



Reinterpreting *Mīthāq al-Madīnah*: A Study of Some Contemporary Scholars

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Abstract

Mīthāq al-Madīnah (The Constitution/Covenant of Madīnah) – the principles of which were based on the *Qur'ān* and *Sunnah* – constitutes the cardinal foundation on which the state and society of Madīnah was founded. In the modern times, various scholars see it as a source of constitutionalism, democratizing reform, and pluralism in Islam. It is regarded not only as the “first written constitution” but also the “first Constitution of democracy in the history of constitutional rule” as well. The signatories of this document were various communities; principally Muslims, Jews, and pagans who (collectively) constituted a unified citizenry – the *Ummah al-Wāhidah*. This Constitution has been described differently by various scholars. For Muhammad Hamidullah, the *Mīthāq* is an “epoch-making innovation” that brought “revolutionary change”; for Ali Būlac, it represents the plurality of legal systems; and for Muqtedar Khan, it is an excellent manifestation of the Prophet’s affinity to “democracy and governance by consent.”

This article revolves round these three modern scholars by analyzing and evaluating their view and vision on the *Mīthāq al-Madīnah*. While making use of primary and secondary material, the authors attempt to present its significance and necessity for peaceful coexistence between various parties in the contemporary globalized world.

Key words: Prophet Muḥammad, *Mīthāq al-Madīnah*, *Hijrah*, *Ummah*, plurality, social contract, Muslims, Jews, pagans, democracy

1.1 *Mīthāq al-Madīnah* (The Constitution of Madinah)³: An Overview

As we know, Muslims in Makkah (Mecca) were severely persecuted; therefore, there was an urgent need to look for a place where they could live in peace. The first *Hijrah* to Abyssinia is an example of this. Later, at the invitation of some of the people from Madīnah (Medina), the Muslims started migrating to this new place. At that time, Madīnah was a torn society with no socio-political unity because it was involved in endless disputes and disagreements. In Madīnah, the state of anarchy prevailed due to the presence of various tribes coupled with the absence of a powerful leader. For generations, dissent and conflict had engulfed the Arab section (divided mainly into *Aws* and *Khazraj*), the Jews (divided into the tribes of *Banū Qaynuqa'*, *Banū Nadīr* and *Banū Qurayzah*), and others. Such a state of affairs dominated by incessant war and acute hatred had tired both these groups. So, when Prophet Muḥammad (peace be upon him) made *Hijrah* in 622 to Madīnah, there was a dire need to resolve these disputes and thereof bring an end to the long chain of disagreements. With the formation of *Mīthāq al-Madīnah*, a strong socio-political unity was established in which people from different tribes, groups, and religions formed a joint socio-political unit. Thus, under the leadership of Muḥammad (peace be upon him) the long and interminable issues were resolved on the one hand, and a new and vibrant socio-political order was created on the other.

The Constitution/Covenant of Madīnah—the principles of which were based on the *Qur'ān* and the *Sunnah* – constitutes the cardinal foundation on which the society and state of Madīnah was

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³ Throughout this article, *Mīthāq al-Madīnah* is translated, alternatively, as Constitution, Covenant, Compact, and Charter.



founded. Various modern scholars interpret it as a source of constitutionalism, democratizing reform, and a pure model of pluralism in Islam. It is regarded not only as the “first written constitution in the world”⁴ but also as the “first Constitution of democracy in the history of constitutional rule.”⁵ In other words, for modern Muslim scholars, the Constitution of Madīnah is hailed as a predecessor of modern constitutionalism and the rule of law equivalent to the *Magna Carta*⁶ and is often cited as “key precedent for constitutionalism, rule of law, collective leadership, and democratizing reform.”⁷

The principles of the Constitution of Madīnah, which in its entirety appears, among others, in the famous work *Sīrah al-Nabawīyah* of Ibn Ishāq, were based on the *Qur’ān* and *Sunnah*. Equipped with these principles, Prophet Muḥammad (peace be upon him) managed to establish the first Islamic state, which included people of multi-religious and multicultural backgrounds in an *Ummah al-Wāḥidah* (one nation/community). Based on universal principles, the *Mīthāq* or. As it is commonly known. The “Constitution of Madīnah,” was completed on 24 September, 622 CE. The Prophet (peace be upon him) himself was declared, in the preamble, to be the architect of the Constitution that established due rights and duties for every community in the society, as one *Ummah*. This Constitution begins:

In the name of God, the Compassionate, the Merciful. This is a covenant from Muhammad the Prophet [governing the relations] between the believers, Muslims of Quraysh, and Yathrib [Medina], and those who follow them, joined them, and labored with them. They constitute (Ummah al-Wahidah) one Ummah.⁸

