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Political Inclusion, and the Legacy of the *Sahifah al-Madina* (622 C.E.)

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Abstract

This paper focuses on the notion of religiosity of the *ummah of believers*, within a capital legal document of the history of Islam, which is the *Sahifah al-Madina* of 622 C.E. (the Charter of Medina). More specifically, it aims at reading the Charter under the light of today's call, in order to draw a notion of "political inclusion" (of religious minorities) in harmony not only with the early Islamic tradition but also with these recent attempts of interreligious dialogue. For this reason, the paper, firstly, tries to highlight the religious and political meanings of the Charter for Muḥammad and his contemporaries; besides it aims demonstrating that under Islamic law agreements between different religious groups are morally and religiously valuable, and, thus to strive for concluding them is beneficial for the entire community; lastly, the paper tries to extract from the Charter some legal principles regulating relationships between the *ummah* and minority groups, so to draw a new interpretation suitable for the contemporary and globalized Muslim society.

Keywords: *Ummah*; Charter of Madina; Political Inclusion; Contemporary Reading; History of Islamic Law; Religiosity.

1. Introduction

In history, there are many periods in which it is possible to discover complicated avenues of mutuality between religions, when borders and lines between them were blurred and consistently redrawn. Thus, a historical interpretation is not only necessary to understand the meanings of deeds, events, and documents for original religious communities but to help us to extract *from the past* new meanings to share with other religious denominations in the present.

This paper seeks to examine the *Sahifah al-Madina* (Charter of Medina) of 622 C.E.[1] in the light of a modern day perspective[2], in order to draw a notion of religiosity as a common ground of theories concerning the political inclusion of different religious groups in the contemporary

multi-religious democracies. In order to do so, this paper will first highlight the religious meanings of the Charter of Medina for Muḥammad and his contemporaries; in addition, it aims to demonstrate that, under Islamic law, agreements are religiously valuable, and, thus, striving for their conclusion is beneficial; lastly, the paper tries to extract from the Charter some trans-historical messages to draw a new interpretation suitable for the contemporary, *globalized* Muslim society.

2. Understanding the Charter of Medina: The Tribal Society, the Customary Law, and the Role of the Prophet in Yathrib/ Medina

A lasting controversy exists among scholars and concerns the cultural landscape of Islamic religion at its origins. In essence, there is an opposition between authors who give relevance to the cities of Arabia and authors who give relevance to nomad life(3). However, the historical solution of this controversy is not important here(4), rather what is important is to underscore that Islam originated in a tribal society, and any attempt to contextualize it must take this fact as a starting point(5).

Specifically, the population of Arabia was made up of Bedouins divided into two groups: in one, urban tribes who lived in the cities; in the other, nomadic tribes who inhabited the desert.

As a city, Mecca was a trade center with modest relations with southern Arabia, Byzantine Syria, and Iraq. For this reason, many foreigners lived there and worked in the local market, where goods from Syria met those from Yemen (slaves included)(6). Mecca was also the center of the worship of the

ka'aba, a building originally without a roof which served as a chest for the sacred "Black Stone". This shrine hosted the main cult of the Banu Quraysh tribe that, at the time of the Prophet, ruled the city. Yathrib (later on renamed as Medina) was the main city in an oasis, whose main activity was the cultivation of palms; moreover, it was the seat of an important Jewish community divided into many tribes – some autonomous, with some other people as clients of the native Arabs. Lastly, the city of al-Ṭā'if in Arabia and near Mecca was a location which conferred a reputation by association and created business opportunities.

When it comes to nomadic life, another nice portrait of the Bedouins of the desert is offered by the scholar Henri Lammens, who, in his book[7], presented their main social and cultural characters, beginning with their "individualism". This quality was central in Bedouin culture because it allowed them to live in the desert, within their families and to quarrel with neighbors for the ownership of water wells and a few pastures. Lammens makes note of additional characteristics of nomadic peoples, such as their hospitality, tenacity, courage, anarchy, and sense of tribal kinship.

- Hospitality was universally considered a prime virtue by the Bedouins, who feared – in the case of its absence - the negative consequences of revenge and feud.
- The value of tenacity was well expressed in the exalted virtue of *ṣabr*, which generally translated is the word for "patience". Yet, this translation does not fully convey all the characteristics of this virtue, among them the ability to fight without hesitation against one's adversities, enemies, climate, environment, a losing battle. Actually, "*ṣabr* is not passive endurance, but active defiance of danger, especially in battle"[8].
- The value of courage was expressed in favor of fight-

ing the enemy, not in open battlefield, but by means of cunning and stratagems. Moreover, the Bedouin culture did not particularly esteem the virtue of the "unknown soldier", prone to combat and dying anonymously alongside his companion and in the trenches. Military virtue was best expressed in the gesture of blatant courage, the kind of courage that deserved elegies by women and poets after the soldier's death[9].

- To describe the character of anarchy, Lammens quotes a verse of the Bible that describes Ishmael (Arabic Ismāʿīl), the ancestor of the Arab tribes:

> **him;** And he will be a wild man; his hand will be against every man, and every man's hand against and he shall dwell in the presence of all his brethren (Gen 16:12).

- This description expresses the idea that the men of this kinship were not able to transcend the rule of clans. The centrality of sectarianism has prevented the Arabs from appreciating the idea of a wider collectivity and has been the reason for long-lasting conflicts between tribes and groups. This anarchy was only mitigated by the relationship of consanguinity between tribes. More exactly, the duty of loyalty between various groups, clans, and tribes was, in accordance with the conception of all social relationships in the old Arab perspective, an obligation which came from consanguine relationships, which often existed only in the remote past and sometimes were only fictitious[10].
- The traits of an aggressive and individualistic character were considered well suited for leaders, even though they could have been mediated by other characteristics. At the same time, tribality expressed the greatest limit and gave authority to the head of the clan. Therefore,

the *sayyid* or *shaikh*/*shaykh*, the head of the group, was nonetheless considered a *primus inter pares* that could govern only and as long as he was holding the consent of the group.

