

Authorizing Religious Conversion in Administrative Courts: Law, Rights, and Secular Indeterminacy*

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Abstract

The administration of religious difference in modern Egypt suggests more continuity in the state's involvement in personal status affairs over the course of the twentieth and twenty-first centuries than is generally thought to exist. At the same time, the role that the administrative courts have played, on the one hand, in regulating formal religious identity and, on the other hand, in adjudicating conversion and apostasy has gone largely unaddressed. This article argues that constituting religious identity as an administrative category subject to judicial oversight was part of a larger constellation of political arrangements that reorganized relations among legal and bureaucratic institutions, religious authority, and state capacity in the modern period. By accounting for the enduring inconsistency with which the rule of law is deployed in religious status jurisprudence and the French legal influences that undergird this practice, the article illuminates how the administrative judiciary, a purportedly secular institution meant to curb an unwieldy bureaucracy, sustains rather than restricts sovereign state decisionism. The paradoxes of judicial discretion construct mutable boundaries between minority and majority religious populations that are central to the exercise of secular power.

Keywords: Egypt, secularism, Majlis al-Dawla, conversion, minorities, public order

On 13 May 1973, the Egyptian Supreme Administrative Court decided whether an Egyptian woman – who was born to a Coptic Christian family but converted to Islam and then reconverted to Coptic Orthodoxy – had the right to inherit from her deceased Coptic husband.¹ The sister of the deceased challenged the legal status of the marriage, and hence the widow's right

to an inheritance, on account of the conversions. The Court affirmed the sister's contentions. It cited the widow's marriage certificate, which indicated that she entered into the contract as a Coptic Christian, as evidence that she previously denied Islam in order to commence the union. The widow was therefore an apostate, ruled the Court. According to the interpretation of *shari'a* that the Court invoked, an apostate is any individual who embraces and then denies Islam regardless of having been born a Muslim, having originally belonged to a different religious community, or having no previous religious affiliation. Apostasy, held the Court, instantaneously annuls any previous marriage and invalidates any subsequent marriage. Furthermore, "[a]n apostate has neither religion nor sect, his apostasy is not sanc-

* The author is grateful to Kenneth Cuno, Ahmed Elsis, Elizabeth Shakman Hurd, Tamir Moustafa, Nate Roberts, Amina Tawasil, Sam Tenorio, and the anonymous reviewers for their insightful comments and suggestions on an earlier version of this article. Thanks also to Paul Cuno-Booth for his supplementary translation of some key conversion cases.

¹ Supreme Administrative Court no. 240, Judicial Year 22, 13 May 1973 (as discussed in Hamad 1999: 225-228).

tioned, nor is his adherence to a new religion recognized.” The Court held that its ruling does not violate constitutional protections for freedom of belief or the equality of individuals before the law since choice of religious belief is always limited by public order. The ruling had significant repercussions for the widow. She was required to return the pension she received between 1963-1966 from Cairo University, where her husband had been a professor in the Faculty of Medicine. More importantly, the judgment restricted her right to marry and inherit in order to preserve and protect what the Court called the “divine rights” of Muslims and non-Muslims, understood as Christians and Jews.

Contrary to one of the grand metanarratives of modern Egyptian history, namely that Egypt experienced a secularizing trend in the 1950s and 1960s and an Islamic trend thereafter, the administration of religious difference suggests continuity in the state’s involvement in religious and personal affairs over the course of the twentieth and twenty-first centuries. The role that the administrative courts have played, on the one hand, in regulating formal religious identity and, on the other hand, in adjudicating conversion and apostasy has gone largely unaddressed. In the absence of a statute on conversion, the administrative judiciary has relied on the notion of public order (*al-nizam al-‘aam*) to adjudicate religious status disputes. Public order as a legal concept has its origins in international law but was incorporated into the domestic laws of various states in the late nineteenth century (Mills 2007). As scholars have shown, judges in contemporary Egypt invoke public order to justify exceptions to legal norms like procedural fairness and equality under the law (Berger 2001, 2003, 2004; Agrama 2012).

