

A Short Note On The Medina Charter

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The Medina Charter, written and promulgated by Prophet Muhammad for the multi-religious ten thousand-strong citizens of the city-state of Medina in 622 A.D is truly a remarkable political-constitutional document. The claim made by Professor M. Hamidullah that it was the first written constitution (FN1) in the world is not without basis. Aristotle's Constitution of Athens (FN2), written on papyrus, discovered by an American missionary in Egypt in 1890 and published in 1891, was not a constitution. It was an account of the constitution of the city-state of Athens. Other legal writings on the conduct of ancient societies have been found, but none can be described as a constitution. The Medina Charter is the first, and in this it preceded the American Constitution of 1787, considered by Western authorities as "a landmark document of the Western world ... the oldest written national constitution in operation" (FN3) by more than a thousand years! It also preceded the English feudal bill of rights, the Magna Carter of 1215, by almost six centuries!

Not only is the Madina Charter important in the sense that it is the first written constitution; it is also modern in the sense that it was promulgated for a plural society, giving equal rights to every citizen as well as giving them a say in governmental matters, as we shall see.

Considering all these, it is amazing that those Muslim leaders and writers who talk and write about the Islamic state seldom refer to this important seminal political document of Islam.

It is to be remembered that Muhammad had become a prophet, reciting God's revelations to his fellow-Meccans, for twelve years before he and his followers migrated to Yathrib, two hundred and ten miles to the north of Mecca. There was going to be another ten years to his mission before he completed the delivery of the Divine message to the Arabs and to mankind in God's final scripture, the Quran. So this Medina Charter was provisional in the sense that it could not contain all the provisions of statecraft contained in the Quran. Yathrib was later to known as "The City of the Prophet " or simply Medina. The reason for the migration was the growing opposition of the Quraisy aristocracy to his teachings and the receptive attitude shown by some Yathrib pilgrims to Mecca at this time.

The whole text of the Charter has been reproduced, word for word, by Ibn Ishaq and Abu Ubaid in their respective books from the original preserved by Ibn Abi Khithamah. (FN4)

The Charter consists of 47 clauses, but due to different numbering, Prof. Hamidullah counts it to be 52 (FN5). Clauses 1, 2 and 39 state the formation of a sovereign nation-state with a common citizenship, consisting of various communities, principally Muslim Arabs from Mecca (the Muhajirin or Immigrants), Muslim Arabs from Yathrib (the Ansar or Helpers), other monotheists form Yathrib (i.e. the Jews) and others who must be at that time still pagans. These constitute a unified citizenry (Arabic term, ummah), having equal rights and responsibilities, as distinct from other peoples.

It should not escape anyone's notice that these two clauses established the first modern nation-state in the world. Although Medina was just a city, its Charter was to last until the beginning of the Umayyad Dynasty in 661. Western historians cite the Treaties of Westphalia in 1648 as the beginning of the modern nation-state era. (FN6)

The Charter provided a federal structure with a centralized authority, with the various tribes in various districts constituting a unit and enjoying autonomy in certain matters of a social, cultural and religious character. Provision for this district autonomy is repeated for each district. (Clauses 3 through to 11 and 26 through to 35) In fact, many matters were left in the hands of the autonomous units, except state security and national defense. (Clauses 17, 36 (a) and 47) Provisions for these centralized subjects are made in Clauses 13, 15, 17 and 44. Only in cases of disputes the units could not resolve, recourse for their decisions had to be made to the Prophet, whose decision was final. (Clauses 23 and 41)

As Prof. Hamidullah rightly stated, " ... this new constitution ... 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 ... brought an end for all times to the chaos of tribalism and which laid the basis for a wider institution, viz a State." (FN7)

It should be noted that this loyalty to the State by its plural citizenry constituted a nationalism, or more exactly a patriotism, that is approved by Islam, contrary to what some modern Muslim ideologues assert. It is in line with the teaching in the Quranic verse, "O people, We created you from the same male and female and rendered you into distinct peoples and tribes that you may recognize one another. The best of you in the sight of God is the most righteous." (FN8)

There were twenty districts each with a chief (naqib) and deputy chiefs (ʿarif) and its meeting place (saqifah). The city at this time had a population of about ten thousand. Of these, the Muslims made up only a few hundred; half of it were monotheist Jews, the rest being polytheists. (FN9)

It is noteworthy that the Charter ordained equality to its members and protected them against oppression. (Clause 16). The State proclaimed the brotherhood of believers and gave each one a right and support to give protection to any individual, excepting an enemy. (Clause 15). It also extended help to its members in debt or in financial difficulties in regard to payment of ransom or blood-money. (Clause 12). It prohibited help or refuge to be given to a murderer. (Clause 22).