There were religions in Arabia before Islam, which, however, did not admit human and idolatrous representation. Among the most important pagan divinities, there were three goddesses, al-Lāt, al-ʿUzzā (both associated with Aphrodite) and al-Manāt (a goddess of destiny). The deities were represented through monoliths, or through constructions, often in connection to water sources for ablutions and trees, on which were hung offerings of votive weapons, gifts from visitors and fragments of clothing. Usually such an area was considered *ḥaram* (sanctum or sanctuary) and was fenced off, so as to protect humans, animals, and plants dwelling inside. These sacred fences were uninhabited for a large part of the year, then they housed periodic gatherings, such as those at the beginning of spring or autumn. Probably, the Meccan ritual of the *hajj* (pilgrimage) with its *mawāqif* (ritual stops) was a remnant of the religion of Abraham, the builder of the *al-kaʿba*[11]. At the time of Muḥammad, these religions persisted even though Allah was beginning to be considered as the major deity (*Allāh akbar*).

In this context, status law was generally linked to the tribal kinship:

- Given that any concept related to criminal law was missing, an individual had no legal protection outside the bond to his tribe (*ʿaṣabīyya*);
- The existence of feuds always was a characteristic of the social organization of Bedouin tribes, not the result of momentary crisis situations and, until very recent times, such was the condition of the Arab Bedouin tribes[12].
- The group was responsible for the actions of its mem-

bers (by means of feuds, mitigated by the price of blood, known as *dīya*)[13];

- Family law was based on promiscuity, as well, due to the fact that cohabiting relationships with slaves were common place. It is not yet correct to speak of polygamy, nor of marriage, in tribal law. Indeed, according to the customs of the group, the patrilineal kinship was flanked by matrilineal systems in which a woman could have relationships with multiple men at different times. Moreover, time-stipulated marriage (*mut'ah*) was frequent.

As far as commerce and trade are concerned, there were two types of legal regulations: those of commercial cities, which involved more advanced regulations, such as contracts, partnerships, and interest loans, and those of nomadic Bedouins, who mainly functioned under customary law. Regarding controversies between individuals and groups, an authoritative system was lacking in both non-nomadic Arab and Bedouin pre-Islamic society. In the event of disputes, it was possible to go before an arbiter (*ḥakam*, which has the secondary meaning of "wise"). An arbiter had to be accepted by both parties, and the choice was based mostly on his personal abilities, his reputation, his family, or his supernatural abilities (*kāhin*: soothsayer, fortune teller). If he accepted the assignment, the parties had to pay a deposit (goods/hostages) to guarantee that they would follow his decision[14].

The Prophet Muḥammad was born into this type of society in Mecca in 570 and received the first revelation in 610. After that, he bore a role as a prophet and started to disseminate and develop Islam as a new monotheistic religion in Mecca. However, his predicament in Mecca was limited only to his closest relatives and companions, until he left that city to migrate to Yathrib for several motivating reasons. On Muḥammad's side, he was persecuted by the Quraysh, the

major merchant tribe in Mecca as well as Muḥammad's tribe, who perceived him and his teachings as a serious threat for their community; on Yathrib's side, the population of this city, composed of various religious groups, suffered a crisis of being in a never-ending conflict with each other. Thus, the recognition of the leadership of Muḥammad was probably linked to the great need to identify an authority to fill the vacuum of power and to limit the condition of lawlessness that reigned in the peninsula[15]. According to the *sīra* – the tradition of the life of the Prophet, Muḥammad was already a political activist already at Mecca[16], and, in such terms, he offered himself and brought his message to the Yathribis. More precisely, Muḥammad was summoned to Yathrib to serve as a neutral arbiter and to put an end to communal fights given that the city was already divided by hatred and resentment. The conflicts between the Yathribis' sects were linked both to issues related to the urban settlement of the various groups and to problems originating from the feuds that would be mediated by customary law. When Muḥammad came to Yathrib, this same tribality was a characteristic of the Jewish community of the city. R.B. Serjeant described this phenomenon in the following way:

> Even before the dominance of Aws and Khazraj the Jews were not all of identical social standings, for some Jewish tribes had honour, wealth, and power (*sharaf, tharwah, 'izz*) over the others. Though 13 Jewish tribes are mentioned at this period, the Prophet in his day apparently took direct political action only against three. Possibly the other Jewish tribes had direct protection agreements with the Arab tribes through their *sayyids* and *naqibs*, [...], and had been politically inactive, or they may have been affiliated or assimilated to the three larger Jewish tribes. The Aghānī makes it clear that whatever position the Jews had held in former times, they had lost status and their power to defend themselves had diminished [...], and by the immediately pre-

Islamic era they were under the protection Arab tribes[17].

Moreover, Jewish groups of Yathrib were also harassed by their pagan neighbors, with the result that they recognized in Muḥammad an authority that could put an end to their condition of insecurity. In fact, Muḥammad had already decided to counteract tribal fragmentation before his arrival at Yathrib. He tried to establish a united community, even at his own expense through denouncing of his Meccan polytheistic ancestors. In opposing his own tribe, the Quraysh, Muḥammad stated many times that God was incompatible with the tribal divisions and tribal divinities that each group worshipped. This particular form of incompatibility emerged from the fact that God was both an ancestral divinity and one God. Allah was the one and only deity of Abraham, the ancestor of the Arabs, subsequent Arab communities and tribes were formed around him. As a consequence, only around Allah, and Allah alone, could the unity of the Arabs be restored. From this perspective, all false deities which supported and nourished the fragmentation among the various tribes of the Arabs should have been sanctioned. But taking everything in account, Muḥammad was much more than just an arbitrator of disputes. Indeed, the reason for his success in Yathrib was linked to the fact that he presented himself as the founder of an inclusive religious community, and, at the same time, an enemy of those who did not want to join in this type of endeavor[18]. By and large, the Charter of Medina established a roadmap for maintaining peaceful coexistence, rights and responsibilities, and internal autonomy for different tribes and religions, and the process for the nonviolent resolution of disputes with Muḥammad as the supreme arbiter.

3. Remarkable Legislation and Terms of the Charter of Medina: A Contemporary Legal Interpretation

In his insightful paper, Saïd Amir Arjomand analyzed the Charter by means of a socio-legal method and divided the traditional text into three deeds[19]. Arjomand's division is useful for highlighting the most remarkable legislation of the Charter of Medina for a contemporary reader, one interested in its interpretation in the light of human rights perspective. For this reason, the terms and the provisions discussed below will follow his numbering.