What has received less attention is the fact that the public order doctrine in Egyptian law is essentially derived from Article 6 of the French Civil Code, which permits judges to dissolve a contractual obligation between two parties if they determine that the motivation behind such an agreement breaches the precedence

of public over individual interests. The obligation that I consider in this essay is one entered into between Egyptian nationals and the Ministry of Interior, and concerns the right of citizens to amend personal information – including religious identity – on their vital records pursuant to Civil Status Law no. 143 of 1994. Public order comes to bear on religious status adjudication when administrative judges employ this concept to defend the values they deem essential to the state’s social cohesion and which they purport that a majority of Egyptians hold. Insofar as they perceive the Islamic prohibition against apostasy as constitutive of public order, the rule of law incessantly blurs formal legal equality with Sunni majoritarianism even in those cases where the judiciary rules in the plaintiff’s favour. Given that Egypt’s administrative judiciary, the code which is the basis of its jurisprudence, and, importantly, the recourse to public order in judicial decision-making are all French-derived, a danger exists of understanding religious status adjudication in Egypt as a misapplication of European legal procedures and codes. Such an understanding obscures important historical reconfigurations of state institutions and authority, and should not be taken as an example of Egypt’s failed political liberalization or incomplete modernization. The question of secularism becomes relevant to the conditions in contemporary Egypt precisely because its history is intimately tied to the history of the West, and secularism as a practice enables and disavows particular forms of life (Asad 2003).

This essay is divided into two parts: the first highlights general features of the administrative judiciary, the historical context in which it was founded, and how two legal innovations in the mid-twentieth century paved the way for administrative judges to arbitrate religious status disputes. Jurisprudence on conversion, which I conceptualize as the amending of one’s religious affiliation on state-issued vital records, illustrates how constituting religious identity as an administrative category was part of a larger constellation of political arrangements that shifted relation-

ships among legal and bureaucratic institutions, religious authority, and state capacity. My interest in this article lies not in investigating how believers come to believe what they do or how they cultivate individual or collective forms of religiosity, but in the socio-political construction of religious difference. The second part of the essay examines how administrative judges have invoked a key feature of the rule of law – the concept of public order – in cases ranging from 1952 to 2011. Accounting for the continuity and inconsistency with which this concept is deployed illuminates how the administrative judiciary, a purportedly secular institution meant to curb an unwieldy bureaucracy, sustains rather than restricts sovereign state decisionism. This pattern does not, however, render the administrative judicial apparatus an anomaly among countries where civil law jurisdictions prevail. It points instead to how French legal influences have converged with the historical particularities of judicial development in Egypt, yielding an institution and a judicial practice that is hybrid at its core.

PART I

Established by the legislature in 1946, the administrative judiciary is called *Majlis al-Dawla* (State Council).² It was modelled after the French Conseil d'État and is the last major institution incorporated into the Egyptian judicial system as a result of Napoleonic influence. Though the idea of holding the government accountable for administrative harms through public law is common to both *Majlis al-Dawla* and the Conseil d'État, these institutions were never identical. Differences are evident in the context of their founding, and in their relationship to the executive branch and ordinary courts (Hill 1993: 207-212).³ *Majlis*

al-Dawla consists of disciplinary courts, courts of first instance, the Court of Administrative Justice, and the Supreme Administrative Court. *Majlis al-Dawla* has three main functions: to review all draft laws originating from the executive branch before they are submitted to parliament, formulate *fatawa* (advisory opinions) about legal matters important to the government, and ensure through adjudication that administrative bodies comply with the law. The administrative judiciary advises the government on matters of constitutionality during its review of legislation originating from the executive branch. The institution's jurisdiction spans the entire state administrative apparatus, including disputes between low-level bureaucrats, ministers, ministries, and the President of the Republic. It also hears cases filed by ordinary individuals against bureaucrats in their capacity as representatives of governing bodies of the state, and may compel the state to compensate individuals for wrongdoing as well as annul administrative decisions.

While *Majlis al-Dawla* proved to be a formidable check on arbitrary government decisions during the first few years of its establishment, a series of laws that were passed beginning in 1949 diminished the institution's formal autonomy until the post-1970 period. This trend took shape during the political climate immediately leading to and following the 1952 Free Officer's coup led by Colonel Gamal Abdel Nasser that ended monarchical rule in Egypt. What is described as the "taming of *Majlis al-Dawla*" (Brown 1997a: 75) culminated in a physical attack on Abd al-Razzaq al-Sanhuri, then-president of *Majlis al-Dawla* and chief architect of the revised Egyptian Civil Code that remains in force today. The attack occurred in 1954 and was led by military sympathizers after the publication of an article suggesting that *Majlis al-Dawla* was on the verge of issuing a decree denying the constitutionality of the Free Officers' coup. Nasser's government subsequently forced Sanhuri out of political and social life (Bechor 2007: 41). The 1956 constitution, which granted Nasser expansive power to rule by presidential decree, further limited the

² I use "administrative judiciary" and "*Majlis al-Dawla*" interchangeably in this article.

