

LEGAL PRINCIPLES IN THE CONSTITUTION OF MADĪNAH: BASES FROM THE QUR'ĀN

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ABSTRACT

This article discusses some constitutional legal principles in the Constitution of Madīnah and identifies the Qur'ānic bases for these principles. The principles include *ummah*, territorial integrity, *jihād*, obedience to the Messenger (s.a.w.), consultation, goodness, right to life, equality and freedom of religion. For this purpose, the Constitution is analysed through doctrinal research, while the times or the causes of the revelation of the relevant verses of the Qur'ān are identified. In addition, *aḥādīth* and historical records are referred to. The article finds that all these principles had their bases in the Qur'ān, and that the verses prescribing them had already been revealed at the time the Constitution of Madīnah was drafted. However, this article also finds that the Constitution of Madīnah did not include all the constitutional principles in the Qur'ān because, at the time of its drafting, some of those principles had not yet been revealed. For this reason, the article concludes that Muslim modern States should not simply adopt the Constitution of Madīnah as a model for their respective constitutions; otherwise, their constitutions will not contain all the principles prescribed in the Qur'ān.

Keywords: Constitution of Madīnah, *Ummah*, Obedience, Consultation, Human Rights.

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PRINSIP-PRINSIP UNDANG-UNDANG DALAM PERLEMBAGAAN MADINAH: ASAS-ASAS DARI AL-QUR'AN

ABSTRAK

Makalah ini membicarakan sebahagian daripada prinsip-prinsip undang-undang perlembagaan dalam Perlembagaan Madinah dan mengenalpasti asas-asasnya dalam al-Qur'an. Prinsip-prinsip itu termasuk umat, keutuhan wilayah, jihad, ketaatan kepada Nabi (s.a.w.), perundingan, kebaikan, hak untuk hidup, kesamarataan dan kebebasan beragama. Bagi tujuan ini, Perlembagaan Madinah dianalisis menggunakan penyelidikan doktrinal, manakala waktu dan sebab penurunan ayat-ayat al-Qur'an yang berkaitan dikenalpasti. Sebagai tambahan, hadis-hadis dan catatan sejarah dirujuk. Makalah ini mendapati semua prinsip ini mempunyai asasnya dalam al-Qur'an, dan ayat-ayat yang menetapkan prinsip-prinsip ini telahpun diturunkan pada waktu Perlembagaan Madinah digubal. Makalah ini turut mendapati bahawa Perlembagaan Madinah tidak mengandungi semua prinsip undang-undang perlembagaan dalam al-Qur'an kerana, pada waktu ia digubal, sebahagian prinsip-prinsip ini belum lagi diturunkan. Atas sebab ini, makalah ini memutuskan bahawa negara-negara Muslim moden tidak sepatutnya secara sembrono mengambil Perlembagaan Madinah sebagai model buat perlembagaan mereka masing-masing; jika ini mereka lakukan, perlembagaan mereka tidak akan merangkumi semua prinsip yang ditentukan dalam al-Qur'an.

Kata Kunci: Perlembagaan Madinah, Umat, Ketaatan, Perundingan, Hak Asasi Manusia.

INTRODUCTION

This article discusses some of the constitutional legal principles in the Constitution of Madīnah, which was drafted during the era of the Messenger (s.a.w.) following his migration thereto. It identifies the bases of the principles from the Qur'ān. For this purpose, the Constitution is analysed through doctrinal research, while verses of the Qur'ān, *aḥādīth* and historical records are referred to. Attempts are made to identify the times or the causes of the revelation of the legal texts from the Qur'ān. This article argues that the bases of all these principles were verses from the Qur'ān, and that the Messenger

(s.a.w.), who was divinely inspired, relied on verses containing these legal principles that had already been revealed before the drafting process.

This article begins with an introduction to the Constitution and the background of Madīnah, where the Constitution was applicable. Thereafter, this article describes the drafting history and identifies the parties to the Constitution. Some of the legal principles contained in the Constitution, including several human rights, are identified, and so are the bases from the Qur'ān. This article finds that the Constitution did not contain all the legal principles as encompassed in the Qur'ān at the time of the demise of the Holy Messenger (s.a.w.), and thus concludes that modern Muslim States should not simply adopt the Constitution of Madīnah as a model when drafting their respective constitutions. Otherwise, some of the principles may not be included therein.