According to this author, the objective of the agreement was to settle religious conflicts and divisions that afflicted the tribal and segmented society of the Arabian Peninsula. Therefore, the structure of the declaration is made by subsequent deeds and includes the institution of a "brotherhood" among the *muhājirūn*[20] from the Quraysh and the *anṣār*[21] in Medina. Moreover, it includes two security pacts between them and some Jewish clans of Medina. Thus, in Arjomand's interpretation, the first deed establishes a new unified community in Medina. This deed is supplemented by a settlement of Muḥammad, whose aim was to include a whole set of new Jewish clans into the community under the protection of God through a bond of religious empathy. A second supplement was amended by the later adhesion of the clan of Banu Qurayẓa (art. 24 in his numbering).

Analyzing the text, the key-point is the interpretation of the term *ummah*, which ordinarily means "community". It should be noted that there is a controversy among scholars, as to whether the meaning of the term changed after the life of Muḥammad due to his authority and influence. According to some, after Muḥammad, this word became synonymous

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with "Muslim community". According to others, the meaning of *ummah* did not change, remaining that of a "religious community", including the *dhimmī* in the social contract. To this end, Ulrica Martensson writes:

> While Arjomand perceives the concept of ummah to be the main link between the Medina Constitution and the Qur'an, I suggest *kitāb* in the contractual sense is an equally important conceptual link. Moreover, where Arjomand argues, similarly to Donner, that the concept of ummah changed after the Prophet's death to become coterminous with a religious community (the Muslim ummah, the Christian ummah, etc.), I would hold that its meaning never changed within Islamic law and administration because the Islamic ummah remained a political community which included *ahl al-dhimmah* in its social contract[22].

This linguistic nuance is not without importance, as it is relevant in regards to the legal nature of the Charter. To our opinion, the final aim of the agreement was to create a confederate community of the clans grounded on their faith in a single God and on the value of religious solidarity. It is not a casualty that the Charter addressed directly community and tribes[23], not individuals. The pillar is art. 15, in which we find the constitutive foundation of the system of religious pluralism. This article grants the Jewish clans protection of the law and religious tolerance (extended by article 16 to the Jewish clan of Thaclaba and its clients). Regarding this stipulation, Arjomand writes:

> The article marks the institution of religious pluralism in Islam, which later developed into the recognition of "those to whom we have given the book" (Q. 2:121; 6:21, 1 14; 13:36, etc.), or more frequently, the "peoples of the book" (Q. 2:63, 65; 5:69-70; 22:18, etc.) under the protection (*dhimmah*) of God. Religious pluralism in Medina was endorsed in the Quran: "There is no compulsion in religion"[24].

It should be noted that religious pluralism is, indubitably, a fundamental interest of this process of creation of a new political community, where unification can be obtained through series of brotherhood or allegiance pacts. Once unified, the *ummah* can be considered a confederation of clans that explicitly recognizes the religious tolerance of Jewish clans and their internal autonomy. Furthermore, this pluralist system seems to have its foundation in the quality of religiosity of its members, rather than in the institution of religions. The quality of being "religious"[25] – that particular kind of human experience represented by the "believers" of many verses of the Quran – more than a specific "religion" – as a set of beliefs and institutions – is the key of inclusion in this conception of unity. Only those who share this characteristic are partners deign of entering into a written contract (*kitāb, ṣaḥīfah*)[26], and, obviously, this quality is evaluated on the basis of monotheism (see Q. 24:55, for example). To support this statement, it is necessary to employ three arguments:

1) In the Quranic revelation, "religiosity" unites the Peoples of the Book under the paramount principle of the unity of God:

> Say: 'O People of the Book, come to a word (which is) fair between us and you, (to wit) that we serve no one but God, that we associate nothing with Him, and that none of us take others as Lords beside God (Q. 3:64).

This vision is reflected in the meaning of the term *ummah* in the Charter, in light of the Quran[27]. In the Charter, this term first appears in the in article 1, which deals with the Muslims of Quraysh and Yathrib and with those who joined and strove together with them, that is to say, the Jews. Concerning all these groups, it reads:

> *innahum ummah wāḥidah min dūn al-nās* (they are one *ummah*, to the exclusion of all other people).

But, when looking for clues in the Quran to the meaning of this article, it is not merely the term ummah that must be traced, but rather the locution: *ummah wāḥidah*. This phrase occurs in the Quran no less than nine times. In all cases and with no exception, it denotes people united by a common religious orientation, in contrast to people divided by different kinds of faith[28]. The conclusion with respect to article 1 of the Charter is, therefore, unescapable. This article declares that the Muslims of Quraysh and Yathrib, as well as the Jews, constitute one unity, sharing the same religious attitude, thus being distinct from all the rest of the people who adhere to other kinds of faith. Unity is intended to be based not only on common sacred territory or religious law but also on common religiosity[29].

Moreover, in another passage of the Quran, religiosity even entails a relationship of brotherhood, so that "The believers are brothers" (*innamā 'l-mu'minūna ikhwah*, The Quran, 49:10)[30] and similarly, another verse of the Quran declares that different religious peoples become brothers, specifically, in "religion" (*fa-ikhwānukum fī'l-dīn*), in case of conversion, if they perform *salat* and pay *zakat* (The Quran, 9:11).

Another linguistic element supports the relevance of mere "religiosity" as a requirement for being part of the contract. This linguistic element is given by the frequency of usage of the terms *mū'min*/Muslim in the text of the Charter. It is worth noting that the generic term *mū'min* (believer) is present 24 times, whereas the specific term "Muslim" is present only 3 times. This frequency approximately respects the proportion to be found in the Quran[31]. This is due to the fact that the early followers of Muḥammad were called starkly *mu'minūn*, which means generically "believers", without the exigency of any other denominational connotation; whereas "Muslim" was, in the same period, "one who heroically defies death"[32]. The first

identifiable evidence of the usage of the word *muslimūn* in the sense of adherents of Islam is from 741 C.E.[33] In other words, during the initial stage of Islam the requirement for being part of the *ummah* was simply to have faith, to be religious, to be a "believer". In addition, the notion of *mu'min* was also suited for expressing the very idea of the protection of Allah and his messenger:

> Thus both God and the Prophet afford security to their *mu'minūn*, to those who seek shelter with them, i.e., feel secure under their protection[34].

