES (Aug. 24, 2013), <http://www.nytimes.com/2013/08/24/opinion/war-on-egypts-christians.html>.

position of power between Muslims and non-muslims has not changed since the Arab Spring, nor has it changed in the past thousand years. Though the Copts status as dhimmis was abolished in 1855, the legacy as second-class citizens still remains today.

The Arab conquest of the Mideast during the first millennium saw the application of sharia law in various contexts.⁶¹ In a short time, Islamic rulers became the rulers of many non-Islamic areas, including Egypt. Donna Artz discusses the imposition of Islam into a non-Islamic society:

Islam, for all its internal cultural and political diversity, is rooted in a radically different consciousness toward community and authority than prevails in much of the West. “Islam,” which literally means “submission to the will of God” (and “Muslim,” “one who submits”), provides a comprehensive code of law, covering the social, political, and economic life of the community as well as rituals of worship. There is no separation of “mosque and state” in Islam. Religion is pervasive, not compartmentalized into one day of the week as in most modern Western societies.⁶²

Non-Muslims, who by their very existence “sit apart” from the Muslim world, need not deliberately and publicly express their opposition, however. Simply by their presence, and their commonplace desire to live as a distinctive community, non-Muslims are considered “non-harmonious” and accordingly treated under separate rules of Islamic law. Sometimes such rules can be highly repressive, especially when combined with secular law.⁶³

In most cases, forced conversion to Islam is not sanctioned by the Koran, but by their very existence non-Muslims were affronts to an Islamic society being governed by sharia law.⁶⁴

The Koran did allow for non-Muslims to live in Muslim lands as dhimmis, or literally,

⁶¹ See Artz *Human Rights*, *supra* note 5, at 143.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* (discussing discrimination against non-Arab Muslims and Muslims who were not of the ruling sect, such as Shiites in Sunni countries, or the Baha'is of Iran).

“protected ones,” though they were clearly second-class citizens.⁶⁵ Dhimmi could keep their property and remain in their homes as long as they paid the jizya tax.⁶⁶

Alternative translations of Mohammad’s instructions state that the dhimmi should be humiliated. However, scholars have debated whether the humiliation should be in the form of non-Muslims having to pay the tax personally by carrying it in hand, whether the tax should be so high that non-Muslims are humiliated, or whether non-Muslims should be humiliated and subdued in every aspect of life.

Forced conversions were the rule for conquered pagans; however, Jews, Christians, and Zoroastrians (all of whom were monotheists) were allowed to keep their religion, if they accepted dhimmi status. Even conquered Hindus and Buddhists were given dhimmi status in areas where they were so numerous that forced conversions were impossible to impose.⁶⁷

Many Christians and Jews who sought religious tolerance fled from persecution to Islamic lands.

For example, Jews under the Ottoman Turks were often better off than Jews who lived under the European Christians. After the Jews were expelled from Spain in 1492, and Spain coerced Portugal into expelling the Jews from Portugal, about 200,000 Iberian Jews moved to Turkey or other Ottoman lands. Christians, too, sometimes sought religious tolerance by fleeing to Islamic lands. The Byzantine Emperor Leo III the Isaurian (717-41) tried to convert the Jews by force, and also persecuted Christian dissenters from the Byzantine Orthodox Church. So Jews and Christians alike immigrated to the territories of the caliphs and sultans, who welcomed the well-educated and talented immigrants.⁶⁸

Throughout Islamic territories dhimmis had restrictions on what they could and could not do.

Different territories were more restrictive than others in their implementation of sharia law, but many of these restrictions were pervasive including; prohibitions on the dhimmi wearing the color green, prohibitions on the building of churches and synagogues, prohibitions on the

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ David B. Kopel, *Dhimmitude and Disarmament*, 18 GEO. MASON U. CIV. RTS. L.J. 305, 306-07 (2008).

⁶⁸ BAT YE’OR, THE DECLINE OF EASTERN CHRISTIANITY UNDER ISLAM: FROM JIHAD TO DHIMMITUDE 34-36, 126 (1996).

performance of religious ceremonies or the ringing of church bells, and prohibitions on proselytizing.⁶⁹ Dhimmi men could not marry a Muslim woman, but Muslim men could marry dhimmi women.⁷⁰ Dhimmis were not allowed to carry arms or defend themselves from attacks by Muslims.⁷¹

All of these restrictions and the jizya coerced dhimmis to convert to Islam, flee, or submit. In many cases, it was a means of forced conversion without direct force. The end effect was the same, decreased numbers of non-Muslims within the borders of the Islamic territory.