Other than the above lesson, this article does not compare the Constitution of Madīnah with the constitutions of modern Muslim States, nor does it analyse the applicability of its principles to the contemporary constitutional framework.

INTRODUCTION TO THE CONSTITUTION OF MADĪNAH

The Constitution of Madīnah called itself a “*kitāb*”¹ and “*ṣaḥīfah*”², which means, in English, a document. The Constitution was drafted on the order of the Messenger (s.a.w.); thus, the act of drafting the Constitution and the principles contained therein are parts of his *Sunnah*. *Sunnah* means the sayings, deeds and approvals of the Messenger (s.a.w.). The *Sunnah* is divine since the Messenger (s.a.w.) spoke, acted and approved in accordance with divine inspiration.³ It is a unanimous agreement (*ijmā'*) among the Muslim jurists that the *Sunnah* is the second source of Islamic law after the Qur'ān. The *Sunnah* is explanatory to, and integral with, the Qur'ān. It reiterates injunctions of the Qur'ān, elaborates concise injunctions, qualifies

¹See Constitution of Madīnah, Article 1.

²See Constitution of Madīnah, Articles 39 & 42.

³Qur'ān, 53:3-4:

Nor does he (the Messenger) say (anything) of (his own) desire. (3)

It is no less than inspiration sent down to him. (4)

unqualified injunctions, specifies general injunctions, and enacts rulings on matters on which the Holy Book is silent.⁴ The drafting of the Constitution of Madīnah is an example of a *Sunnah* enactment on matters on which the Qur'ān is silent.

The Constitution was drafted after the Messenger's arrival in Madīnah, following his migration thereto, which happened in the 7th Century. Muhammad Hamidullah finds that the Constitution of Madīnah was the first written constitution in the world,⁵ while Mohamed S. El-Awa writes that the Constitution of Madīnah was not patterned on any previous example.⁶ Badruzzaman Bin Ishak and Shamrahayu Binti Ab Aziz are also of the view that the Constitution of Madīnah was a constitution.⁷ However, Ovamir Anjum is of the view that the document cannot be accepted as a constitution.⁸

At that time, Madīnah was still known as Yathrib, and the old name was used in the Constitution of Madīnah. Before the Messenger's Migration, Madīnah was home to several multireligious Arab and Jewish tribes that were continuously engaged in tribal conflicts and rivalries.⁹ As not all inhabitants of Madīnah were Muslims who could readily accept the Qur'ān and the *Sunnah*, this necessitated a constitution acceptable to both Muslims and non-Muslims.

⁴ Mohamad Akram Laldin, *Introduction to Shariah and Islamic Jurisprudence* (CERT Publications, 2006), 77-81; Abu Ameenah Bilal Philips, *The Evolution of Fiqh: Islamic Law & the Madh-habs* (A.S. Noordeen, 2002/1422H), 30-32.

⁵ Muhammad Hamidullah, *The First Written Constitution in the World* (2nd ed., Sh. Muhammad Ashraf, 1388H/1968), 9-10; Muhammad Hamidullah, *The Prophet's Establishing a State and His Succession* (Adam Publishers & Distributors, 2006), 25 & 42-43.

⁶ Mohamed S. El-Awa, *On the Political System of the Islamic State* (American Trust Publications, 1978), 22.

⁷ Badruzzaman Bin Ishak and Shamrahayu Binti Ab Aziz, "The Madinah Charter in Light of a Modern Constitution", *IIUMLJ* 30, no. 1 (2022): 197.

⁸ Dr. Ovamir Anjum, "The 'Constitution' of Medina: Translation, Commentary, and Meaning Today", February 4, 2021, Updated July 22, 2024, <https://yaqeeninstitute.org.my/read>, accessed July 23, 2025.

⁹ Hamidullah, *First Written Constitution*, 14; Hamidullah, *The Prophet's Establishing a State*, 46.