In the same vein, where "religion" is expressly considered in the Charter, the word "Muslim" is used in contradistinction to "Jews", whereas the word *mu'minūn* is not employed as a contrast to "Jews" but instead includes them, such as it is done in written form in art. 15:

> *wa inna Yahūd banī 'Awf ummah m'a al-mu'minīn* (the Jews of Banu 'Awf are a community along with the believers)[35].

2) The second argument comes from the interpretation of the regime of legal autonomy for the tribes involved in the agreement. The same article 15 continues:

> *li-Yahudi dīnuhum wa li-l-Muslimīna dīnuhum* (Jews having their religion (*dīn*) and the Muslims their religion)

granting protection, tolerance and, over all, respect to the laws of the different religious communities. As Watt puts it:

> There is some justification for thinking that at some period during the first year or so at Medina (not necessarily in the first months) Muḥammad contemplated a religious and political arrangement which would give a measure of unity but would not demand from the Jews any renunciation of

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> their faith or acceptance of Muḥammad as a prophet with a message for them [...][36].

As regards this specific factor in the Charter of Medina, Uri Rubin affirms:

> Being recognized as *mu'minūn*[37], keep to their own *dīn*, stipulation of article 25 [15 in Arjomand's numbers], which must now examined: *li-Yahudi dīnuhum wa li-l-Muslimīna dīnuhum*. [...] the latter clause seems to convey the idea that the *dīn*, i.e., religion, of both parties has equal merit so that each party has the right to go on adhering to its own *dīn*. [...] It is clear now that within the *ummah wāḥidah* which separated all monotheistic groups of Medina from other people, the Jews were given the position of "*ummah* of believers", thus being distinguished from all other monotheistic (Muslim) members of the *ummah wāḥidah*. Their recognition as believers provided them with the privilege to stick to their own Jewish *dīn* while enjoying complete protection[38].

In addition, we would like to underline that the word *dīn* in Arabic means religion and this term is used to identify Islam among the religions of humanity (*inna dīna Muḥammadin khayr al-adīyan*). Needless to say, religion also entailed a specific law to be applied to the faithful[39]. Yet, the Arabic root has other two meanings:

- A verbal noun exists for translating the idea of "judging, passing judgment, passing sentence"; and along with this, "judgment, verdict";
- There is the verbal noun of a verb "to conduct oneself, to observe certain practices, to follow traditional usage, to conform"; and, hence "conformity, property, obedience", and also "usages, customs, standard behavior"[40].

Thus, the Arabic word clearly refers to the idea of religious law as well as "the perceptivity that lies in every man",

understood as a cognitive quality[41], so that the *dīn* is exactly that faculty that requires individuals to judge facts according to religious categories. In other words, "religion" – when defined as a set of rules and beliefs – and "religiosity" – defined as that particular kind of human experience that conduct people's behavior and judgments – encompass one other.

3) The third element that can support our statement, according to which "religiosity" counts more than "religion" in defining the boundaries of the community, comes from art. 29, according to which in the Yathrib's territory shall be established a sanctuary for all the people of the Charter. It is important to clarify that the meaning of "sanctuary", at the time of the Prophet, was different from the contemporary one. Denny articulates it succinctly for us here:

> [This immunity] has linked it to the traditional Arabian pattern of establishing sanctuaries (haram in the ancient usage and hawtah in contemporary South Arabia), which he calls "sacred enclaves" centering in the cult of a local god. A haram or hawtah is a secure locality, established by a holy person or family, together with the agreement of the surrounding tribes, to respect it as a safe place where diverse factions may meet and mingle, conduct business, settle disputes, and so on, with all factions pledged to defend it and preserve its sanctity and neutrality. Murder, for example, is the greatest of offences within the enclave, particularly if it is intertribal.[42]

In other words, an effect of the establishment of the *ḥaram* (sanctuary) would also guarantee a status of personal inviolability within that territory to all the "religious" members of the *ummah*, in spite of the previous relationships of hostility grounded on kinship and tribal feuds. With respect to this point, the Charter was totally consistent with the Quran, where there is a clear condemnation of tribal relationships when they clash with religious ones, as in the Quran, 3:103:

> And hold firmly to the rope of Allah all together and do not become divided. And remember the favor of Allah upon you - when you were enemies and He brought your hearts together and you became, by His favor, brothers. And you were on the edge of a pit of the Fire, and He saved you from it. Thus does Allah make clear to you His verses that you may be guided.

This statement against kinship's allegiances is also present in the Sunnah of the Prophet. In a hadith, Muḥammad clearly explains his opinion about the *'aṣabīyyah*, the spirit of tribal partisanship:

> Jubayr b. Mut'im reported the Messenger of Allah (May peace be upon him) as saying: Laysa minnā man d'aā ila 'aṣabīyyah, wa laysa minnā man qātala 'ala 'aṣabīyyah, wa laysa minnā man māt 'ala 'aṣabīyyah (Whoever advocates al-'aṣabīyyah is not one of us, and he is not of us who[43] kills in the cause of al-'aṣabīyyah; and he is not of us who dies in the cause of al-'aṣabīyyah).[44]

Literally, *'aṣabah* are male relations in the male line in the family or tribe, and Islam recognizes people's loyalty to their clans and tribes. Yet, Islam differentiates between two different types of loyalty: there is a 'blind loyalty', which is *al-'aṣabīyyah*, and a 'positive loyalty', which is *al-nuṣrah*. Therefore, Islam is against 'blind loyalty' because it usually leads to discrimination, racism, and may even lead to disloyalty which will threaten the internal security of the state.

In conclusion, it should be clear that the document of Medina was neither a constitution in the modern sense – because it did not have the nature of a social contract between equals, nor a constitution of the *khilāfah islāmīyyah* (Islamic Caliphate) – because the Prophet was not interested in determining a governmental system[45]. In fact, it seems to actually have been a treaty addressing the relationship between "religious"

people of different "religions"[46]. Insofar as art. 25 of the Charter implied that the contracting parties were bound to mutual support against any attack on Yathrib, the real goal of the treaty was to establish a new order to preserve security, autonomy, and religious respect between the groups. To put it in another way, the principal aim of the agreement was to establish a confederation where the tie of religiosity would have supplanted the tie of kinship, which was preponderant at that time of the Prophet and was the origin of enduring conflicts and feuds in the Arab peninsula[47].