³ A particular form of separation of powers allows the Conseil d'État to oversee the apparatus of French administrative courts, which comprise a litigation division within the executive itself. Though distinct from the ordinary courts, *Majlis al-Dawla* and its hierarchy of administrative courts remain part of the Egyptian judiciary.

administrative judiciary's potential to galvanize resistance against the new regime. *Majlis al-Dawla* would reclaim some of its lost autonomy in the 1970s and 1980s as judges were given greater latitude in managing appointments, promotions, and transfers, and also were granted significant legal protections against dismissal (Rosberg 1995: 187). This was due in no small measure to the subsequent president, Anwar al-Sadat. Judicial institutions and rule-of-law rhetoric were central to his campaign of building political legitimacy that would attract foreign investments and reverse the debilitating effects of Nasser's authoritarianism (Moustafa 2008).

Two important legal developments in the early years of the Egyptian Republic set the stage for *Majlis al-Dawla* to become a key arbiter in disputes over religious identity status. In 1955, the state abolished the *shari'a* and *milliya* courts that exercised exclusive jurisdiction over Muslim and non-Muslim (Christian and Jewish) personal status matters.⁴ When this law (no. 462 of 1955) took effect the following year, confessional jurisdiction fell under the National Court system, where civil court judges would apply a codified version of the religious laws of the litigants when adjudicating disputes over marriage, maintenance, and custody. The Law on Personal Cards (no. 181) was also passed in 1955 and mandated that all Egyptians obtain a national identity card at sixteen years of age. This law empowered the Ministry of Interior to decide what criteria to include on these and other vital records. Religious affiliation became a legal category subject to bureaucratic oversight and judicial review.⁵ We see, then, that the state's attempt to establish a liberal rule of law, based on the principles of pro-

cedural fairness and formal legal equality, unified the judicial system but did not yield a uniform personal status law applicable to all Egyptians (Sezgin 2013: 119-132). The bureaucratization of religious identity not only displaced the authority that community-based structures exercised over their constituencies, but also generated and diffused modern forms of authority through the regulatory institutions of the modern state. *Majlis al-Dawla* is one locus through which religious expertise became embedded. Accounting for how the modern category of religious identity is constituted thus offers insight into the secularization of political authority whereby "politics" has come to be very differently articulated from the configurations of power and authority that had previously prevailed" (Asad 2015).

That the administration of religious difference is deliberated in *Majlis al-Dawla* suggests that scholars have underestimated the expansive regulatory capacity of this institution. Scholars of Islamic law, legal pluralism, and the rule of law in Egypt might expect to find adjudication on apostasy and conversion occurring in the personal status division of the civil courts. Indeed, with only a few exceptions (Hamad 1999; Berger 2003; Bernard-Maugiron 2011; Mahmood and Danchin 2014), most studies of legal plurality or the conflict of laws focus either on the Court of Cassation or the Supreme Constitutional Court. The literature on Egyptian judicial development provides key insights into French and British influences on the establishment of Mixed and National Courts, the courts' capacity to limit executive authority, and the effects of legal liberalization on professionalizing the judiciary (Hill 1979; Brown 1997a; Moustafa 2007). Within these contributions, however, the development of administrative courts remains understudied.⁶ In the few inquiries that do exist, *Majlis al-Dawla* is described as a neutral forum in which citizens can file claims against the state to restrain bureaucratic autonomy and to ensure

⁴ The term "personal status" was invented by European powers during the nineteenth century out of concern for the status of Ottoman Christian populations. See Sfeir 1956 and Cuno 2015.

⁵ Egyptian authorities began collecting information about individual religious affiliation before 1955 (see Cuno and Reimer 1997), but the Law on Personal Cards inaugurated bureaucratic procedures whereby individuals became required to provide proof of religious identity.

⁶ This is in contrast to the literature in Arabic. See al-Bishri 1987, Abd al-Barr 1991, and Imam 2013.

that administrative decisions comply with the law (Rosberg 1995; Brown 1997a; El-Ghobashy 2006; Moustafa 2008). The specific role that the administrative judiciary plays in managing social heterogeneity, not to mention authorizing religious conversion, has gone largely unaddressed.