B. De facto dhimmitude

Though in the eyes of the law the Copts are Egyptian citizens, the legacy of dhimmitude is pervasive in practice. Today, only a handful of Islamic states still have official distinctions between dhimmi and non-dhimmi.⁷² The jizya tax has also been abolished. However, the cultural separation and discrimination is still prevalent:

In more secularized Muslim countries, as in most other societies in the post-apartheid era, religious discrimination tends to be de facto rather than de jure. Non-Muslims are now eligible for citizenship in every Muslim state except Saudi Arabia. While no less invidious, religious persecution which is not officially sanctioned by state law allows governments to disavow responsibility, blaming such acts on ostensibly eradicable, ancient, culturally-based prejudices.⁷³

⁶⁹ See Kopel, *supra* note 67, at 308.

⁷⁰ See Brown, *supra* note 12, at 1079-80.

⁷¹ See Kopel *supra* note 67, (discussing the general disarmament of all dhimmis in Islamic territories).

⁷² Donna E. Arzt, The Role of Compulsion in Islamic Conversion: Jihad, Dhimma Andridda, 8 BUFF. HUM. RTS. L. REV. 15, 25 (2002) [hereinafter *Arzt Compulsion*]. (“Only in the formally Islamic states of Saudi Arabia, the Sudan, Iran, and Oman are non-Muslim minorities afforded an officially unequal status under law; distinctions between dhimmi and non-dhimmi minorities are also lawful in these countries”).

⁷³ *Id.*

This de facto discrimination is informative to the situation of the Copts in Egypt. The Copts were dhimmis who paid the jizya, and for all intents and purposes are still dhimmis today with strict restrictions on their behavior that touches every aspect of Coptic life.

For instance, in 1977 the Council of the Egyptian Ministry of Justice accepted a draft law that would have strengthened sharia law's influence in Egypt.⁷⁴ As part of the draft law, which was ultimately defeated, any Muslim who intentionally left the faith was deemed an "apostate." Under the law the punishments for apostasy could include the loss of the right to administer one's own property and even death.⁷⁵ The other effect was to criminalize any successful efforts by the Coptic Church to gain converts.⁷⁶ Though the law was not passed, as recently as 2011, 24 Copts were killed when a rumor was circulated that Coptic men had kidnapped and forcibly converted a Muslim woman to Christianity.⁷⁷ In other cases, Muslim converts to Christianity have been arrested and detained.⁷⁸ Required national identity cards display the religion of every Egyptian citizen.⁷⁹ This same requirement extends to birth certificates, driver's licenses, employment applications, and visas for travel. Muslims who have converted to Christianity are unable to change their status on these documents.⁸⁰

⁷⁴ See Rowberry, *supra* note 3, at 121.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ David Kirkpatrick, *Egypt's Christians Fear Violence as Changes Embolden Islamists*, N.Y. TIMES (May 31, 2011), <http://www.nytimes.com/2011/05/31/world/middleeast/31coptic.html?pagewanted=all> [hereinafter *Kirkpatrick*].

⁷⁸ See Brown, *supra* note 12, at 1091-92.

⁷⁹ *Id.*

⁸⁰ *Id.*

The prohibition on the building and repair of churches is still in effect.⁸¹ This proscription, called the Hamayouni Decree, dates back to the rule of the Ottoman Turks, who required a labyrinthine series of necessary permits for the smallest of repairs.⁸² Any construction or repair of a church in Egypt required presidential approval up until 1998.⁸³ At this time governors can give approval but the practice is still onerous to Christians who find ways of getting around the law, such as erecting “community centers” that serve as places of worship.⁸⁴ There is also a ban on building new Churches within the “vicinity” of a mosque, though the distance is undefined.⁸⁵ Final approval for any building is left in the hands of the authorities where Copts have little influence.⁸⁶

Inequalities also exist in the education systems of Egypt. For example, the Koran is taught in the public schools of Egypt, requiring Coptic children to memorize passages.⁸⁷ No lessons are given on Christianity. As a result of the government’s ability to appoint university administration members, Copts have also been denied key positions at universities.⁸⁸ Furthermore, Copts were kept out of medical schools under the reasoning that “some Islamists find [] treatment of Muslim women by Coptic doctors [] offensive.”⁸⁹

There is also a lack of representation of the Copts in the Egyptian Parliament. By many estimates, Copts make up 10% of the Egyptian population, though their representation in

⁸¹ *Id.* at 1086-87.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See *Kirkpatrick*, *supra* note 77.