DRAFTING HISTORY OF THE CONSTITUTION OF MADĪNAH

What has come to light is that the Constitution of Madīnah consisted of 47 provisions. Although all the 47 provisions seemed to be in the same document, the Constitution apparently had two (2) distinct parts, namely: Articles 1-23 that prescribed rules mainly affecting the *Muhājirūn* (the Emigrants) and the Arabs of Madīnah, and Articles 24-47 that laid down primarily the rules between the Muslims and the Jews. According to Muhammad Hamidullah, the Constitution started to be drafted a few months after the Messenger's arrival in Madīnah,¹⁰ that is, Articles 1-23 were drafted in the very first year of the migration,¹¹ while Articles 24-47 were added later, probably after the Muslims' victory against the Quraysh in the Battle of Badr that happened in year 2H.¹²

Historical records indicate that Rabbi Mukhayriq ibn al-Naḍīr, the leader of the Jewish tribe of Banū Tha'labah, fought alongside the Messenger (s.a.w.) in the Battle of Uḥud, which took place in the year 3H. Rabbi Mukhayriq was honouring the Constitution of Madīnah,¹³ which provided that all parties thereto should mutually help one another in fighting their common enemy and that each had to bear their own expenses.¹⁴ Banū Tha'labah was a party to the Constitution that guaranteed their rights in Article 31 thereof. This fact supports Muhammad Hamidullah's opinion that Articles 24-47 were added probably after the Battle of Badr. Otherwise, Rabbi Mukhayriq would

¹⁰Hamidullah, *First*, 10 & 16; Hamidullah, *The Prophet's*, 43 & 47.

¹¹Hamidullah, *First*, 23; Hamidullah, *The Prophet's*, 52.

¹²Hamidullah, *First*, 22-23 & 26; Hamidullah, *The Prophet's*, 51-52 & 54.

¹³Safi-ur-Rahman al-Mubarakpuri, *al-Rahiq al-Makhtum/Cahaya Abadi*, revised ed., trans. Mohd Nor Long, rev. Mohd. Puzhi bin Usop (al-Hidayah Publication, 1399H/1979, reprint 2016), 275 & 278; Akbar Shah Najeebabadi, *The History of Islam*, rev. Safi-ur-Rahman Mubarakpuri, ed. Abdul Rahman Abdullah and Muhammad Tahir Salafi (Darussalam, 2000, Vol. 1), 179; Abu Mazaya al-Hafiz, *Sirah dan Riwayat Hidup Nabi Muhammad*, ed. Dr. Mohd Puzhi Usop (al-Hidayah, 2018), 448 & 471; Ahmad Hatta, *The Great Story of Muhammad s.a.w.: Referensi Lengkap Hidup Rasulullah s.a.w. dari Sebelum Kelahiran hingga Detik-detik Terakhir*, ed. Erwyn Kurniawan (Maghfirah Pustaka, 2011), 334.

¹⁴Constitution of Madīnah, Articles 24, 37 & 38.

have fought alongside the Messenger (s.a.w.) in the Battle of Badr. This fact also shows that Banū Tha‘labah became a party to the Constitution before the Battle of Uḥud.

The parties to the Constitution were the Messenger (s.a.w.), the *Muhājirūn*, eight (8) Arab tribes of Madīnah, and nine (9) Jewish groups of Madīnah. The *Muhājirūn* were from Makkah and mainly of the Quraysh tribe, but several individuals were from other tribes and non-Arabs, such as Bilāl ibn Rabāh (an Abyssinian), Ṣuhayb ibn Sinān al-Rūmī (a Roman) and Khabbāb ibn al-Aratt (an Iraqī).¹⁵ Regardless of their ethnicity and origin, they were all considered among the *Muhājirūn*.