The *Mīthāq* consists of 47 clauses and, according to Muḥammad Ḥamīdullah, of 52 clauses/articles/sections.⁹ Clauses 1, 2, and 25 state the formation of a sovereign nation-state with a common citizenship, consisting of various communities, principally Muslim Arabs from Makkah (the *Muhājirūn* or Immigrants), Muslim Arabs from Yathrib/Madīnah (the *Anṣār* or Helpers), and other monotheists form *Yathrib* (i.e., the Jews) and others who must at that time still have been pagans. These constitute a unified citizenry (Arabic term, *Ummah*), having equal rights and responsibilities, as distinct from other peoples. The *Mīthāq* or Covenant provided a federal structure with a centralized authority, with the various tribes in various districts constituting individual units and enjoying autonomy in certain matters of a social, cultural and religious character.¹⁰

The Constitution expressed the principle that freedom, justice, and equality were based on humanity itself (i.e., Articles 15 and 17). This makes it clear, Montgomery Watt states, that, with Muslims, the Jews and Christians constituted a new type of political unit, an *Ummah* or “community,”¹¹

⁴ Muhammad Hamidullah, *The First Written Constitution in the World*, Lahore: Sheikh Muhammad Ashraf, 1968. The book was first published in England in 1941.

⁵ Sayyid Khattab and Gary D. Bouma, *Democracy in Islam*, London: Routledge, 2007, p. 32.

⁶ *Magna Carta*, meaning ‘The Great Charter’, (also called *Magna Carta Libertatum*— the Great Charter of the Liberties), issued by King John of England (r. 1199-1216) as a practical solution to the political crisis he faced in 1215, is one of the most famous documents in the world. It embodied that everybody, including the king, was subject to the law. Moreover, it granted ‘right to justice’ and a ‘fair trial’ to all the free men. For more information on this see, Claire Breay and Julian Harrison, “Magna Carta: an introduction”, in: *British Library*, <http://www.bl.uk/magna-carta/articles/magna-carta-an-introduction> (accessed on November 5, 2015)

⁷ Khalid Ahmad Blankinship, “The Constitution of Medina”, in: Joseph W. Meri (ed.), *Medieval Islamic Civilization: An Encyclopedia*, New York: Routledge, 2006, Vol. 1, pp. 170-171, p. 171.

⁸ For the complete Arabic version of Constitution of Madīnah, see Abd al-Malik Ibn Hisham, *al-Sīrah al-Nabawīyah* (The Prophetic History), 1st ed., 4 vols. Beirut: Dar Ihya’ al-Turath, 1995, Vol. 2, pp. 115–116. For the complete English translations see, A. Guillaume, *The Life of Muhammad: A Translation of Ishaq’s Sirat Rasul Allah*, introduction and notes by A. Guillaume, Oxford and Delhi: Oxford University Press, 1955, Vol. 1, pp. 231–232. Muhammad Husayn Haykal, *Hayat-i-Muhammad (The Life of Muhammad)*, English trans. by Ismail Raji al-Faruqi, 8th ed., Indianapolis: American Trust Publications, 1976, pp. 182–183. Martin Lings, *Muhammad: His Life Based on the Earliest Sources*, London: George Allen and Unwin Publishers, 1989, pp. 125–127. W. Montgomery Watt, *Muhammad: Prophet and Statesman*, London: Oxford University Press, 1961, pp. 94–96.

⁹ Hamidullah, *The First Written Constitution*, pp. 19-20. This article follows Hamidullah’s numbering.

¹⁰ Kassim Ahmad, “A Short Note on the Medina Charter”, <http://www.constitution.org/cons/medina/kassim2.htm> (accessed on March 15, 2015)

¹¹ Watt, *Muhammad*, p. 94.



or, in Blankinship's terms¹², a collectivity. The members of the Madinan polity are all referred to as believers (*mu'minūn*) and one community, whether Muslims or Jews, reflecting the situation shown in the *Qur'ān* 2: 62; 3: 64; and 5: 69, among other *Āyāt*; and thus providing an "ideological basis for the Polity". For him, the Constitution depicts a "federation of tribes more akin to a republic than an autocracy".¹³

Thus, the Constitution laid down the foundation of the first Islamic state of a multi-tribal and multi-religious society. The objectives of the various rules enunciated in the Constitution were to maintain peace and cooperation, to protect the life and property of all citizens, to eliminate aggression and injustice regardless of tribal or religious affiliations, and to ensure freedom of religion and movement. Indeed, the Constitution of Madīnah placed the rules of justice over and above religious solidarity and affirmed the right of the victims of aggression and injustice to restitution regardless of their tribal and religious affiliations. It formed the foundation of the first model Islamic state and defined political rights.¹⁴