Conversion in the Egyptian context is an under-researched topic despite the fact that numerous studies have identified conversion as one of the most vexing dilemmas that predates and persists in the modern period (Cromer 1915; Wakin 1963; Ziadeh 1968; Carter 1986; Philipp 1995; Afifi 1999; Elsässer 2014). Most historical scholarship focuses on two discrete time periods. One strand accounts for the social and political pressures that caused the mass conversion of Coptic Christians to Islam under Mamluk rule between 1250-1517 (Little 1976; Bulliet 1979; El-Leithy 2005). Another literature examines American and British Protestant missionary activity at the onset of British occupation of Egypt in 1882 through the end of the Arab-Israeli War of 1967 (Sharkey 2008a; 2008b). While specialists of the Mamluk period have chronicled the extent to which Coptic elites professed belief in Islam out of political expediency, scholars writing on the nineteenth and twentieth century have analysed conversion in terms of spiritual transformation and theorized missionary encounters in the context of Western imperialism following British decolonization. Both sets of scholars note the phenomenon of recording religious affiliation in state registries, and yet their relatively narrow notion of conversion as change in belief limits our understanding of the category of religious identity that emerged with the rise of the modern nation-state. Addressing the processes through which this category is constituted queries reigning assumptions about the self-evident nature and political effect of religious difference.

Jurisprudence on religious conversion is thus a compelling lens to theorize what secularism *does*. Following Hussein Ali Agrama, I understand secularism as “a historical arrangement of power in which the question of how and where to draw the line between religion and politics becomes seem-

ingly indispensable to the practical intelligibility of our ways of life” (2012: 40). I am concerned with the conditions that continually give rise to the question about religion’s proper place, the form it can take, and where and through what means it can be made manifest. I am also attuned to the effects, or what Agrama has called the “attached stakes,” of secularism’s intractability. We see this particularly well in Egypt where religious identity is a compulsory legal category that corresponds to a confessional personal status regime (*markaz qanuniy*). The outcome of religious status adjudication determines individuals’ rights in marriage, divorce, custody, and inheritance – those essential freedoms whose definition and distribution are not absolute but rather depend on judicial interpretation. Examining the conflicts that arise when individuals seek to align their self-proclaimed and official religious identities illuminates the processes, mechanisms, and principles that undergird and continually unsettle the question of what the proper place of religion should be. But just as “conversion scrambles the categories of religious identification neatly kept in place by bureaucratic logic” and exposes the limits of national belonging, conversion as an act and a process “also brings to focus an essential role of the state in modernity” (Viswanathan 1998: 16-17). This role is to constitute and maintain a distinction between the majority and its minorities (in the Egyptian case between Muslims and non-Muslims, and between *dhimmi*⁷ and non-*dhimmi* subjects) that is so crucial to the distribution of rights within the modern sovereign state.

What is particularly interesting about religious status adjudication is that it takes place in a forum initially established to reign in the bureaucracy. Recourse to public order, a legal concept which by definition affirms sovereign state decisionism, points to secularism’s tendency to blur the lines between fundamental freedoms and majority values as the secular state fashions reli-

⁷ *Dhimmi* status in Islamic law is reserved for *ahl al-kitab* – Christians and Jews – and consists of legal protections for freedom of worship and legal autonomy to organize community affairs.

gion as an object of government intervention. As Agrama has shown, this right of decision is typically vested in state legal authority and the structures of the rule of law, making sovereign power one that stands “prior to religion and politics but is not indifferent to the question of how to distinguish and separate them” (2012: 226-227). In this sense, jurisprudence on religious conversion is less about resolving a conflict between the Islamic legal tradition and the right to freedom of religion, as some scholars have suggested (El Fegieri 2013). Instead, and as Tamir Moustafa (2014) has importantly shown in the context of religious liberty cases in Malaysia, judicial systems carry institutional legacies that often reproduce legal controversies and exacerbate existing ideological cleavages. The indeterminacies evident in adjudicating conversion in Egypt thus challenge the widespread understanding of courts as disinterested guarantors of freedoms essential to the liberal rule of law.

PART II

In the second part of this essay I elaborate on the arguments I developed above by focusing on particular administrative court cases decided between 1952 and 2011. While in the first part I explained how *Majlis al-Dawla* came to exercise jurisdiction over religious status disputes, here I will analyse the various modes through which judges have continually yet inconsistently invoked the concept of public order to resolve these disputes. I refer to cases decided over several decades in order to illuminate their conditions of possibility, namely, that whereas *Majlis al-Dawla* jurisdiction over the bureaucracy is specified in statutes and constitutional provisions,⁸ the conversion cases that fall within its purview exist beyond legal regulation. Law,

⁸ See Law no. 47 of 1972. The jurisdiction of *Majlis al-Dawla* has been delineated in Egypt’s constitution since 1956. The 1971 constitution significantly expanded the scope of state actions over which *Majlis al-Dawla* exercises jurisdiction, and subsequent constitutions have further elaborated on this scope.

in its simultaneous absence and presence, creates the conditions whereby judges exercise vast discretionary power in cases that give rise to the question about the proper manifestation of religion.⁹ I show that even when administrative courts rule in favour of the plaintiff, their recourse to public order nevertheless affirms state sovereignty insofar as the concept is used to both justify formal legal equality between citizens as well as exceptions to this norm. The rule of law, through its reliance on public order, thus constructs permeable boundaries between minority and majority populations. I suggest that the contradictory verdicts in the repertoire of religious status jurisprudence should be understood within the context of the civil law tradition’s enduring legacy.