The Arab tribes of Madīnah consisted of five (5) clans from the Khazraj tribe, namely: Banū ‘Awf, Banū al-Hārith ibn Khazraj, Banū Sā‘idah, Banū Jusham and Banū al-Najjār, and three (3) clans from the Aws tribe, namely: Banū ‘Amr ibn ‘Awf, Banū al-Nabīt and Banū al-Aws.¹⁶ The Jewish groups of Madīnah were the Jews of Banū ‘Awf, the Jews of Banū al-Najjār, the Jews of Banū al-Hārith, the Jews of Banū Sā‘idah, the Jews of Banū Jusham, the Jews of Banū al-Aws, the Jews of Banū Tha‘labah, the Jafnah clan, and Banū al-Shutaybah.¹⁷

It should be noted that the six (6) firstly mentioned Jewish groups were from the same Arab tribes who were parties to the Constitution. It means that the Arabs and the Jews of the six tribes became parties to the Constitution separately. They were from the Arab tribes of Banū ‘Awf,¹⁸ Banū al-Najjār,¹⁹ Banū al-Hārith,²⁰ Banū Sā‘idah,²¹ Banū Jusham²² and Banū al-Aws.²³ Some among the Arab tribes of Madīnah, before the arrival of the Messenger (s.a.w.), had accepted the Jewish faith²⁴ because their parents, childless at the time

¹⁵Hamidullah, *The Prophet's*, 34; Anjum, “The ‘Constitution’ of Medina”.

¹⁶Anjum, “The ‘Constitution’ of Medina”. See Constitution of Madīnah, Articles 4-11.

¹⁷See Constitution of Madīnah, Articles 25-33.

¹⁸See Constitution of Madīnah, Articles 4 & 25.

¹⁹See Constitution of Madīnah, Articles 8 & 26.

²⁰See Constitution of Madīnah, Articles 5 & 27.

²¹See Constitution of Madīnah, Articles 6 & 28.

²²See Constitution of Madīnah, Articles 7 & 29.

²³See Constitution of Madīnah, Articles 11, 30 & 46.

²⁴See Uri Rubin, “The ‘Constitution of Medina’ Some Notes”, *Studia Islamica* 62 (1985): 6.

of the vow, had pledged them to be raised by Jews as Jews, or because they were impressed that Judaism was better than paganism.²⁵ There is also a view that these Jews were closely associated with the Arab tribes among whom they dwelt.²⁶

Among the nine Jewish parties to the Constitution of Madīnah, only Banū Tha‘labah, its clan, Jafnah, and Banū al-Shutaybah were Jewish tribes. There were another three (3) main Jewish tribes in Madīnah, namely: Banū Qaynuqā‘, Banū al-Naḍīr and Banū Qurayzah, but they were not parties to the Constitution.²⁷ The Messenger (s.a.w.) tried to establish peaceful relations with the three main Jewish tribes.²⁸ However, Banū Qaynuqā‘ had a dispute with the Muslims – about one (1) month after the Muslims’ victory at Badr - that quickly escalated into a war between the two sides. Probably, the dispute and the war happened too quickly before the Messenger (s.a.w.) could have negotiated with Banū Qaynuqā‘ to consent to the Constitution. The names of Banū al-Naḍīr and Banū Qurayzah were also not mentioned in the Constitution of Madīnah, but there were a few facts that show that these two tribes might have had some other forms of treaties with the Messenger (s.a.w.). These facts are discussed under the sub-topic “Obedience to the Messenger (s.a.w.)” below.

There were Christians in Madīnah.²⁹ But there was no Christian group party to the Constitution, which could mean that their numbers were very small at that time, so they just joined the Arab tribes.

²⁵Anjum, “The ‘Constitution’ of Medina”; Hamidullah, *First*, 29-30; Hamidullah, *The Prophet’s*, 56-57. See also Abū ‘Abd Allāh Muḥammad ibn Aḥmad al-Anṣārī al-Qurṭubī, *al-Jāmi‘ li-Aḥkām al-Qur‘ān* (Dār al-Kutub al-‘Ilmīyyah, n.d., Vol. 3), 182; Muḥammad ibn ‘Alī ibn Muḥammad al-Shawkānī, *Fath al-Qadīr al-Jāmi‘ bayn Fannay al-Riwāyah wa-al-Dirāyah min ‘Ilm al-Tafsīr* (Dār Iḥyā’ al-Turāth al-‘Arabī, 1418H/1998, Vol. 1), 304; Abū al-Fidā’ Ismā‘īl ibn Kathīr, *Tafsīr al-Qur‘ān al-‘Azīm* (Dār Iḥyā’ al-Turāth al-‘Arabī, 1420H/2000, Vol. 1), 321; Abū Dāwud Sulaymān ibn al-Ash‘at al-Sajastanī al-Azadī, *Sunan Abī Dāwud*, ḥadīth no. 2682, <https://sunnah.com/>.