1.2 Rights and Duties Enjoined in *Mīthāq al-Madīnah*

The Constitution stipulated that the social and political activities in the new system must be subjected to a set of universal values, collective intelligence, and standards that treat all people equally. It repeatedly emphasised the fundamental nature of justice and righteousness, and frequently condemned in different expressions injustice and despotism: "God grants His protection to whosoever acts in piety, charity and goodness. He shall be against the rebellious, and against those who seek to spread injustice, sin, enmity, or corruption among the believers."¹⁵ The Constitution introduced a number of political rights and facilities to be provided by the state to all its members, Muslims and non-Muslims alike, in return for duties. For example, the Constitution promulgated (i) standing laws defining the rights and duties of all members, (ii) arrangements for impartial decisions on matters of right, and (iii) the unfailing protection of members of the community in the enjoyment of their rights. These are the very characteristics of the political society defined by John Locke: "a society which fails to provide these facilities is not really a political society at all, but a continuation of the state of nature."¹⁶

Indeed, all the articles of the Constitution of Madīnah provided these and other facilities and political rights, including: (i) the freedom of belief, that is, every community has the right to live according to its beliefs; (ii) the freedom of movement from and to Medina ("whoever will go out is safe and whoever will stay in Medina is safe"); (iii) the assurance that if there is an external threat to non-Muslims, the Muslims would help them and vice versa; (iv) the assurance that both Muslims and non-Muslims are believers and would stand together to defend Medina [Madīnah] against any attack; (v) the agreement that no one should go to war before consulting with the Prophet (article 36); (vi) the assurance that when there is a consultation, the representatives of all parties should be present; (vii) the assurance that, in cases of negotiation with foreign states, representatives of all parties should be present, and that negotiations should not be concluded unilaterally; (viii) the understanding that when a person acquires guilt they acquire it only against themselves; (ix) that a person is not liable for their

¹² Khalid Yahya Blankinship (Associate Professor of Religion at Temple University, Philadelphia, PA) is the author of *End of the Jihad State* (Suny Series), *The History of Al-Tabari: The End of Expansion* (Suny Series), and has written an introduction to *Attributes of God* (Amal Press).

¹³ Blankinship, *The Constitution of Medina*, p. 170.

¹⁴ Watt, *Muhammad*, pp. 94–95.

¹⁵ Haykal, *Hayat-i-Muhammad*, pp. 182–183.

¹⁶ Willmoore Kendall, *John Locke and the Doctrine of Majority Rule*, Urbana: University of Illinois Press, 1965, p. 91, as cited in Khatab & Bouma, *Democracy in Islam*, p.33.



ally's misdeeds; (x) that charity and goodness are clearly distinguishable from crime and injury; and (xi) that God is the guarantor of the truth and goodwill of this covenant.¹⁷

The openness of Islam to other religions in the conduct of international relations can be clearly seen in the excellent relationship that was developed between the emerging Muslim community and the Christian Kingdom of Abyssinia. Abyssinia maintained its Christian identity long after Islam was established in the Middle East. A few Muslim families could be found in eleventh-century Abyssinia.¹⁸

From the beginning, the Abyssinians showed their goodwill to the early Muslims who, escaping persecution in Arabia, had sought refuge in Abyssinia, where Christianity was well established. It is possible, therefore, that Muḥammad (peace be upon him) wisely advised them to go to Christian Abyssinia; as reported by Ibn Hishām (d.180/833), Muḥammad (peace be upon him) said to them that "if you go to Abyssinia you will find a King with whom no one is oppressed; it is the land of honesty and sincerity."¹⁹ The Muslim emigrants were welcomed by the Abyssinians and were further protected from the persecutors who sent delegates to extradite the Muslims back home. These brief examples represent the the common ground between religions and bear witness to the reality of the good relations between them as well as between Muslims and non-Muslims in both Islamic and Christian states.²⁰ Thus, in this early model of an Islamic state, the Prophet (peace be upon him) brought about a social transformation based upon the cultural foundation of the message of the *Qur'ān*.