⁸⁵ See *Brown*, *supra* note 12, at 1086-87.

⁸⁶ *Id.*

⁸⁷ See *Brown*, *supra* note 12, at 1088-89.

⁸⁸ *Id.*

⁸⁹ *Id.*

Parliament is far from proportional.⁹⁰ Coptic representation has declined since a peak in 1942, when Copts made up 10% of the Parliament.⁹¹ Sahar Aziz attributes some of the decline to Nasser's presidency:

The downward trend began with an official ban in 1953 of all political parties, including the Al-Wafd Party, as part of a series of political reforms under President Nasser's Arab socialist agenda. These reforms implemented socialist policies while promoting Egypt's Arab character and role as leader of the Arab World. Institutional efforts to promote Egypt's Arab heritage marginalized Copts, many of whom identified as Egyptians rather than Arabs. Although the ban on political parties was officially lifted in 1976, Coptic representation in parliament continued to decline following the adoption of a winner-take-all, independent candidate system in 1990. The winner-take-all system disadvantaged minority candidates, who previously only had to win a predetermined minimum number of votes to secure a parliamentary seat under a proportional representation system. This change, coupled with growing public disillusionment with the government by both Muslims and Copts, further limited Coptic representation.⁹²

Aziz further explains that the geographic concentration of Copts in a few regions of the country means that they cannot attain the "critical mass" to gain a meaningful number of Parliamentary seats. Regardless of the reason, the result is the same, Copts have less representation in proportion to their percentage of the population in Egypt, which equals a smaller voice.⁹³

IV. What Should Be Done For the Copts – Opportunity for Change

Egypt has the framework and the incentive to become a more just and equitable society. By making small changes and enforcing international human rights pacts it has already agreed to, Egypt could improve the lives of the Copts as well as all Egyptians.

A. Egypt should enforce its human rights obligations

⁹⁰ Sahar F. Aziz, *Revolution Without Reform? A Critique of Egypt's Election Laws*, 45 GEO. WASH. INT'L L. REV. 1, 64 (2013).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 56.

Egypt has been a member of the United Nations (“UN”) since 1945.⁹⁴ The relationship with the UN has been beneficial to Egypt as one of its own, Boutros Boutros-Ghali, a Copt, became Secretary General in 1992.⁹⁵ Egypt has an obligation to the UN International Bill of Human Rights (IBHR)⁹⁶ which is made up of several documents including, the Universal Declaration of Human Rights (“UDHR”)⁹⁷, and the International Covenant on Civil and Political Rights (“CCPR”)⁹⁸. The UDHR sets forth that people are free to choose, change, and to practice that religion.⁹⁹ The CCPR requires signatories to guarantee freedom of conscience, thought and religion, while providing judicial and legislative remedies for violations of these rights.¹⁰⁰

Scott Kent Brown argues that the Egyptian government has an affirmative duty under both the UDHR and the CCPR to protect Copts from discrimination from state and non-state actors.

Article 2(3) requires states to provide an “effective remedy” to those individuals whose religious human rights have been violated. Thus, states that are party to the CCPR, as Egypt is, are affirmatively obligated to enact “legal measures” to protect the religious human rights of their citizens.”¹⁰¹

The CCPR requires that Egypt enact laws to assure the religious freedom of its citizens against state and non-state actors “even when committed by people outside or without any official

⁹⁴ See Brown, *supra* note 12, at 1064.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

⁹⁸ G.A. Res. 2200A, (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, (entered into force Mar. 23, 1976) [hereinafter CCPR].

⁹⁹ See Brown, *supra* note 12, at 1066,

¹⁰⁰ *Id.*

¹⁰¹ See Brown, *supra* note 12, at 1072.

authority.”¹⁰² Brown further suggests that under the CCPR Egypt must investigate and respond to threats and violence in a timely manner.¹⁰³ If Egypt is slow to respond or does not adequately investigate it would be in breach of its obligations under the CCPR.¹⁰⁴ Arguably, Egypt can improve the lives of the Copts and fulfill its obligations under the CCPR by thoroughly investigating and prosecuting crimes against Copts and Coptic property. Crimes against Copts for conversion from Islam are also clearly violations of the CCPR, but go uninvestigated. As it stands now, random acts of violence against Copts go uninvestigated and unpunished. The benefit of attempting to end religious-based violence is that it creates more stability and security which will in turn boost the economy. Brown believes that tourism would be the first industry to benefit from a government crackdown on violence.¹⁰⁵ But one could argue that all industries could benefit from the stability that could be gained from less violence.