²⁶See Rubin, “The ‘Constitution of Medina’”, 7.

²⁷See Rubin, “The ‘Constitution of Medina’”, 6.

²⁸See Rubin, “The ‘Constitution of Medina’”, 18.

²⁹Zaid Mohamad, “The Islamic State and Its Re-Establishment”, *IJU Law Journal* 1, no. 2 (1989): 57.

In addition to the 47 provisions of the Constitution of Madīnah, there were other written documents that reiterated some of the rules in the Constitution. It was reported that:

‘Alī ibn Abī Ṭālib gave a sermon on a pulpit. He was carrying a scroll. He said, “By Allāh, we have no book to read except the Book of Allāh and whatever is on this scroll.” ‘Alī unrolled it, written therein what sort of camels were to be given as *diyāh*, and that “Madīnah is a sanctuary (*ḥaram*) from (Mount) ‘Ayr to such and such place, so whoever innovates therein a heresy, he will incur the curse of Allāh, the angels and all the people; Allāh will not accept his compulsory or optional good deeds.” And written therein also was: “The pledge of protection granted by the Muslims is one, even by a Muslim of the lowest status, is to be secured and respected by all the other Muslims, so whoever betrays a Muslim will incur the curse of Allāh, the angels and all the people; Allāh will not accept his compulsory or optional good deeds.” And written therein also was: “Whoever (a freed slave) takes as masters other than his manumitter without his permission will incur the curse of Allāh, the angels and all the people; Allāh will not accept his compulsory or optional good deeds.”³⁰

The detailed rules on *diyāh* in this document reiterated Articles 3-11 and 21 of the Constitution that recognised *diyāh*. Madīnah being a sanctuary (*ḥaram*) in the document, reiterated Article 39 of the Constitution. The pledge of protection by a Muslim, even by the humblest of them, is binding on all Muslims as provided in the document reiterated Article 15 of the Constitution. It seems that the document reiterated the rules affecting Muslims.

It has not come to light with whom the Messenger (s.a.w.) concluded the terms in the document. It was probably with a tribe that embraced Islam after the drafting of the Constitution of Madīnah. An example of such a tribe is the Aws Allāh clan of Banū Aws, which was not named in the Constitution and embraced Islam only on the occasion of the Battle of the Trench in the year 5H.³¹

³⁰Abū ‘Abd Allāh Muḥammad ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, *ḥadīth* no. 7300, <https://sunnah.com/>. See also al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, *ḥadīth* no. 3047, <https://sunnah.com/>, that ‘Alī ibn Abī Ṭālib had a scroll that provided, among other things, that no Muslim should be killed for killing an infidel, reiterating Article 14 of the Constitution of Madīnah.

³¹Anjum, “The ‘Constitution’ of Medina”.

SOME LEGAL PRINCIPLES CONTAINED IN THE CONSTITUTION OF MADĪNAH

The Constitution of Madīnah and the Messenger's observance of its terms show the Messenger's commitment to peace, inter-religious co-existence, and honouring treaties as well as his preference for diplomacy over war.

It should be noted that the Constitution of Madīnah was drafted when verses of the Qur'ān, including legal texts, were still being revealed. At that time, some of the verses containing legal concepts had already been revealed, but many other legal verses were not yet revealed. It should be borne in mind that revelations before the migration focused more on the belief system of Islam and moral values, rather than on law.³²

Not all constitutional legal principles that can be found in the Qur'ān at the end of the lifetime of the Messenger (s.a.w.) can be found in the Constitution of Madīnah. Legal principles that can be found in the Constitution were principles that had already been revealed before its drafting. Thus, verses of the Qur'ān were the bases for the provisions in the Constitution. At that time, Islamic legal concepts were still new, so the principles stated in the Constitution were basic and general, with few details. There were many legal texts that were revealed after the conclusion of the Constitution, and these principles could not be found in the Constitution, because at the time of the drafting of the Constitution, the bases were not available yet for the Messenger (s.a.w.) to include the principles therein. The Messenger (s.a.w.) would not have said or done anything unless there was a divine basis.³³ After the conclusion of the Constitution, the legal concepts were continuously developed through revelations, but the written Constitution was not updated with the development of the *sharī'ah*. The reason is unknown.