Majlis al-Dawla began adjudicating religious status disputes soon after its establishment. One of the earliest cases was decided in 1952, and concerned the right of a Baha’i government employee to collect marriage and family allowances.¹⁰ The man provided a copy of his marriage contract, which conformed to Baha’i religious law, to demonstrate his eligibility to receive the allowances. When his employer, the Egyptian Railway Authority, did not reply to his requests he filed an administrative suit. The Court held that the plaintiff was an apostate and that his marriage was therefore null and void [*batil*]. The Court also struck down the plaintiff’s argument that he was entitled to equal legal treatment alongside *dhimmi* subjects, finding that *dhimmi* status is reserved for Christians and Jews with “all other religions being heresy and unbelief.” The Court moved to consider the relevance of Articles 12 and 13 of the 1923 constitution regarding freedom of belief and the free exercise of religious rites. The judgment held that “the legislator did not intend these articles to protect the change of an individual’s religion or his adherence to a religion that is not recognized by the state.” Find-

⁹ For an extended discussion of the always mutually constitutive relationship between law and religion see Sullivan et. al. 2011.

¹⁰ My discussion of this case relies on Pink 2003: 421.

ing that the plaintiff did not have legal grounds for receiving the allowances to which he claimed entitlement, the Court dismissed the suit. The judicial reasoning in this case foreshadows similar arguments that Baha'is would repeatedly face on account of the state's refusal to recognize Bahaism as a religion and, consequently, the legality of Baha'i marriage.

Following a presidential decree (Law no. 263 of 1960) outlawing Baha'i activities and authorizing the confiscation of their properties, Baha'is interacted with the state to the extent necessary for acquiring identity cards, registering marriages and births, and settling disputes over custody and inheritance.¹¹ Since the administrative bureaucracy governs these domains, and given that only Islam, Christianity, and Judaism are formally recognized by the state, conflicts often arose between Baha'is and the Ministry of Interior over the right to indicate their self-proclaimed religious identity on vital records. Allowing Baha'is to do so would amount to informal recognition of Baha'ism. And yet, compelling them to choose from among one of the Abrahamic faiths would violate their legal obligation to provide truthful information on government records. In their close reading of three administrative court cases decided in 2006 and 2008,¹² Mahmood and Danchin (2014) demonstrate that the dilemma of when and how the state should recognize or limit manifestations of religious belief tends to privilege majoritarian values, sensibilities, and customs. The judgments in these cases advance competing understandings of the public order, "holding first that Bahaism must be recorded on identity documents for the express purpose of its public order limitation; second, that the state is prohibited from recording Bahaism on identity documents because only the three heavenly religions [the Abrahamic faiths]

¹¹ The history of Baha'i relations with the Egyptian state is long and complex, and one that others have carefully analyzed. See Cole 1998 and Pink 2005.

¹² Court of Administrative Justice no. 24044, Judicial Year 45, 4 April 2006; and Supreme Administrative Court nos. 16834 and 18971, Judicial Year 52, 16 December 2006.

are recognized by the Egyptian public order; and third, that the issuing of identity documents with no space for religion or simply a dash would 'conform with the law and reality'" (Mahmood and Danchin 2014: 155).

At the same time that *Majlis al-Dawla* was adjudicating the Baha'i cases, it addressed the question of who has the right to formalize reconversion to Christianity on vital records. Dozens of religious conversion cases were decided in favour of the petitioner between 2004 and 2006. A series of Court of Administrative Justice rulings in 2007 reversed this trend.¹³ The Supreme Administrative Court subsequently ruled in 2008 that individuals of Christian origin who thereafter converted to Islam and then reconverted to Christianity could indicate a Christian identity and their original names on official documents.¹⁴ However, in what appears as a compromise between the state's position and the complainants' demands, the Court ordered that the new identity cards issued to the complainants note their previous conversion to Islam. The 2008 judgment did not apply in cases where the petitioner was born to Christian parents and whose father converted to Islam while he or she was still a minor.¹⁵ In fact, the Court of Administrative Justice ruled in 2009 that *shari'a* prohibits those who become affiliated with Islam – even involuntarily through the father's conversion – to leave it.¹⁶ A 2011 Supreme Administrative Court ruling not only affirmed the 2008 decision, but also established that children of converts to Islam

¹³ See for example Court of Administrative Justice no. 7403, Judicial Year 60, 24 April 2007.