Under its CCPR obligations, Egypt should also eliminate forms of discrimination within the government; in short, establish equal treatment for Muslim and non-Muslims. As it stands now, state-sanctioned religious discrimination is in violation of the CCPR. Brown believes that the extent to which sharia law is instituted determines whether or not a breach of the UDHR or the CCPR has occurred:

A total and complete implementation of the sharia into Egypt's legal system would clearly violate the Copts' religious human rights. For example, the sharia does not treat a non-Muslim living in an Islamic state as a full citizen of that state.¹⁰⁶

Brown describes the status of dhimmis under Islamic law and the various restrictions sharia would impose on Copts in this system. He concludes that, “substantial portions of the sharia do

¹⁰² Report of the Human Rights Committee, General Comments on Article 7 of the Covenant, 37 U.N. GAOR Supp. (No. 40) at 95, U.N. Doc. A/37/40 (1982).

¹⁰³ See Brown, *supra* note 12, at 1072.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 1074.

¹⁰⁶ *Id.* at 1079.

not protect the fundamental religious human rights of non-Muslims living under its jurisdiction.”¹⁰⁷ Clearly, anything of similar nature that places Copts in the position of dhimmis is a violation of the CCPR and fundamental religious human rights. Egypt should take steps to protect the Copts by not allowing a stricter form of sharia law to be implemented. Furthermore, the UN should mandate that Egypt take actions that bring it in line with its responsibilities under the requirements of CCPR and UDHR.

B. Egypt should institute parliamentary quotas for minority representation

Egypt should employ quota to increase minority representation in Parliament in something akin to affirmative action. The steady decline of Coptic representation in Parliament illustrates that Egypt is going backwards with regards to legislative inclusiveness. Part of the problem is the systemic unwillingness to elect Coptic candidates. Sahar Aziz recommends a proportional representation system to increase Coptic participation:

In theory, a proportional representation system increases the prospects of small parties and minority groups in gaining representation in parliament. Electoral districts in proportional representation systems are always larger than under a winner-take-all system and fixed according to historical considerations such as traditional geographic boundaries, demographics, and tribal areas. This promotes greater political participation by minorities because they need not win a majority of the votes in order to win a parliamentary seat. Instead, smaller political parties need only obtain a predetermined minimum number of votes, known as a “baseline.” In the case of Copts, multi-member districts increase the chances of election of Coptic candidates in governorates like Minya, Qena, Sohag, and Assiut, where large concentrations of Copts reside.¹⁰⁸

Aziz’s suggestion is to require political parties to allot a spot for a Coptic candidate in the “top three slots in districts where Copts comprise at least 10% of the general population.”¹⁰⁹

¹⁰⁷ *Id.*

¹⁰⁸ See Aziz, *supra* note 90, at 64-66.

¹⁰⁹ *Id.* at 68.

Another possibility is to set aside 10% of the total seats in Parliament to Copts receiving the popular vote within a certain region. This would be a proportional allotment based on the estimate population of Copts within Egypt. Candidates for these positions could be selected from the various regions of the country by Copts themselves in a special Copt-only runoff election. Candidates could also be selected by a Parliamentary commission that selects the 10% from local legislative Coptic leaders.

Because of Egypt's history of religious discrimination, drastic measures to create more representation for Copts in Egypt's Parliament are necessary.

C. Egypt Should Reform the Judiciary

The Egyptian Supreme Constitutional Court is a bright spot in the Egyptian government. The Court is semi-autonomous and has taken great pains, at times, to track a more secular line.

Accordingly, the Constitutional Court has tried to strike a balance between "normative Islamic principles" and Egypt's "democratic character." In addition, the Constitutional Court has advocated the need for Egypt to honor its obligations to international human rights instruments.¹¹⁰

The introduction of a more strict interpretation of sharia law in to the Egyptian Constitution would make the Court's efforts at secular even-handedness extremely difficult. As mentioned above, the Court has to find a balance between democracy and Islam. Strict sharia creates structural inequalities, as we have seen, that are at odds with an open and equal democracy. Egypt's moderately sharia-based system has managed to address some of this conflict, but the new government should endeavor to keep sharia at bay.

Some commentators have called for new autonomy for the Court in the wake of the ouster of Mubarak and Morsi:

¹¹⁰ See Brown, *supra* note 12, at 1083-84.