This article will show that the following constitutional legal principles in the Constitution of Madīnah were based on verses that had already been revealed at the time of its drafting. The principles are:

³²Mohamad Akram Laldin, *Introduction to Shariah*, 156-159; Bilal Philips, *Evolution of Fiqh*, 8-9.

³³Qur'ān, 53:3-4: Nor does he (the Messenger) say (anything) of (his own) desire. (3) It is no less than inspiration sent down to him. (4)

ummah, territorial integrity, *jihād*, obedience to the Messenger (s.a.w.), consultation, goodness, justice, right to life, equality, and freedom of religion.

The Concept of *Ummah*

Article 1 of the Constitution of Madīnah provided:

This is a document (*kitāb*) from Muḥammad, the Prophet, peace be upon him, governing the relations between the faithful Muslims and the Muslims of the Quraysh and Yathrib, and those who followed them, then joined them (another version: then settled down with them) and strived with them.

Parties to the Constitution mentioned in Article 1 “are one *ummah* to the exclusion of (all other) people.”³⁴ The *ummah* (nation) comprised of the original parties to the Constitution (including the Messenger (s.a.w.), the *Muhājirūn* and the eight Arab tribes of Madīnah) and parties who subsequently acceded to the Constitution (including the nine Jewish groups of Madīnah). This *ummah* left other tribes, nations and States out. Nevertheless, the phrase “and those who followed them, then joined them and strived with them” in Article 1 allowed other tribes or groups to accede to the Constitution and join the *ummah*.³⁵

Mohamed S. El-Awa writes that, in Article 2 of the Constitution, “a new element never known before was introduced to Arab society for the first time”.³⁶ Actually, the concept of *ummah* was first introduced by verse 21:92. Chapter 21 of the Qur’ān was revealed in Makkah, before the migration. Verse 21:92 reads: “Verily, this *ummah* of yours is a single *ummah* ...”. By virtue of this verse, tribal ties were replaced by the ties of Islam. All Muslims became one *ummah*. However, in Makkah, the Muslims could not form a community that was independent from the Quraysh, who were oppressing and persecuting the Muslims in attempts to convert the Muslims out of their religion.

The concept of *ummah* evolved to become more inclusive when the Messenger (s.a.w.) concluded the Constitution of Madīnah. By virtue of Articles 1 and 2, the concept of *ummah* was now comprised

³⁴ Constitution of Madīnah, Article 2.

³⁵ El-Awa, *Political System of the Islamic State*, 21.

³⁶ El-Awa, *Political System*, 20.

of the Muslims, whether they were from Makkah or Madīnah, the polytheists, the Jews and probably the Christians. At that time, not all Arabs of Madīnah were already Muslims or had accepted the Jewish faith. There were those who were still polytheists. This is known because Article 20(b) of the Constitution imposed a duty on the polytheists not to protect the Quraysh. Having a duty under the Constitution shows that the polytheists of Madīnah were part of the *ummah*. Regarding the Jews, Article 25 provides that, “And verily the Jews of Banū ‘Awf are one *ummah* with the faithful Muslims ...”, and Articles 26-33 provide the same for the other 8 Jewish groups. The Muslims, the polytheists, the Jews and the Christians were all parts of the *ummah* because they resided in Madīnah. In other words, the element of territory became the basis for granting the right to citizenship.³⁷ This was in line with one version of Article 1 that said, “... then settled down with them ...”, cited in the quoted Article 1 above. The Muslims in Makkah who did not emigrate were not citizens of Madīnah.³⁸

The notion of one nation was a crucial step toward resolving the deep-seated rivalries and conflicts between the tribes in Madīnah that, prior to the arrival of the Messenger (s.a.w.), were threatening to destroy them further. In addition, the concept made no distinction between natives and immigrants. The *Muhājirūn* also had rights and duties under the Constitution. Not only did the Messenger (s.a.w.) – a man from the Quraysh who emigrated from Makkah - become the Head of the City State, the succeeding Rightly Guided Caliphs – all men from the Quraysh of Makkah - also became the Head of the State, the capital of which was Madīnah.