¹⁴ Supreme Administrative Court nos. 12794 and 16766, Judicial Year 51, 9 February 2008.

¹⁵ The Civil Status Organization of the Interior Ministry often routinely assigns children a Muslim identity once the father records his conversion to Islam and irrespective of whether the mother of the child remains a Christian. The "Civil Status Organization" is also referred to as the "Civil Status Authority" and the "Civil Status Department." All three terms refer to the same institution, known in Arabic as *maslahat al-ahwal al-madaniyya*.

¹⁶ Court of Administrative Justice no. 4475, Judicial Year 58, 30 June 2009.

have the right to amend their religious status on vital records.¹⁷

Various judgments on the status of Christian reconverts assert that maintaining public order requires those who become Muslim, whether voluntarily (through conversion) or involuntarily (by birth or through their father's conversion to Islam), to remain Muslim on their vital records. Allowing these individuals to formally return to Christianity, it is claimed, harms public morals and constitutes an abuse against Muslims and Islam. Judges of this opinion have asserted that while individuals are free to change their religious beliefs, the Ministry of Interior is not legally obligated to amend their religious status. The petitioners are left to go about their lives as not fully Christian in the legal sense. Since their vital records reflect a Muslim identity they remain subject to Muslim family law, which determines their relationship to the state and the types of legal relations (including marriage) they may enter into with other Egyptians. For some judges, the discrepancy whereby individuals are not permitted to unify their self-proclaimed and official religious identities does not constitute a violation of public order while other judges have asserted the contrary. That is, public order requires state institutions to possess accurate information about the citizenry. The argument goes that it is in the state, and thus the public, interest to allow reconverts to Christianity to formalize their reconversion. In so doing, these judges have insisted, this does not amount to an endorsement of the act of reconversion but merely an acknowledgement that the individual's legal status has changed.

Administrative judges have been most reluctant to extend this line of thinking to the two cases wherein individuals of Muslim origin sought to formalize their conversion to Christianity.¹⁸

¹⁷ Supreme Administrative Court no. 5324, Judicial Year 54, 3 July 2011.

¹⁸ Court of Administrative Justice no. 35647, Judicial Year 61, 29 January 2008; Court of Administrative Justice no. 53717, Judicial Year 62, 13 June 2009; and Court of Administrative Justice no. 22566, Judicial Year 63, 13 June 2009.

Decided in 2008 and 2009, these judgements undertake investigations into the genuineness of the petitioner's religious convictions even as the judges consider the merits of each dispute. In the case decided in 2008, the petitioner is suspected of converting away from Islam "out of ignorance and a tendency toward irrational behaviour." His petition, the Court ruled, constitutes a request for state authorities to approve his "ill deeds and degenerate impulses." The Court interpreted the matter as seditious, and the judgment admonishes the petitioner for having failed to grasp the wisdom of Islam. The ruling handed down in 2009 holds that the Ministry of Interior was correct to deny the plaintiff's request to alter his religious affiliation on account of his failing to meet "the formal and procedural conditions and substantive rules that the law requires for establishing change of religion." And yet, the Court simultaneously finds that legislators have not specified a body that is competent to authorize a change of religion from Islam to Christianity. Both cases affirm that the Ministry of Interior is not legally obligated to amend religious status in a direction that is perceived to contravene public order. Importantly, the 2009 judgment holds that "it is incumbent on the judiciary, in its role as guardian of the public order, to concern itself with this automatically, even if the concerned parties fail to bring it up."

What accounts for the flexibility whereby some forms of conversion are deemed greater or lesser threats to public order? Why has the Supreme Administrative Court handed down multiple contradictory opinions on the same legal issue? More generally, how should the foregoing cases be understood? The great variation in religious status adjudication requires us to consider the enduring legacy of the civil law tradition in Egypt. I use the term "tradition" to highlight "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected, and taught (Merryman and

Pérez-Perdomo 2007: 2).” The judgments in all of the cases surveyed for this article assert that interpreting Article 47 of the Civil Status Law, which governs the issuance of vital records and the information reflected on them, falls within *Majlis al-Dawla* jurisdiction. This insistence on following the accepted theory on the sources of law seems to affirm the administrative judges’ rote, uncreative function. In practice, however, judges in the civil law tradition actively legislate – whether adjudicating a case according to the applicable law or judging the law itself (Shapiro 1981: 155). This is particularly clear in cases filed by Muslim converts to Christianity wherein courts describe apostasy as a criminal act, even though conversion is not a crime under state law. The Court of Administrative Justice decision of 2008 argued:

And while Egyptian legislation lacks a text that explicitly outlines the act of and punishment for this crime, an administrative judge, on assuming his constitutional and legislative role of settling administrative disputes related to what an apostate claims is a right of his, need not stand about waiting for a cleric or religious organization to issue a *fatwa* no matter the religious nature of the case. Rather, it is his duty to concern himself with the public order, which is grievously wounded by the harm the sins of apostasy and deviation from Islamic precepts cause to the official national religion a majority of the Egyptian people has taken to heart.¹⁹

The reliance on the public order concept appears at odds with the foundational purpose of *Majlis al-Dawla*. If *Majlis al-Dawla* is entrusted to hold the state accountable for its administrative oversights, how can it do so by invoking a principle that affirms sovereign authority? Every attempt at adjudicating conversion continually gives rise to the irresolvable question about religion’s proper place, the form it can take, and where and through what means it can be made manifest. Secularism is fraught with precisely this questioning power.

¹⁹ Court of Administrative Justice No. 35647, Judicial Year 61, 29 January 2008.

While Enid Hill (1987) has suggested that the Conseil d’État is just one reference point for the founding of *Majlis al-Dawla*, the influence of the French institution should not be understated. This is especially since the basis of *Majlis al-Dawla*—the revised Egyptian Civil Code—was modelled on the French Civil Code and is the primary source of civil law in Egypt (Bechor 2007). Put into effect in 1949 and amended in 1994, Article 1 of the Egyptian Civil Code stipulates that in the absence of applicable legislative provisions, the administrative judge shall rule according to customary law or, in its absence, according to *shari’a*. This bears striking resemblance to the practices of administrative judges in France who apply “a pre-existing law or a custom or, in their absence ... base their decisions on principles of equity, reason, justice or tradition.”²⁰ Moreover, the legal concept of public order in Egypt is based nearly verbatim on its articulation in the French Civil Code. Articles 135 and 136 of the Egyptian Civil Code read: “A contract shall be void if its object contradicts public order or morality” and “If there were no reason for the obligation, or if the reason is contrary to public order or morality, the contract is void.” In Egypt as in France, administrative law is not codified and while judges may refer to past verdicts on similar legal issues, they are not bound to do so. This does not mean, however, that precedent plays no role in either context. Rather, the absence of a custom or statute regulating conversion in Egypt facilitates the highly varied and even opposing administrative decisions. *Majlis al-Dawla* judges interpret the *shari’a* in order to determine whether the state in fact has a legal obligation to authorize various iterations of status conversion.

Bruno Latour shows in his ethnography of the Conseil d’État that arbitration presents different opportunities for judicial activism of this kind, preserving what he calls a “fabric of discordant and concordant discourses” that sustains administrative law in the French context (Latour 2010: 170). This fabric’s coherence is invented and

²⁰ David 1960: 85 as cited in Hill 1993: 211.

maintained through continuous cycles of deliberation and judgment. Each contradictory verdict requires careful adjustment through other interpretations to ensure the integrity of the fabric. In so doing, “the judges exercise their skill upon the organization of the law itself, its coherence, its logic, and its viability” (Latour 2010: 170). An analogous sensibility is evident in the Supreme Administrative Court’s practice of hearing cases on the same legal issue and handing down incongruous verdicts. This pattern suggests that *Majlis al-Dawla* upholds petitioners’ rights to seek recourse in the law even if the institution itself remains undecided about how to interpret Article 47. The verdicts in the conversion cases were determined by how administrative judges understand freedom of belief versus the manifestation of belief, how that line can be drawn, and the insistence that such a line must be drawn to maintain public order. The distinction between freedom of belief and the manifestation of belief is neither stagnant nor predictable, and always carries enormous consequences for the petitioners. In every case, the distinction has either authorized or refused the unification of official and self-proclaimed religious identities, a judicial practice that reflects deeply held sensibilities about constituting the nation through the prominence of Islam. The contradictory opinions signal a process whereby the Egyptian Civil Code “bound society to itself, so that it would not appear artificial or divorced; it granted legal and social legitimacy to a new world view that inverted contract law; and it granted judicial discretion to the court, the guard at the gate of public order and morality that decides who may pass and who may not” (Bechor 2007: 206).