The immediate purposes were to condition the pattern of thinking and actions of the citizens in order to fashion them into a new social and political unity, to maintain peace and cooperation, to protect the life and property of all citizens, to eliminate aggression and injustice regardless of tribal or religious affiliations, and to ensure freedom of religion and movement.²¹ All citizens of this state were to follow, as one *Ummah*, the charismatic personality of Muḥammad (peace be upon him). He was the Prophet and the Ruler but not the Sovereign. Sovereignty would not rest on Muḥammad (peace be upon him) or any particular group but on the Law based on justice and goodness, maintaining the dignity of all groups in the community.²²

1.3 Positing the Views of Some Modern Scholars and their Interpretations of the Constitution

This section attempts to reflect on the views of three modern scholars, namely, Muḥammad Ḥamidullah,²³ who has done an in-depth exploration of this Constitution, Ali Bülac,²⁴ who interprets the Constitution as the basis of 'plurality of legal systems' and a model to be emulated by modern

¹⁷ Haykal, *Hayat-i-Muhammad*, pp. 181–182. Also see, Guillaume, *The Life of Muhammad*, vol. 1, pp. 231–33.

¹⁸ Thomas Walker Arnold, *The Preaching of Islam*, London: Constable and Company, 1913, p. 113.

¹⁹ Ibn Hisham, *al-Sīrah*, Vol. 1, p. 358.

²⁰ *Ibid.*, pp. 370–75.

²¹ Watt, *Muhammad*, pp. 94-95.

²² Haykal, *op. cit.*, pp. 180-82.

²³ Muḥammad Ḥamidullah (b.1909, Hyderabad, d. 2002, USA) was a *Muḥaddith*, *Mufasssir*, *Faqīh*, *Sīrah* writer and historian with a special focus on Islamic International Law. He is well known for his contributions to the research of the history of *Ḥadīth*, his translation of the *Qur'ān*, *Sīrah* writings with a special focusing on socio-political aspects, the advancement of Islamic learning, and the dissemination of Islamic teachings in the West. Some of his famous works are: *Muslim Conduct of State* (1941); *First Written Constitution in the World* (1968); *Introduction to Islam* (1969); *Muhammad Rasullah* (1974); *The Prophet's establishing a State and his Succession* (1988).

²⁴ Ali Bülac (b. 1951, Mardin, Turkey) is a leading and prominent Muslim intellectual from Turkey and his works mostly discuss the subject of pluralism, especially ethnic and religious pluralism. Since the early 1970s, he has been a prolific writer, writing for various newspapers, including *Yeni Devir*, *Millî Gazete* and *Yeni Şafak*. In 1976, he co-founded the magazine *Düşünce*. For more on his life, see Michelangelo Guida, "The New Islamists' Understanding of Democracy in Turkey: The Examples of Ali Bulaç and Hayreddin Karaman", in: *Turkish Studies*, 11: 3, (Sep 2010), pp. 347-70, pp. 351-55.



societies, and M. A. Muqtedar Khan,²⁵ who regards it as a “Social Contract” and an excellent manifestation of the Prophet’s affinity to “democracy and governance by consent.”

1.1.1. Muhammad Hamidullah on the “First Written Constitution in the World”

Muhammad Hamidullah is credited with having revived the explorations of and discussions on *Mīthāq al-Madīnah* in the Muslim world and beyond. He has not only given the historical and social ambiance that witnessed the emergence of this *Mīthāq* but has also provided comprehensive and broad information relating to the subject as well. His book titled *The First Written Constitution in the World* is an authoritative proof of it.

Muhammad Hamidullah says that the Prophet (peace be upon him), had a deed drawn up, referred to as *kitab/sahifa*—meaning a code of action or a chart of rights and duties—and which “obviously was written after consultation with the people concerned.”²⁶ In fact, it amounted to a declaration of the city of Madīnah as a city-state (or the *federal City State of Medina*)²⁷ for the first time and to the laying down of a code for its administration.²⁸ No doubt, this Covenant positioned Muhammad (peace be upon him) as the Head of the State with highest judicial, legislative, and executive powers. Nonetheless, Muhammad Hamidullah says that the significant difference between this authority and the autocratic royal authorities was the absence of any materialistic tendency.²⁹ He further maintains that the Prophet (peace be upon him) not only incorporated, among other things, moral elements into his policies, regarded Allah as the source of authority, and considered himself to be His messenger. He also showed in practice that the principles, commands, and injunctions are applicable to one and all including his own self.³⁰ According to him:

[This new Constitution of a City State] brought with it very important, and—to Arabia at least—very revolutionary change and improvement, by providing the people with a central public institution for seeking justice, in place of everyone seeking it with the power of his own hand or, at best, that of his family. This epoch-making innovation has been recorded in that very document which brought an end for all times to the chaos of tribalism and which laid the basis for a wider institution, viz a State.³¹