First and foremost, Egypt should follow Benin's lead and continue to grant new authority to the Supreme Constitutional Court in order to create a court with true independent authority that is able to protect the constitution and the rights of Egyptians. Egypt should also create a system of accountability and transparency as Malawi has, perhaps even adopting the ombudsmen system to protect civil liberties.¹¹¹

The specter of the Mubarak's dictatorship is present in today's military rule. The judiciary must strive to be separate and autonomous from the executive as well as the military. The only means of doing this is strengthening the Court's powers in by Constitutional amendment.

E. Egypt should end the last vestiges of dhimmitude

One of the most important steps Egypt as country must take is to destroy all of the last remaining vestiges of dhimmitude and the rules and laws that survived from that time.

First, Egypt should abolish the restriction on construction and repair of churches. The strict requirement for permits for basic repairs is unfair and is meant lower the quality of worship of the Copts. Zoning rules and reasonable restrictions on the building of new churches can remain in effect, as long as they are not enforced with discriminatory purpose. The blanket prohibition on building new churches within the vicinity of mosques is clearly discriminatory and should be abolished.

Secondly, Egypt should reform the education system to be more inclusive of Copts and their history. The teaching of the Koran at public schools is common within Muslim countries. However, Egypt should endeavor to teach the basic history and beliefs of the Copts to public school students. The benefit could be twofold; first, Copts would be seen as equal participants in Egyptian culture, deserving of consideration; secondly, Copts themselves would be able to

¹¹¹ James Feuille, *Reforming Egypt's Constitution: Hope for Egyptian Democracy?*, 47 TEX. INT'L L.J. 237, 259 (2011).

engage and participate more if they felt like some attempt was being made to incorporate their heritage.

Third, the government should abolish any religious discrimination in the acceptance to higher education programs, or the appointment of higher education faculty and administration. Egypt should go as far as to implement a kind of affirmative action to ensure that Coptic Christians have presence in all areas of higher education. As it stands now, de facto discrimination in higher education, as previously mentioned, diminishes the ability of the Copts to receive education and to achieve professional advancement. Discrimination with regards to the appointment of university professors and administrators has the same effect. Any discrimination in higher education based on religion should be ended.

These laws marginalize and cast Copts as second class citizens. They stack the deck against the Copts, demoralize, and help justify discrimination. Before any meaningful change can take place, the Copts must be put on equal footing with the rest of Egypt in the eyes of the law and greater culture.

F. The Copts should take action themselves

In the chaos of the military's coup d'état and the violence against Copts that followed, one may ask how there is any opportunity for positive change in Egypt. It is a hard fact that whatever changes the government makes that are positive and towards inclusion of the Copts may not stop or slow down random acts of violence committed against the Copts. That said, the dictatorship of Mubarak is gone, the Muslim Brotherhood is under siege, and a new more secular government seems like a possibility. If there were ever a time for the Copts to gain some ground, it is now.

The Copts are as much an ethnicity as a religious group. Their history and tradition, as well as their insular nature has created a rich identity but has also made them the target of criticism. Copts should endeavor to become more open and inclusive as a means of educating the Egyptian people as to who the Copts are. One step towards accomplishing this is to create the equivalent of community centers throughout Egypt akin to the YMCA. These centers could be secular in nature, but managed by local Copts. The services provided could vary from spaces for sports and recreation, to areas where people can meet and interact. The benefit would be to get the average Egyptian Muslim and Egyptian Copt interacting in a way the religion is left out. These centers would benefit communities and in turn would create goodwill towards their Coptic managers.

Secondly, in the political realm, Copts should side with more moderate and more secular forces working within Egypt. During the revolution it was the young, educated, secular Egyptians that organized the protests and achieved Mubarak's ouster. These young activists use social media, consume Western media, and tended to be more open to equality. These same Egyptians were sidelined by the Muslim Brotherhood's ascension to power. The Copts have similar interests in achieving more secularization of the Egyptian government as these groups. By throwing their support and manpower behind these groups the Copts could help ensure that more moderate elements are elected to Parliament or other high offices of the government. At the very least, by assisting and interacting with these groups, the Copts help assure that the next generation of Egyptians is more open to them.

Third, Copts should strive to assimilate culturally as Egyptians, while keeping their religious identities in the background. The current Pope of the Coptic church, then Bishop put it succinctly:

Integrating in the society is a fundamental scriptural Christian trait,” Bishop Tawadros said then. “This integration is a must — moderate constructive integration,” he added. “All of us, as Egyptians, have to participate.”¹¹²

Egyptians have a shared history that dates back thousands of years and is still omnipresent.