The last phrase in Article 1, “... and strived with them” (“*wa jāhada ma‘a-hum*”) meant that not only was the *ummah* a political community, but *jihād* was a characteristic of the *ummah*.³⁹ *Jihād* can

³⁷El-Awa, *Political System*, 20; Rubin, “The ‘Constitution of Medina’”, 9.

³⁸See Qur’ān, 8:72: Verily, those who believed, emigrated, and strived with their wealth and lives in the cause of Allāh, as well as those who gave them shelter and help - they are guardians of one another. And those who believed but did not emigrate - you have no obligations to them until they emigrate. But if they seek your help (against persecution) in faith, you are obligated to help them, except against a people bound with you in a treaty. Allāh is All-Seeing of what you do.

³⁹Anjum, “The ‘Constitution’ of Medina”.

be by peaceful and warlike means. Meanwhile, by Article 13, all Muslims must unite against any wrongful act, injustice, sin, transgression or evil. It was no longer only the victim's clan that could aid. When all Muslims combine and reach the level of preponderance, they would deter potential lawbreakers or be able to punish the lawbreakers.

Territorial Integrity and *Jihād*

At the time of the drafting of the Constitution of Madīnah, the State comprised of only Madīnah. However, at the time of the demise of the Messenger (s.a.w.), the territory of the State expanded to cover the whole Arabian Peninsula. Article 39 thereof provided, "And verily the inner part of Yathrib shall be an inviolable territory (*ḥaram*) for the people of this document." This was in line with a *ḥadīth*, "Madīnah is a *ḥaram* (sanctuary) from (Mount) 'Ayr to (Mount) Thawr."⁴⁰ The Messenger (s.a.w.) also sent some Companions to mark the boundaries of the sacred land of Madīnah to be between its free-land to the east and the west, Mount 'Ayr in the south, and Mount Thawr in the north.⁴¹ It should be noted that Mount Thawr in the north of Madīnah, referred to here, is not the same Mount Thawr in the south of Makkah where the Messenger (s.a.w.) and Abū Bakr al-Ṣiddīq took refuge temporarily during their migration to Madīnah.

The Qur'ān records that Prophet Ibrāhīm had prayed that Allāh make Makkah peaceful,⁴² and that Allāh made Makkah a *ḥaram*.⁴³ All these verses were revealed before the migration. After returning from Tabūk, the Messenger (s.a.w.) reaffirmed the status of Madīnah as a *ḥaram* by relating it to the acts of Prophet Ibrāhīm. Seeing Mount Uḥud, the Messenger (s.a.w.) said:

⁴⁰Ibn Ḥajar al-ʿAsqalānī, *Bulūḡ al-Marām*, *ḥadīth* no. 741, <https://sunnah.com/>.

⁴¹El-Awa, *Political System*, 19 n. 1.

⁴²Qur'ān, 14:35 in part: And (remember) when Ibrāhīm prayed, "God, make this city (of Makkah) secure ..."

Qur'ān, 2:126 in part: And (remember) when Ibrāhīm prayed, "God, make this (Makkah) a city of security ..."

⁴³Qur'ān, 27:91: (Say, O Muḥammad,) "I have been commanded to worship the God of this city (of Makkah), Who has made it sacred, and to Him belongs everything. And I have been commanded to be one of those who (fully) submit (to Him).

*This is a mountain that loves us and is loved by us. O Allāh! Ibrāhīm made Makkah a ḥaram, and I make (the area) between two mountains (of Madīnah) a ḥaram.*⁴⁴

The parties to the Constitution were expected to defend the State. Articles 37-38 provided that the Jews and the Muslims must finance the war expenses and must help each other against whoever fought the people of the document. Article 44 provided that “They shall undertake to aid each other against whoever attacks Yathrib.” Hence, Muslims and non-Muslims had this collective self-defence obligation, on the basis that they constituted as one *ummah*.⁴⁵ Article 17 provided that:

The peace of the faithful Muslims is indivisible. No separate peace shall be made when the faithful Muslims are fighting in the way of Allāh ...