As already stated, the city of Madīnah, prior to the *Hijrah* of Prophet Muhammad (peace be upon him), was in utter chaos with a murky ambiance owing to the absence of strong leadership. The major problems and issues according to Hamidullah in the post-*Hijrah* period that demanded urgent solutions were the following:

- the definition of the rights and duties, his own as well as those of the local inhabitants;
- arrangements for the rehabilitation of the Meccan refugees.
- an understanding with the non-Muslims of the city, particularly the Jews;
- arrangements for the political organization and military defence of the city;

²⁵ Dr. M. A. Muqtedar Khan (b. 1966, Hyderabad, India)—an Indian American political scientist—is an associate professor in the Department of Political Science and International Relations at the University of Delaware (USA). He is also the founding Director of the Islamic Studies Program at the University of Delaware. A well-known Muslim intellectual—whose writings, especially articles and columns are widely published—Khan is admired for advancing a more moderate and liberal version of Islam, for being critical of radicalism and narrow conservatism within Islamic thought and also of Western foreign policies, racism and Islamophobia in the U.S. and the West. He is author of *American Muslims* (Amana, 2002); *Jihad for Jerusalem: Identity and Strategy in International Relations* (Praeger, 2004); *Debating Moderate Islam* (Utah, 2007); and editor of *Islamic Democratic Discourse* (Lexington Books, 2006).

²⁶ Hamidullah, *The First Written Constitution*, p. 10.

²⁷ *Ibid.*, p. 21.

²⁸ *Ibid.*, p. 10.

²⁹ *Ibid.*, p. 11.

³⁰ *Ibid.*

³¹ *Ibid.*, p. 18.



- compensation for the loss of life and property suffered by the refugees at the hands of Quraish of Mecca.³²

Hamidullah further demonstrates that Constitution of Madīnah was not unitary but the result of two juxtaposed sections. The first section, which according to him, runs from Articles 1-23, is concerned with the matters of the Muslims and the other section (Articles 24-47) demarcate the principles and rules for building a relation between the communities (Jews).³³ Furthermore, amid a deep analysis of the Constitution of Madīnah, Hamidullah highlights some of the very significant dimensions of the subject, such as:

- the principles of brotherhood, equality and freedom of action were made to play an active part in this political unit;
- the right of seeking justice was transferred from the individuals to the community, i.e., the central authority; and this was a great revolution;
- the Jews have been given equal political and cultural rights with the Muslims in the clearest terms (Art 25), and the allies of the Jews, have been given equal status with original Jews in general in the matter of rights and responsibilities (Art 32, 34, 45, 46), in reality a military alliance;
- the Jews not only accepted the Prophet of Islam as their sovereign but also agreed to regard the city of Medina as a “sacred territory” (Art 39), and thus a small town was organized into a “city-state,” which later became the “metropolis of an extensive and powerful empire extending over three continents of Asia, Africa, and Europe”;
- there is nothing in the document that could be considered to be contrary to the general policy of Islam, nothing impossible, and nothing out of harmony with the life and work of the Prophet of Islam.³⁴

1.1.2. Ali Bülac on the Constitution: A “Productive Model” to be Emulated in Modern Times’

Ali Bülac, a prominent Turkish theorist, understood the early Islamic political experience (including the Madīnah Constitution) as democratic and constitutional.³⁵ Inspired by *Mīthāq al-Madīnah*, Bülac sees it as a model that represents the plurality of the legal systems (*cok hukukluluk*). For him, the Madīnah Constitution suggests a model in which the state greatly retreats from the public arena and groups move forward to occupy that space in which each legal community will have religious, cultural, and legal autonomy.³⁶ He says:

The fact that the Prophet migrated to the free environment of Medina and suggested to other religious-ethnic groups that they sign a contract ... is the first step showing the political power can be configured outside the central ideology. If the central ideology is not imposed ... [and the different religious-ethnic groups] are given freedom to

³² *Ibid.*, pp. 9-10.

³³ *Ibid.*, pp. 12-15.

³⁴ *Ibid.*, pp. 16-25.

³⁵ For details see, Ali Bülac, “The Medina Document”, in: Charles Kurzman (ed.), *Liberal Islam: A Sourcebook*, New York: Oxford University Press, 1998, pp. 169-178. Özlem Denli, “An Islamic Quest for a Pluralistic Model: A Turkish Perspective”, in M. A. Muqtedar Khan (ed.), *Islamic Democratic Discourse: Theory, Debates and Philosophical Perspectives*, Lanham, MD: Lexington Books, 2006, pp. 85-103. Denli focuses on the prominent Turkish theorist Ali Bülac’s Medina Document, providing an interesting analysis of how Bülac understood the early Islamic political experience to be democratic and constitutional.