Drawing on that similarity instead of religious difference, is a powerful way to be accepted. This naturally occurs, but the new Pope Tawadros II has made it a point to say that the Church will stay out of politics. This strategy will benefit the Copts who want to make inroads with secular elements, while also minimizing the criticism of more Islamic elements. The Church can still work to better the plight of the Copts, but instead of being a political entity, it can be a force behind politically-minded Copts.

Fourth, Copts should maintain their policy of passive resistance in the face of violent brutality. In August of 2013, in backlash to President Morsi’s ouster, supporters of the President took to the streets, attacked Copts and burned dozens of churches across Egypt.¹¹³ In the onslaught, Copts were unable to defend the churches or themselves. At the urging of the Coptic Pope, Copts remained passive, for the most part. The loss of property or the burning of churches is much more acceptable than a loss of life. Copts should confront violent attacks on their places of worship with passivity. They should defend their lives, when attacked, but they should not pursue retribution. Time after time, whenever a Copt has defended a church, the resulting loss of life has been great. The only means to survive is to passively accept acts of destruction while working towards political and cultural reform.

¹¹² David Kirkpatrick, *Coptic Church Chooses Pope Who Rejects Political Role*, N.Y. TIMES (Nov. 5, 2012), <http://www.nytimes.com/2012/11/05/world/middleeast/coptic-church-chooses-pope-who-rejects-politics.html>.

¹¹³ David Kirkpatrick, *Islamists Debate Their Next Move in Tense Cairo*, N.Y. TIMES (Aug. 16, 2013), <http://www.nytimes.com/2013/08/16/world/middleeast/egypt.html>.

Fifth, Copts should endeavor to improve themselves through education, business, and personal achievements. Copts who have distinguished themselves in business or public life are renowned. These include media moguls, actors, members of the UN, chefs, etc.¹¹⁴ Through education more Copts can achieve distinction in professional fields and business. These Copts in turn can assist others through investment in Coptic-owned businesses. Copts who have expatriated and who are successful in their new countries should do their best to invest in Coptic endeavors and Coptic charities in Egypt. Furthermore, those who have been successful should fund scholarships for the brightest Coptic students and the best Coptic athletes.

Finally, the Copts should continue to make their plight heard to the international community. Though, from time to time, the plight of the Copts makes its way to the forefront of news, most people in the US have never heard of the Copts, nor knew that Christians lived in Egypt. After the revolution more and more has been written about the Copts and the attacks on them, but more needs to be done to publicize the situation. Copts should continue to reach out to political and religious groups on both sides of the spectrum in Europe and the US to request assistance. Copts should continue to reach out to media outlets in the hope that more coverage will bring to light some of the practices going on in Egypt. Finally, Copts should endeavor to soften their message and preach inclusion and co-existence at all times. Only through these messages will people sympathize with the Copts.

¹¹⁴ See WIKIPEDIA, *List of Copts*, http://en.wikipedia.org/wiki/List_of_Copts (listing famous and notable Copts from various fields and professions) (as of Sept. 23, 2013, 10:02 GMT).

V. Conclusions

On October 20, 2013 a motorcycle pulled up to a Coptic Church in Cairo as wedding attendees were entering the building. Two assailants opened fire and sprayed the building and guests with bullets. Four people were killed, including an eight-year-old Coptic girl, named Mariam Ashraf.¹¹⁵ Random acts of violence perpetrated against the Copts forces us to ask, “Is there really anything that can be done to stop it.” The answer is not clear, but there is hope. If the government takes steps to end discrimination against the Copts within all levels of the government, educational systems, military, and judiciary; if Egypt gives more representation to Copts in Parliament; if crimes against Copts are investigate thoroughly and those responsible are prosecuted to the fullest extent of Egyptian laws, then the hope is that the culture will change and the violence will too.

The dust has not settled after the Arab Spring. The reversal of fortunes of the Muslim Brotherhood after the ouster of Morsi sent things in to chaos once again. As of now the military seems poised to maintain power, but will it be akin to the dictatorship under Mubarak, a sharia-based government as Morsi was attempting to establish, or something else? There is the possibility of a blank slate where more moderate, more secular individuals will rule. That is the best hope for Egypt’s Copts.

¹¹⁵ Kareem Fahim, *Gunmen Fire at Church in Egypt; At Least 3 Die*, N.Y. TIMES (Oct. 20, 2012), http://www.nytimes.com/2013/10/21/world/middleeast/gunmen-fire-at-church-in-egypt-at-least-3-die.html?_r=0.