4. The Charter of Medina as a Paradigm of a Peace Treaty and Its Legacy within the Theory of Citizenship

One of the main components of early Islam's foreign policy was to seek peace and stability. It is not a coincidence that soon after the Medina Charter, Muslim historians mention other examples of treaties (*muʿāhadāt*) having the same contents and pursuing very similar goals. Its pattern of security agreement was simply extended to include other and still more tribes in the Arabian peninsula[48]. Al-Ṭabarī records the Covenant of 'Umar, a document apparently addressed to the people of the city of Jerusalem, which was conquered in the year 636 CE. In turn, this document states:

> This is the assurance of safety (*amān*) which the servant of God 'Umar, the Commander of the Faithful, has granted to the people of Jerusalem. He has given them an assurance of safety for themselves, for their property, their churches, their crosses, the sick and the healthy of the city, and for all the rituals that belong to their religion. Their churches will not be inhabited [by Muslims] and will not be destroyed. Neither they, nor the land on which they stand, nor their crosses,

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> nor their property will be damaged. They will not be forcibly converted [...]. The people of Jerusalem must pay the poll tax like the people of [other] cities, and they must expel the Byzantines and the robbers [...].(49)

According to al-Ṭabarī, these conditions, respecting Christian practices and places of worship, were also given to other towns throughout Palestine. In regard to the Armenian front, there are many references to treaties made with Jewish and Christian, as well as Zoroastrian, inhabitants of the region.

From our point of view, the legal nature of the Charter of Medina is the reason of its importance nowadays. Clearly, the contemporary evaluation must take into account the historical context:

> Medina confronted two contending discourses, that of rights and that of might. The first was a discourse affirming the might and right of the wealthy and dominant. This discourse was sustained by tribal logic, caused Medina's conflict-ridden sociopolitical dynamics, and undermined the dignity and prosperity of Medinans. The second relates to the rise of a powerful doctrinal discourse of rights in Islam, which affirms the rights of peoples across religious, social, racial, ethnic, and gender divides(50).

However, the practice and the example of the Prophet, his authority, and his political goals support the idea that, under Islamic law, agreements were religiously valuable, and, therefore, striving for their conclusion was beneficial. Moreover, the Charter of Medina has been considered the religious paradigm of international peace treaties (*muʿāhadāt*), thus highlighting that there was a public interest to sign a peace agreement with non-Muslim parties, when they were inclined to do so. This public interest position has its foundation in the Quran itself and encourages Muslims to make peace with others, as much as possible:

> But if they incline to peace, you also incline to it, and (put your) trust in Allah. Indeed, He is the All-Hearer, the All-Knower (The Quran, 8:61).

Ladeeb A. Bsoul, who has written a book about the notion of *mu'āhadah* in Islamic law, states:

> This verse validates *muwāda'ah* in circumstances where non-Muslims are inclined to propose peace. However, jurists argue that if a *muwāda'ah* serves the interests of Muslims, it is permissible for them to take the initiative in cases where it is required or advantageous(51).

If we accept the idea of the Charter as a peace treaty, we can also understand the activity of Muḥammad in Medina as a diplomat or, more accurately, an "ideal diplomat"(52). Muḥammad was known as an arbiter in Mecca, when he arrived in Yathrib. There, acting as a diplomat, he offered to negotiate an agreement between the different tribes in which justice was the central goal by means of a written document which articulated the rights and obligations of peoples living in Medina. In turn, Allah was represented as a god of struggle and combat, one with the qualities of a leader and general. His care for his believers was expressed in terms of the care a patriarch takes of his kin. His power, on the one hand, and his benevolence, on the other, were stressed in his maintenance of justice for all the *mu'minūn*(53). In other words, facing the conflicts of Yathrib, Muḥammad tried to solve the problems by mediating between the clans, who, in turn, negotiated and deliberated a solution(54). In doing so, he applied a method of persuasion and not coercion. The Prophet attempted to win the loyalty of non-Muslims by granting a due respect and freedom of worship, which also meant their self-government, taking into account their capability and will to be part of a peace agreement in Medina. Muḥammad used the treaty

as an operational form of justice. In doing so, he divided factions and problems into more manageable issues, chose the fundamental principles to apply, designed a matrix of reciprocal obligations, and connected the provisions with the local tribal laws for their enforcement and execution. It should be noted that a treaty is always the result of a process in which different sequential phases are drafting, negotiation, acceptance, execution, and management. Many articles of the Medina declaration contain evidence of the process because they are evidence of the negotiation, deliberation, and execution of the agreement. For example, it is possible to localize the bulk of the agreement in some basic positions that are offered to all the parties involved in the negotiation; specifically, these include a) equal right to life, b) freedom of worship and religious self-government, c) civic equality, and d) fair justice.

Many articles protect the life of different peoples or, to be more specific, declare the "sanctity of life"(55). This principle is the synthesis of a number of articles that establish limits and sanctions for blood-vengeance, preserve the security of the people of Medina, declare *haram* the territory of the city, and protect the life of strangers and pilgrims within the area.

The freedom of worship and the principle of self-government are declared by art. 15, permitting the application of different religious laws for different religious groups.

The same article is also evidence of the equal standing of all the parties of the agreement, Jews included. This article is not only the declaration of the previous principles of freedom of worship and legal pluralism, but also a mirror image of the terms of the first part of the agreement – that addresses only Muslims – between the *ansār* and the *muhajirūn*(56). The regulating scheme is the same for the two parts, and it is apparent that the signatories are treated as equals in this way.

Finally, the closing article 30 is dedicated to the overarching principle of rule of law and fair justice by the supreme arbitration of Muḥammad. As noted by Rasha Diab, this provision:

> sheds light on this mechanism in relation to dispute resolution: "If any dispute or controversy likely to cause trouble should arise it must be referred to God and to Muḥammad, the Apostle of God. God accepts what is nearest to piety and goodness in this document." This article, in addition to giving precedence to the autonomy of communities, identifies another central resource/authority that can help realize these communities' right to justice. Only when they fail to resolve their own conflicts are they supported by such central authority, namely divine law and their chosen arbiter, Muḥammad, to resolve conflicts[57].