³⁶ Denli, *An Islamic Quest*, p. 91.



choose their religion and ideology, and if there is no interference with the lifestyles that correspond to their choice, then the concrete guarantee of this lies not in a singular, but in a pluralistic legal system.³⁷

Bülac goes on to say that, if a person is free to choose this or that religion, then he should also be free in selecting a legal system as well. So, on the basis of cultural and legal autonomy the *Mithāq al-Madīnah* can serve as a model in a multicultural society. According to him, the *Mithāq* demonstrated to different communities “the ways of coexisting through the realization of a pluralist social project based on religious and legal autonomy.”³⁸ The Covenant – a text of great interest even today – was a strictly practical set of agreed procedures that, according to him, could provide a model for a new Muslim society.³⁹

For Bülac, the Covenant amounted to the implementation of the *Āyat* revealed at Makkah that stated: “*To you your religion and to me my religion.*”⁴⁰ This Covenant can be seen as the realization of the message revealed in Makkah at the social, legal, and institutional levels.⁴¹ Moreover, Articles 2 and 25 refer to the different contracting parties as *Ummah*, and Bülac views this *Ummah* as a representation of a “political unit” of Muslims, Jews, and Polytheists.⁴² This *Ummah*, which was established on religious, cultural, and legal autonomy, according to him, “is a social project which does not discriminate on the basis of race, language, religion, sect, and ethnic origins.”⁴³ He obviously seems to support his arguments by frequently referring to the various articles of the Covenant (Articles 1, 2, 16, and 25), such as, for example, Article 25, which reads “for the Jews being their religion and for the Muslims their religion.”⁴⁴ He validates his opinion even further by directly quoting the *Āyat* of the *Qur’ān* in which Allah states: “*There is no compulsion in religion; true guidance has become distinct from the error.*”⁴⁵ For him, this testimonial is seen as the canonical statement rejecting coercion in matters of religion and faith and upholding Islam as a religion of *Da’wah (tablīgh)*.⁴⁶

He also maintains that, for a legitimate political organization in contemporary times, the unforced consent of the contracting parties is critically significant. The same is reflected from the Covenant that proposed “social project not based on “domination” but on “participation” by all the social groups.”⁴⁷ He uses the constitutive principles of the Covenant with the aim of extrapolating rules and regulations for current society. He also underlines some of the basic constitutive principles on which different contracting parties reached an agreement:

1. A righteous and just, law-respecting ideal project and social arrangement aiming for genuine peace and stability can be realized through a contract between various religious, legal, philosophical, political, etc. polarities. At the same time, while preparing this “contract,” the representation of various social groups is a must activity and the social arrangement that thus would be founded would be the outcome of “participation” and not “domination.”⁴⁸

³⁷ Bülac, *The Medina Document*, p. 177.

³⁸ *Ibid.*, p. 170.

³⁹ Guida, *The New Islamists*, p. 356.

⁴⁰ *Qur’ān*, 109/6.

⁴¹ *Ibid.* Bülac also argues that in this model religious messages will be propagated and at the same time this propagation will be totally devoid of coercion; that is to say, no one will be converted through force and those who convert will face no opposition at all.

⁴² *Ibid.*, p. 176. Bülac further says that this political unit never meant the political unit of the Muslims. If that had been the case, the Jews and the non-Believers in Article 25 would have been accepted as Muslims which is totally inconceivable. See, Bülac, *The Medina Document*, pp. 175-176.

⁴³ *Ibid.*, p. 175.

⁴⁴ Hamidullah, *The First Written Constitution*, p. 31.

⁴⁵ *Qur’ān*, 2/256.

⁴⁶ Denli, *An Islamic Quest*, p. 100.

⁴⁷ Bülac, *The Medina Document*, pp. 173-174.

⁴⁸ *Ibid.*, p. 174.



2. By virtue of these principles, the agreement affirmed the fact of plurality and established a legally guaranteed framework for respecting diverging forms of life.⁴⁹

Bülac also maintains that, in such a pluralist society, there is the possibility of the coexistence of several legal systems. If any conflict arises among various groups due to contradictions between laws; then, according to him, either the court of *Mazalim* or the higher courts emerging as a result of the representation of all the legal communities can solve the matter.⁵⁰