A very important human right is given in Clause 25 where freedom was guaranteed for each community to practice its own religion. The implication of this clause is that each individual was also free to choose his or her religion, in line with the clear teachings of the Quran. (FN10)

Another important principle of statecraft is consultation with the people in all matters. This is stated in Clause 37(a). Unlike in modern democratic polity, the voice of the people, vox populi, regardless of whether that voice represents right and truth or not, is given the highest value. This is a basic flaw in Western democracy. Another important principle of just governance is that no quarter is given to an injustice or wrong-doing. In the Charter, this is stated in Clause 47.

As I stated above, this constitution is Muhammad's ijtiḥad at formulating a constitution when he was confronted with the task of administrating the city-state of Medina. At this time, he had not yet received the full Quran. He had therefore to fall back on customs and precedents,

and he did. In any case, all constitutions are provisional in the sense that it must be adapted to changing times.

A trace of Arab tribalism can be detected in two clauses where a member together with his family were to be punished because of a crime he committed. (Clauses 25 and 36(b)) This clearly contradicts another clause which states that no evil-doer is punished except for the crime he commits. (Clause 46)

Perhaps, in the light of present Muslim interest in an "Islamic state", we should point out that this important constitutional document of Islam does not anywhere use the term "Islamic state" or "Islamic society". The major principles governing an Islamic society are, of course, present -- principles like justice, brotherhood and unity of believers, unity and cooperation among citizens of the state, freedom of religion, strict adherence to pacts entered into between parties, cooperation to do good and to prevent evil, encouragement for high moral conduct, consultation as a method of government. It is also interesting to note that what has been called "Hudud laws", being part of Islamic Law, is also nowhere mentioned in the document.

It should be noted that the Charter, this first Islamic political-constitutional document, was given to the people of Medina in the name of Muhammad the Prophet (Clause 1) and also in the name of God as well as Prophet Muhammad. (Clause 47) Why two different ways of phrasing the ultimate source of power? It is to be remembered that during the Western Middle Ages, the Church ruled supreme in the name of God, and God's name was, of course, much misused by hypocrites and opportunists. The modern Western practice of replacing God with the people has, of course, not helped matters very much. In the name of the people, oppression, wars, colonialism and aggressions have been launched.

Thus, even in this modern age of science and technology, mankind cannot ignore a power that is greater than itself. Mankind has an autonomous right to live, and to live happily, but he must do that in a lawfully created Universe. It is in this sense that the Charter was given in the name of Muhammad the Prophet, who represented the principle of the good and of right reason, which is higher than the individual man. Likewise, in Clause 47 God's name was put first, as God represents the highest Good and the highest principle of right reason. This is necessary to conduct Man to higher and ever higher achievements.

APPENDIX **THE MEDINA CHARTER (FN11)**

In the name of God the Compassionate, the Merciful.

(1) This is a document from Muhammad the prophet (governing the relations) between the believers and Muslims of Quraysh and Yathrib, and those who followed them and joined them and labored with them.

(2) They are one community (umma) to the exclusion of all men.

(3) The Quraysh emigrants according to their present custom shall pay the bloodwit within their number and shall redeem their prisoners with the kindness and justice common among believers.

(4-8) The B. 'Auf according to their present custom shall pay the bloodwit they paid in heathenism; every section shall redeem its prisoners with the kindness and justice common among believers. The B. Sa'ida, the B. 'l-Harith, and the B. Jusham, and the B. al-Najjar likewise.

(9-11) The B. 'Amr b. 'Auf, the B. al-Nabit and the B. al-'Aus likewise.

(12)(a) Believers shall not leave anyone destitute among them by not paying his redemption money or bloodwit in kindness.

(12)(b) A believer shall not take as an ally the freedman of another Muslim against him.

(13) The God-fearing believers shall be against the rebellious or him who seeks to spread injustice, or sin or animosity, or corruption between believers; the hand of every man shall be against him even if he be a son of one of them.

(14) A believer shall not slay a believer for the sake of an unbeliever, nor shall he aid an unbeliever against a believer.

(15) God's protection is one, the least of them may give protection to a stranger on their behalf. Believers are friends one to the other to the exclusion of outsiders.