Understanding secularism as the mere regulation of religion is thus insufficient to account for indeterminacies in the administration of religious difference. When the Law on Personal Cards was passed in 1955, it entrusted the Ministry of Interior to decide what information is necessary to collect and record for managing the population. It was through this allocation of responsibility that religious identity was entrenched within

the bureaucracy and became increasingly subject to sovereign decisionism. This law was later subsumed under Article 49 of the same law at issue in the conversion cases (Law no. 143 of 1994). Article 49 states: “The executive regulations shall determine the format of the card, the information entered thereon, and the proof and procedures of procuring the card.” Though there was some latitude in what constituted “religion” on vital records in the first decades of the law’s implementation, the Ministry of Interior decided in 2004 to limit which religions would be permitted for facilitating interactions between individuals and the state.²¹ The Ministry’s new policy directive empowered *Majlis al-Dawla* to make increasingly bold pronouncements about how it understands its role in relation to the executive and legislative branches of government. These statements are couched in the Islamic prohibition against apostasy, the absence of a statute regulating religious conversion, and what the institution understands as its fundamental duty to re-establish a particular social balance between Muslims and non-Muslims—and between *dhimmi* and non-*dhimmi* subjects—when this balance is purportedly disturbed. Since the apostasy prohibition in *shari’a* is treated as constitutive of public order, with public order connoting different meanings depending on who files the complaint and which judges hear the case, the rule of law incessantly blurs formal legal equality and Sunni majoritarianism.

Conclusion

The process of authorizing religious conversion analysed here casts into doubt widely held views about Egypt’s administrative courts. Existing studies hold that since the early 1970s, *Majlis al-Dawla* has served as a vital and even neutral arbiter of citizen-initiated disputes against the state. They assert that while a powerful admin-

²¹ For a discussion of how this bureaucratic practice constrains the ability of Baha’i communities to access education; seek and secure employment; and register births, marriages, and deaths, see Human Rights Watch and Egyptian Initiative for Personal Rights 2007.

istrative judiciary can only assess bureaucratic infractions against constitutional and statutory provisions, it nevertheless “renders authoritarianism a little more consistent and less personalistic” (Brown 1997b). It is further argued that an expansion of *Majlis al-Dawla* jurisdiction to include a wider range of administrative acts resulted in a parallel expansion in the scope of civil rights protections (Rosberg 1995). While the administrative judiciary has in fact used its power of interpretation to limit executive restrictions on personal freedoms as they relate to elections procedures, arrest and imprisonment, as well as freedom of travel,²² this argument does not hold in the domain of religious liberty. As the foregoing discussion has shown, *Majlis al-Dawla* is far from a neutral arbiter. The consolidation of administrative authority since the 1970s has resulted in the arbitrary adjudication of cases on religious status conversion.

At a time when legal scholars are concerned with how political transformations in the Middle East infringe on or otherwise alter constitutional rights, we might reorient our focus toward *Majlis al-Dawla* and its work of overseeing bureaucratic agencies. As Tom Ginsburg reminds us, “[t]he average citizen is not a dissident who is concerned with the state limiting her political speech; nor is the average citizen a criminal concerned with criminal procedure provisions in constitutions.” Instead, “the average citizen encounters the state in myriad petty interactions [and it] is here that the rubber meets the road for constitutionalism, where predictability and curbs on arbitrariness are least likely to be noticed but most likely to affect a large number of citizens” (Ginsburg 2010: 118). While Egypt has adopted a host of constitutions and provisional constitutional declarations since the end of British colonial rule, its 1949 Civil Code remains relatively unchanged. Adjudication in administrative courts reveals how civil and constitutional laws interact

to structure citizen-state and intercommunal relations. This is an important site of interaction since administrative courts often have to reconcile Article 2 of the constitution, which holds that *shari’a* is the principle source of legislation, with Law no. 143 of 1994 concerning amendments to individual civil status.

On another level, this article has explored how social norms and legal procedures both create and exacerbate the tension between identities formalized on official state documents and the self-proclaimed identities to which individuals aspire or lay claim. A study of the jurisprudence on religious conversion enables a more critical scholarly engagement with the legal and political processes involved in governing social heterogeneity. Examining the arbitration of religious status disputes enhances a theoretical understanding of how religious identity is shaped and often circumscribed through administrative mechanisms, the ways in which individuals negotiate the limitations that these mechanisms impose, and how the authority to delineate boundaries between minority and majority religious populations ultimately reaffirms the sovereign state’s function as both regulator and guardian of majority rights.

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²² See Rosberg 1995: 234a for a list of 75 cases adjudicated between 1971-1986 and the civil rights significance to which they correspond. Notably, cases related to religious liberty are not part of his analysis.

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