As is evident enough, Bülac vehemently aspires for a pluralist society and holds that the constitutive principles of the Covenant can possibly support the pluralist project. The prevailing society, in which we are living, as he experiences it, is tormented by an ethnic predicament, hostile religious communities, and nonstop warfare.⁵¹ Therefore, what is needed is to find pluralist projects allowing the existence of all religious, ethnic, and political groups based on partnership, choice, and participation.⁵² Consequently, the various polarities ready for social agreement should be free to choose their religion, worldview, ideology, or some other thought system. In this way, the organization of different parties can be reached through the establishment of political unity.⁵³

The duties of the “political establishment,” according to Bülac, have to be partial and the space should be given to each and every contracting group to freely oversee the realms of, *inter alia*, legislation, culture, education, the arts, science, trade, and the economy.⁵⁴ The governing machinery should remain circumscribed to the executive branch wherein it should undertake, in Bülac’s view, *common and indivisible services*⁵⁵ like maintaining the unity of the state, ensuring security and internal stability, collecting taxes for services to the entire community and also providing security from external enemies.⁵⁶

In short, Bülac advocates a plurality of legal systems and supports the implementation of those principles of the Covenant that make the representation of myriad groups possible. He views the Covenant as a productive model, full of richness, that can bring new dimensions to the concepts of politics, power, and state.

1.1.3. The Views of Muqtedar Khan on the Constitution: An Excellent Manifestation of the Prophet’s Affinity for “Democracy and Governance by Consent”

For Muqtedar Khan, the Constitution/Compact act of Madīnah, which established the importance of consent and cooperation for governance, is a “particular precedent set by Prophet [Muḥammad (peace be upon him)] that not only supports the democratic theories of Islamic state but also provides a very important occasion for the development of political theory itself.”⁵⁷ According to this compact, Muslims and non-Muslims were equal citizens of the Islamic state with identical rights and duties. Communities from different religious orientations enjoyed religious autonomy. The Constitution of Madīnah established a “pluralistic state – a community of communities.” The principles of equality,

⁴⁹ Denli, *An Islamic Quest*, p. 91.

⁵⁰ Bülac, *The Medina Document*, p. 175.

⁵¹ It is worth noting that Ali Bulaç began to write on the Covenant when the world was witness to the violent disintegration of multicultural Yugoslavia. Moreover, he also experienced the post-1980s Turkey ambience—a multicultural, multi-religious, and multiethnic society torn apart by internal contrapositions.

⁵² Bülac, *The Medina Document*, p. 176.

⁵³ *Ibid.*, p. 177.

⁵⁴ Bülac, *The Medina Document*, p. 174, p. 177. See also Guida, *The New Islamists*, p. 357. Denli, *An Islamic Quest*, p. 91.

⁵⁵ Bülac, *The Medina Document*, pp. 177-178. Italics in original.

⁵⁶ Guida, *The New Islamists*, p. 357.

⁵⁷ M. A. Muqtedar Khan, *American Muslims: Bridging Faith and Freedom*, Beltsville, MD: Amana Publications, 2002, p. 99.



consensual governance, and pluralism were central to the Compact of Madīnah. It is amazing, Khan argues, to see how Prophet Muḥammad's (peace be upon him) interpretation of the *Qur'ān* was so "democratic, so tolerant, and compassionate", while some contemporary interpretations of the same are "so harsh, so authoritarian, and so intolerant."⁵⁸ For him, the first Islamic state established in Madīnah was "based on a social contract, was constitutional in character and the ruler ruled with the explicit written consent of all the citizens of the state." The Compact of Madīnah indeed considered all those who were party to it as people who constituted one nation.⁵⁹

Khan, who regards the Constitution of Madīnah to be a "social contract," argues that, if we bypass the legalist tradition and return to the original sources of Islam we will find "an excellent model for an Islamic democracy" in the Prophet's example, or, in other words, the Constitution of Madīnah is an "excellent manifestation of the Prophet's affinity to democracy and governance by consent."⁶⁰

Khan even goes further to argue that the Constitution of Madīnah provides an excellent historical example of two theoretical constructs that have shaped contemporary democratic theory – constitutions and social contracts – and should therefore be of great value to theoretical reflection on the Islamic state. On the basis of the Constitution of Madīnah, Prophet Muḥammad (peace be upon him) ruled Madīnah by the consent of its citizens and in consultation with them. The Constitution of Madīnah, which served the dual function of a social contract and a constitution, legitimized his authority over Madīnah. The Prophet (peace be upon him) in his great wisdom demonstrated a democratic spirit quite unlike the authoritarian tendencies of many of those who claim to imitate him today. He chose to construct and implement a historically specific constitution based on the eternal and transcendent principles revealed to him and sought the consent of all who would be affected by its implementation.⁶¹

The Constitution introduced a number of political rights and facilities to be provided by the state to all its members, Muslims and non-Muslims alike, in return for the duties. For example, the Constitution promulgated (i) standing laws defining the rights and duties of all members, (ii) arrangements for impartial decisions on matters of right, and (iii) the unfailing protection of the members of the community in the enjoyment of their rights.