Also in this case, it is necessary to recall the spirit of the times. In deciding to be the final arbiter, Muḥammad affirms that there is a divine law which is supreme over the human regulations but also recognizes the necessity of tribal regulations and, to some extent, the dependence on them. That is to say, Muḥammad is the political authority of a fragmented community which aims toward peace and security, but he knows that there is no state or government (*dawlah*) that can enforce the new rules. Therefore, he operates as an authority that can sponsor the realization of rights or regulate punitive measures for rights violators/withholders, by using the power of the tribes. In turn, the Charter of Medina is a code of conduct that permits different communities to enforce legal regulations[58]. In accordance with all those basic principles, the text provides secondary and complementary articles regulating the relational matrix of alliance (*ḥilf*), brotherhood (*ikhā'*), and friendship (*wudd*) still existing between the tribes along with some financial reciprocal obligations, solidarity rules, and political allegiances[59].

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5. Conclusions

Religious principles sometimes share meanings in common with other faiths because of the unity of the religious experience. As noted in the introduction, the historical interpretation is necessary not only for understanding the meanings of religious phenomena according to the original faith and the faithful community, but also for extracting new meanings from it to share with other religious denominations in different time periods. This interreligious and trans-historical interpretation "creates" new cultural values to be applied in the present. The Charter of Medina is a legal source that permits such a trans-historical interpretation. Even though history teaches us that, unfortunately, the situation changed with the victory over Mecca and with a subsequent break with the Jews(60). Nevertheless, it is intriguing to suppose that religiosity, brotherhood, and tolerance were the pillars of the political unity of early Islam and marked its subsequent international system of diplomacy. The present interpretation of the Charter of Medina highlights what principles it contained that may foster a new theory of contractual citizenship in the present day.

The first principle is that, since its origins, the Islamic legal tradition has developed a casuistic system of law without the exigency of establishing general theories of legal institutions. In this system, the Charter was not a constitution per se but a paradigm for peace agreements to establish a confederation of autonomous groups. The goal was to prevent tribes from waging war against each other because of kinship relations. There is little doubt that similar goals are totally acceptable in the contemporary international legal system(61).

The second principle is that, in many respects, "religiosity" seems to be a more universalizing concept that is grounded

in the human nature of individuals, faith, cultural habits, and rights, that is to say, in their religious experience. Religiosity is a primordial phenomenon that comprises the feelings, acts, and experiences of individual people. From a global perspective, which is not religiously neutral, nor concerned with legal formalism, but rather, polycentric and complex, "religiosity" is a factor that guides individuals when they act as private legal actors of global law, the selection of whose global legal instruments and remedies are best for achieving their religious goals. This does not mean that religions are useless or inconsistent, rather their regulatory power resides not only in their institutional shapes, codes, hierarchies, community organization, and laws but also in their own symbolic appeal, unofficial saints, separate constitutive narratives, different jurisdictional concepts and conflict resolution norms, cross-border affiliations, transnational solidarity, and international mobilization capacity. It is not a coincidence that religious leaders have, of late, increasingly sustained the idea of human dignity as a direct and concrete regulatory power.

The third principle is that legal agreements are religiously valuable, hence striving for their conclusion is beneficial. For example, even though Islamic law has had many applications of pacts, agreements, covenants, sales, treaties, constitutions, and declarations, a philosophical and unified theory of contract has been lacking. As far as the Islamic legal tradition is concerned, it has many words and concepts related to the idea of the conclusion of an agreement, such as *mīthāq, bay'ah, 'aqd, kitāb, mu'āhadah, dustūr*, and so on. In public law, it still requires extensive studies if Islam has generated a theory of social contract, and the foundation of the theory of social contract in Islamic sources seems to be a matter of contemporary debate amongst scholars. In this light, in theorizing the forms of inclusive citizenship, some Muslim scholars think that

religious minorities should not be treated like *dhimmī*, but like *mu'āhid*s – people with whom the state has a treaty of political alliance. Such a position should have the effect of rendering them equals of the majority of Muslims. In the same vein, an institutional policy of contextualized agreements between the government and Muslim communities could be an acceptable strategy of citizenship's implementation for many Muslim minorities living and settling in the West today(62).

Notes

1. For the problem of the exact date of the Constitution, cf. M.W. Watt, *Muhammad at Medina*, Oxford University Press, Oxford, 1956, p. 227 ss. See also U. Rubin, "The 'Constitution of Medina': Some Notes", in *Studia Islamica*, No. 62 (1985), p. 18. For the problem of authenticity, see R.B. Serjeant, "The 'Constitution of Medina'", in *Islamic Quarterly*, Jan. 1, 1964, 8, p. 1; moreover, for a complete textual analysis, R.B. Serjeant, "The Sunnah Jāmiʿah, Pacts with the Yaṯ̲rib Jews, and the "Taḥrīm" of Yaṯ̲rib: Analysis and Translation of the Documents Comprised in the So-Called Constitution of Medina", in *Bulletin of the School of Oriental and African Studies*, University of London, Vol. 41, No. 1 (1978), pp. 1-42.
2. M. Berween, "Al-Wathiqa: The First Islamic State Constitution", in *Journal of Muslim Minority Affairs*, 23:1, 2003, p. 103.
3. See J. Berque, *Gli Arabi. Caratteri originali e ricerca di un'identità*, Einaudi, Torino, 1978. See also, M.C.A. Mac-

donald, "Was There a "Bedouinization of Arabia"?" in *Der Islam*, 92(1), 2015, p. 54.