(16) To the Jew who follows us belong help and equality. He shall not be wronged nor shall his enemies be aided.

(17) The peace of the believers is indivisible. No separate peace shall be made when believers are fighting in the way of God. Conditions must be fair and equitable to all.

(18) In every foray a rider must take another behind him.

(19) The believers must avenge the blood of one another shed in the way of God.

(20)(a) The God-fearing believers enjoy the best and most upright guidance.

(20)(b) No polytheist shall take the property of person of Quraysh under his protection nor shall he intervene against a believer.

(21) Whoever is convicted of killing a believer without good reason shall be subject to retaliation unless the next of kin is satisfied (with blood-money), and the believers shall be against him as one man, and they are bound to take action against him.

(22) It shall not be lawful to a believer who holds by what is in this document and believes in God and the last day to help an evil-doer or to shelter him. The curse of God and His anger on the day of resurrection will be upon him if he does, and neither repentance nor ransom will be received from him.

(23) Whenever you differ about a matter it must be referred to God and to Muhammad.

(24) The Jews shall contribute to the cost of war so long as they are fighting alongside the believers.

(25) The Jews of the B. 'Auf are one community with the believers (the Jews have their religion and the Muslims have theirs), their freedmen and their persons except those who behave unjustly and sinfully, for they hurt but themselves and their families.

(26-35) The same applies to the Jews of the B. al-Najjar, B. al-Harith, B. Sai ida, B. Jusham, B. al-Aus, B. Tha'laba, and the Jafna, a clan of the Tha'laba and the B. al-Shutayba. Loyalty is a protection against treachery. The freedmen of Tha 'laba are as themselves. The close friends of the Jews are as themselves.

(36) None of them shall go out to war save the permission of Muhammad, but he shall not be prevented from taking revenge for a wound. He who slays a man without warning slays himself and his household, unless it be one who has wronged him, for God will accept that.

(37) The Jews must bear their expenses and the Muslims their expenses. Each must help the other against anyone who attacks the people of this document. They must seek mutual advice and consultation, and loyalty is a protection against treachery. A man is not liable for his ally's misdeeds. The wronged must be helped.

(38) The Jews must pay with the believers so long as war lasts.

(39) Yathrib shall be a sanctuary for the people of this document.

(40) A stranger under protection shall be as his host doing no harm and committing no crime.

(41) A woman shall only be given protection with the consent of her family.

(42) If any dispute or controversy likely to cause trouble should arise it must be referred to God and to Muhammad the apostle of God. God accepts what is nearest to piety and goodness in this document.

(43) Quraysh and their helpers shall not be given protection.

(44) The contracting parties are bound to help one another against any attack on Yathrib.

(45)(a) If they are called to make peace and maintain it they must do so; and if they make a similar demand on the Muslims it must be carried out except in the case of a holy war.

(45)(b) Every one shall have his portion from the side to which he belongs.

(46) The Jews of al-Aus, their freedmen and themselves have the same standing with the people of this document in purely loyalty from the people of this document. Loyalty is a protection against treachery. He who acquires ought acquires it for himself. God approves of this document.

(47) This deed will not protect the unjust and the sinner. The man who goes forth to fight and the man who stays at home in the city is safe unless he has been unjust and sinned. God is the protector of the good and God-fearing man and Muhammad is the apostle of God.

FOOTNOTES:

- The First Written Constitution in the World, Sh. Muhammad Ashraf, Lahore, 1968. First published in England, 1941.
- Translated by Frederic G. Kenyon, Internet. 1996 The Avalon Project.
- The New Encyclopaedia Britannica, 15th Edition, 1991.
- The First Written Constitution in the World, p. 9. The translation of the whole text for A. Guillaume's Life of Muhammad is appended at the end.
- Ibid., pp. 19-20.
- The New Encyclopaedia Britannica, 15th Edition, 1991.
- The First Written Constitution, p. 18.
- Quran, 49:13.
- Ibid., pp. 12-13.
- There shall be no compulsion in religion: the right way is now distinguished from the wrong way." (2:256) Note that this statement of complete religious freedom comes immediately after the grandest statement of God's power to be found in any scripture. It is indeed significant!
- This text is taken from A. Guillaume, The Life of Muhammad -- A Translation of Ishaq's Sirat Rasul Allah, Oxford University Press, Karachi, 1955; pp. 231-233. Numbering added.