To conclude, for Khan, the Constitution, which shows the significance of consent and cooperation for governance, can serve the dual function of "social contract" and "constitution." Moreover, he holds that the Compact cannot serve as a modern constitution for it is a specific document that, historically, is far too limited in scope. So, for him it is not a manual that needs to be duplicated but an example of how to develop such manuals on the basis of principles.⁶²

1.4 Conclusion: The Contemporary Relevance of the Constitution

Viewed as the "first written constitution", the Constitution of Madīnah is (re)interpreted, by various modern scholars, as discussed above, as a key precedent for constitutionalism, the rule of law, collective leadership, and democratizing reform. The principles of the Constitution of Madīnah were based on the *Qur'ān* and the *Sunnah* and, equipped with these principles, the Prophet (peace be upon

⁵⁸ *Ibid.*, p. 102. See also M. A. Muqtedar Khan, "The Compact of Medina: A Constitutional Theory of the Islamic State," in: *The Mirror International*, May 30, 2001, <http://www.Ijtihad.org/compact.htm> (accessed on March 25, 2015)

⁵⁹ *Ibid.* See also M. A. Muqtedar Khan, "Islamic Governance and Democracy," in: Shiping Hua (ed.), *Islam and Democratization in Asia*, Amherst, NY: Cambria Press, 2009, pp. 13-27, pp. 21-22.

⁶⁰ M. A. Muqtedar Khan, "The Priority of Politics: A response to 'Islam and the Challenge of Democracy'", in: *Boston Review*, (April-May 2003), <http://bostonreview.net/BR28.2/khan.html> (accessed on March 28, 2015). See also, Khan, *American Muslims*, p. 102.

⁶¹ Khan, "The Priority of Politics," *ibid.*

⁶² Khan, *American Muslims*, pp. 101-102.



him) managed to establish the first “Islamic state.” Such a state included people of multi-religious and multicultural backgrounds in an *Ummah Wāhidah* (one nation) based on universal principles that constituted this Charter. The Madīnah Charter – truly a “remarkable political-constitutional document” – is important not only in the sense that it is the first written constitution but also in that it was promulgated for a pluralist society, giving equal rights to every citizen as well as giving them a say in governmental affairs.

The Charter, providing a federal structure with a centralized authority and the various tribes in various districts constituting individual units/entities, was an epoch-making innovation that brought with it, in Hamidullah’s words, revolutionary change and improvement by providing the people with a central public institution for seeking justice.

Similarly, Ali Būlac – who interprets the Constitution as the basis of “plurality of legal systems” and as a “productive model” to be emulated in modern times to the concepts of politics, power, and state – has indeed observed striking resemblances between contemporary Muslim societies and the society of Madīnah established some 1450 years ago. He also sees that the Covenant grants a high degree of autonomy and freedom to all minorities, and, if it is adopted it can be far more effective than democracy. The fact is that the former contains the idea of participation while the latter (democracy) is based on the idea of the sovereignty of the majority. In its concrete forms, democracy safeguards and represents only the majority, and the minority, even if it is 49%, is, subjected to the tyranny of the majority.⁶³ In order to represent all the groups and entities *as well as* to safeguard each of them, Būlac not only supports the Madīnah model but also proposes circumscribing the intervention of the “state apparatus” in religious and other matters. By giving more power to the individual communities, he attempts to thus strengthen civil society and looks for a social organization that is morally homogenous. Moreover, to obtain a true and real pluralism and coexistence, it is necessary to give different groups the freedom to choose their religion and legal system, according to Bulac. Lastly, he also highlights that the Covenant may be an alternative to the contemporary geopolitical setting that with the passage of time is becoming more totalitarian, both openly and covertly.⁶⁴

Muqtadar Khan, who regards the Constitution as a “social contract” and an excellent manifestation of the Prophet’s affinity for “democracy and governance by consent,” clearly points out that in this Constitution Muslims and non-Muslims were equal citizens, with identical rights and duties. Thus, it established not only the importance of consent and cooperation for governance but also established a “pluralistic state – a community of communities” – based on the principles of equality, consensual governance, and pluralism. Therefore, for Khan, it can serve as a guiding principle to be emulated by contemporary societies.

⁶³ Guida, *The New Islamists*, pp. 356-357.

⁶⁴ Bulac, *The Medina Document*, p. 178.