4. On the general characteristics of pre-Islamic Arabia, see C. Hillenbrand, *Islam. Una nuova introduzione storica*, Einaudi, Torino, 2016; G. Vercellin, *Istituzioni del mondo musulmano*, Einaudi, Torino, 2002, p. 85. See also, al-Tabari, *History of al-Tabari*, vol. IV, The Ancient Kingdoms, State University of New York Press, New York, 1987.
5. Cf. S.M. Musavi Lari, *The Seal of the Prophet and His Message. Lessons on Islamic Doctrine*, Book two, Foundation of Islamic C.P.W, London, 2008, p. 98-99; see also P. Crone, *Meccan Trade and the Rise of Islam*, Gorgia Press. Piscataway, NJ, 2015, p. 237.
6. P. Crone, cit., pp. 217-218.
7. H. Lammens, *Islam. Beliefs and Institutions*, Methuen, London, 1929, p. 8 ff.
8. See M.M. Bravmann, The Spiritual Background of Early Islam. Studies in Ancient Arab Concepts, Brill, Leiden, 1972, p. 15.
9. See, for some heroic motives in early Arabic literature, M.M. Bravmann, cit., p. 39 ff.
10. M.M. Bravmann, cit., p. 77.
11. H. Kung., *Islam*, Garzanti, Milano, 2004, p. 66.
12. A. Kennett, *Bedouin Justice. Law and Customs Among the Egyptian Bedouin*, Frank Cass, London, 1925. Also R.B. Serjeant, "The Constitution of Medina", cit., p. 8, re-reads the Charter of Medina in the light of some connections with contemporary Arabian tribal law and documents, because close similarities between the two in their content and style.
13. The formulation of the paragraph 21 of the Charter of Medina contains textual evidence of the fact that the procedure applied in cases of "talio" derives directly from pre-

Islamic customary law: this type of procedure has become the official attitude in the Muslim community of Medina, see for this M.M. Bravmann, cit., p. 328.

14. For a cursory introduction to Islamic Law, M.'A. Shomali, *Principles of Jurisprudence. An Introduction to Methodology of Fiqh*, Centre for Cultural and Ethical Studies, London, 2012; J. Schacht, *An Introduction to Islamic Law*, Clarendon Press, Oxford, 1964.
15. P. Crone, cit., p. 235 ss.
16. Cf. how J. Waardenburg, *Muslim and Others: Relations in Context*, Walter De Gruyter, Berlin-New York, 2003, pp. 89-90 describes the role of Muḥammad in Mecca as an activist: "As W. Montgomery Watt demonstrated, Allah was a god recognized by the Meccans as *rabb al-bayt* and lord of the town, but not as the only divine being. To Muḥammad, Allah became instead *rabb al-'ālamīn*, a universal god—creator, sustainer and judge—outside whom there was nothing divine. This message, together with the theme of resurrection, judgment, and afterlife, led to violent debates between Muḥammad and the Meccans. He reproached them for not being able to recognize the oneness and uniqueness of God and to draw the logical consequences of such a recognition. Instead of powers like Fate and Time, it was this almighty (*al-ilāhu*) who decided on the major determinants of life. In contrast to a current confidence in a good life on earth and material wellbeing, Muḥammad preached a human being's status as a creature and any creature's dependence on God as Creator. He preached a morality of divine commandments instead of tribal tradition, a sanction of eschatological reward and punishment instead of tribal honor, and religion as a basis for human solidarity instead of tribal and other factional interests. These notions of divine commandments and judgment and of religious communi-

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ty were probably not completely new to the Meccans. But ideas and practices that may have been half-known from other religions were presented now in a new, 'Arabicized' form."

17. Cf. R.B. Serjeant, "The Sunnah", cit., p. 3.
18. P. Crone, cit., pp. 242-243.
19. See S.A. Arjomand, "The Constitution of Medina: A Socio-legal Interpretation of Muḥammad's Acts of Foundation of the Umma", in *International Journal of Middle East Studies*, Vol. 41, No. 4 (Nov., 2009), pp. 558 ff.
20. I. Lindstedt, "Muhājirūn as a Name for the First/Seventh Century Muslims", in *Journal of Near Eastern Studies*, Vol. 74, No. 1 (April 2015), p. 67 ff.
21. It should be noted that this epithet of the Prophet's followers from Medina (meaning "helpers") and its grade of esteem must be related with the fact that already as early as in pre-Islamic times the Arabs aspired to the high ideal to be *anṣār* of a man of outstanding qualities, cf. M.M. Bravmann, cit., p. 68. Moreover, there is a close connection between the word *anṣār* and other words having the same root, like *naṣr* "victory" or the adjective/name *manṣūr* "victorious, the one being helped". The explanation derives from the idea that victory is a result of the help (rendered by the gods), Ibid, p. 74.
22. Cf. U. Martensson, "Social Contract Theory in Islamic Sources", in *Comparative Islamic Studies*, 10.2, 2014, pp. 129-136.
23. Y. Yildirim, "The Charter of Medina: A Historical Case of Conflict Resolution", in *Islam and Christian–Muslim Relations*, 20:4, 2009, p. 444. See also, Z. Embong, "Conflict Management in the Constitution of Medina: An Analysis", in *International Journal of Academic Research in Business and Social Sciences*, 8(12), 2018, pp. 396-414.

24. S.A. Arjomand, cit., p. 568.
25. J. Dewey, *A Common Faith*, Yale University Press, New Haven, 1967.
26. More precisely, the term "*ṣaḥīfah*" is the word employed in the Charter to refer to itself. See R.B. Serjeant, "The Constitution of Medina", cit., p. 5.
27. F.M. Denny, "Umma in the Constitution of Medina", in *Journal of Near Eastern Studies* 36 (1977): 44, 52.
28. Needless to say that the incipit of the *Nostra Aetate* Declaration clearly resembles this notion: "All men form but one community. This is so because all stem from the one stock which God created to people the entire earth, and also because all share in a common destiny, namely God".
29. U. Rubin, cit., p. 13.
30. Cardinal M. Fitzgerald, cit., p. 19-20, seems to support this interpretation quoting Yusuf Ali's comment on the Medina interreligious society.
31. F.M. Denny, cit., p. 43. Maybe it is not a casualty that the word *kāfir*, which is quite the opposite of *mu'min*, comes from the root kafara (k-f-r) that can mean "to declare oneself dissociated from something", see R.B. Serjeant, "The Constitution of Medina", cit., p. 12, footnote 1. On the same word, see the detailed explanation of M.M. Bravmann, cit., pp. 76-79.
32. On the meaning of both terms, at the early stage, see M.M. Bravmann, cit., p. 8 ff. and 26 ff.
33. I. Lindstedt, cit., p. 67.
34. M.M. Bravmann, cit., p. 29.
35. Ibn Ishaq writes in article 25: "The Jews of Banu 'Awf are a community along with the believers" (*wa inna Banī 'Awf ummatun ma'a al-mu'minīn*). In a second version, Abu Ubayd uses the preposition min (lit. "from", "among") instead of *ma'a*, which can have two possible meanings. Yet,

the preposition "*min*" can indicate that the Jewish ummah is included within the Muslim ummah (or larger body of believers) and therefore acts as an "explanatory *min*" (*min li-al-bayān*). In other words, the reference to the Jewish ummah is a part of the general ummah, and this version does not distinguish one ummah from another. Cf. A. Emon, "Reflection on the 'Constitution of Medina'", in *1 UCLA Journal Islamic & Near E. L.* 103 2001-2002, p. 110.

36. M. Watt, cit. p. 200.
37. Active participle of the verb *'āmana*.
38. U. Rubin, cit., p. 16.
39. R.B. Serjeant, "The Constitution of Medina", cit., p. 13.
40. W.C. Smith, *The Meaning and End of Religion*, Fortress Press, Minneapolis, pp. 101-102. See also the entry "*dīn*" in M. Baalbaki, R.M. Baalbaki, *Al-Mawrid al-Hadeeth*, Mazraa, Dar El-Ilm Lilmayin, 2014.
41. W.C. Smith, cit., p. 287, footnote 61.
42. F. M. Denny, cit., p. 45. See also, P. Crone, cit., p. 180 ff.
43. Cf. M. Berween, cit., p. 107.
44. *Sunan* of Abi Dāwūd 5121, grade *ḍa'īf*. On the relevance of *'aṣabīyyah* in the present, see the Italian anthropologist's work, U. Fabietti, *Culture in bilico. Antropologia del Medio Oriente*, Bruno Mondadori, Milano, 2002, p. 79 ff.
45. Cf. A. Romdhoni, "The Medinah Charter. Not A Constitution of Islamic State", in *al-Tawasut, Indonesian Journal of Moderate Islam*, Volume 1, Number 1, May 2013, p. 17 ff.
46. Cf. A. Emon, cit., p. 129.
47. See R.B. Serjeant, "The Constitution of Medina", cit. p. 12, who says: "[...] by my understanding of it, we have here a treaty which, in effect, forms a tribal confederation from a number of tribes more or less independent of one another. It is entirely political, not religious, for it simply provides the structure of political unity-in fact, with a slight altera-

tion of names it could be the very type of agreement Arabian tribes conclude today".

48. See also R.B. Serjeant, "The Constitution of Medina", cit., p. 15.
49. See for a critical reading, J.A. Morrow (ed.), *Islam and the People of the Book Volume 1. Critical Studies on the Covenants of the Prophet*, Cambridge Scholars Publishing, 2017, p. 437. See also, in a comparative perspective, J.A. Morrow, *The Covenants of the Prophet Muhammad with the Christians of the World*, Angelico Press, 2013.
50. R. Diab, "Legal-Political Rhetoric, Human Rights, and the Constitution of Medina", in *Rhetorica*, Vol. XXXVI, Issue 3, p. 232.
51. Cf. L.A. Bsoul, "The Concept of Treaty in Islamic Jurisprudence: A Comparative View of the Classical Jurist", in *Journal of Islam in Asia*, vol. 7 (1), July 2010, p. 61 and L.A. Bsoul, *International Treaties (Mu'āhadāt) in Islam*, University Press of America, Boulder, New York, Toronto, Plymouth UK, 2008, p. 107 ff.
52. See A. Robani, G. Fealy, S. Najmuddin, S. Hassan, A. Kassim, "Islamic Diplomacy as an Ethical Tradition of Malaysia: Lessons from The First Islamic State of Medinah", in *Journal of Human Capital Development*, Vol. 8 No. 1 January-June 2015, p. 2.
53. See, for this striking image, J. Waardenburg, *Islam: Historical, Social, and Political Perspectives*, Walter de Gruyter, Berlin-New York, 2002, p. 35.
54. R. Diab, cit., pp. 219 ff.
55. In the Quran and the Sunna, the word "*nafs*" ("self", but also "soul") refers to the subject protected by the right to life and has been used in general terms without any distinction and particularization.
56. R. Diab, cit., p. 235.

57. R. Diab, cit., p. 242.
58. R. Diab, cit., p. 239.
59. Cf. U. Rubin, cit., p. 8.
60. R.S. Faizer, "Muhammad and the Medinan Jews: A Comparison of the Texts of Ibn Ishaq's *Kitāb Sīrat Rasūl Allāh* with al-Wāqidī's *Kitāb al-Maghāzī*", in *International Journal of Middle East Studies*, Vol. 28, No. 4 (Nov., 1996), pp. 463-489.
61. Cf. E. Tourme Jouannet, *A Short Introduction to International Law*, Cambridge University Press, Cambridge, 2013, p. 64 ff. See also, A. A. An-Na'im, "Religious Minorities under Islamic Law and the Limits of Cultural Relativism", in *Human Rights Quarterly*, Vol. 9, No. 1 (Feb., 1987), pp. 1-18. See also M. Mirahmadi, "Religious Democracy in Iran: Discursive Analysis of Imam Khomeini's Political Thought", in *Journal of Islamic Political Studies*, Article 1, Volume 1, Issue 1, Winter and Spring 2019.
62. For the Italian case-study, see G. Anello, "The Umma in Italy: Eurocentric Pluralism, Local Legislation, Courts' Decisions: How to Make the Right to Worship Real", in *Journal of Muslims in Europe*, vol. 9, Issue 1, December 2019, p. 3 ff.; G. Anello, "Constitution Before Administration: The Latest Decision of the Italian Constitutional Court Fosters the Freedom of Religion in Italy", in *VerfBlog*, 2019/12/13, https://verfassungsblog.de/constitution-before-administration/, DOI: https://doi.org/10.17176/20191214-060557-0. G. Anello, "Passato e futuro della minoranza musulmana in Italia, tra islamofobia e pluralismo pragmatico-giuridico", in *Stato, Chiese e pluralismo confessionale*, n. 32/2016, https://riviste.unimi.it/index.php/statoechiese/article/view/7678.