This provision emphasised that Muslims were united, as their peace was one and indivisible. If the Muslim people were waging a defence against aggression, the other Muslims must not stand neutral but must assist the Muslim people.⁴⁶

At the time of the drafting of the Constitution, verses 22:39-40 of the Qur’ān had already been revealed, permitting the Muslims to fight in self-defence after the Quraysh had declared war against the Muslims.⁴⁷ These verses were revealed at the time when the Messenger (s.a.w.) was migrating to Madīnah.⁴⁸

⁴⁴Al-Bukhārī, *Ṣaḥīḥ, ḥadīth* no. 3367 & 4084, <https://sunnah.com/>.

⁴⁵Badruzzaman and Shamrahayu, “The Madinah Charter”, 209.

⁴⁶Mohd Hisham bin Mohd Kamal, “Collective Security: United Nations Practice and Islamic Perspective” (PhD diss. International Islamic University Malaysia, 2005), 172.

⁴⁷Qur’ān, 22:39-40: Permission (to fight) is given to those who are being fought, because they are wronged - and verily, Allāh is Most Powerful for their aid. (39) (They are) those who have been expelled from their homes in defiance of right - (for no other cause) except that they say, “Our God is Allāh.” Did not Allāh check one set of people by means of another, there would surely have been pulled down monasteries, churches, synagogues, and mosques, in which the name of Allāh is commemorated in abundant measure. Allāh will certainly aid those who aid His (cause) – for verily Allāh is Full of Strength, Exalted in Might, (Able to enforce His Will). (40)

The other provisions in the Constitution of Madīnah that were on defence were Articles 14, 15, 18, 19, 20, 36 & 43.

Obedience to the Messenger (s.a.w.)

The word “*kitāb*” in Article 1 of the Constitution of Madīnah means a prescription or a command. Thus, the Messenger (s.a.w.) prescribed the Constitution for its parties, and the parties had an obligation to obey the Messenger’s commands. For example, under Article 36, none of the Jews shall go out of Madīnah except with the permission of Muḥammad (s.a.w.).

In addition to being the Head of the State and holding executive authority, the Messenger (s.a.w.) also held judicial authority. Article 23 of the Constitution provided, “And whenever you differ on anything, it must be referred to Allāh and to Muḥammad”, while Article 42 provided:

And verily if any crime or dispute likely to cause trouble takes place between the parties to this document, it must be referred to Allāh and to Muḥammad, the Messenger of Allāh. And verily Allāh accepts what is nearest to piety and goodness in this document.

Article 23 covered disputes between individuals, such as spouses, siblings, or neighbours. Whereas Article 42 encompasses crimes and disputes between the parties to the Constitution, including matters concerning the interpretation and application of the provisions of the Constitution. With these provisions, the people of Madīnah were provided with a central public institution to seek justice, replacing the old system in which everyone sought justice through the power of his own hand or that of his family. Thus, the Constitution sought to bring the chaos of tribalism to an end.⁴⁹

According to Ovamir Anjum, verse 4:59 orders the faithful Muslims to obey Allāh and the Messenger (s.a.w.)⁵⁰ - would have been revealed at the time of the drafting of the Constitution.⁵¹ There are two

⁴⁸Abū ‘Abd Allāh Muḥammad ibn Aḥmad al-Anṣārī al-Qurṭubī, *al-Jāmi‘ li-Aḥkām al-Qur‘ān* (Dār al-Kutub al-‘Ilmīyyah, n.d., Vol. 12), 46-47; Zulkifli Mohd Yusoff and Muhammad Mukhlis, *Asbabun Nuzul* (PTS Publishing House, 2019), 482-483; Jalaluddin as-Sayuthi, *Asbab Nuzul al-Quran* (Darul Fajr, 2008), 504; Najeebabadi, *History of Islam*, Vol. 1, 143; Ahmad Hatta, *Great Story of Muhammad*, 269.

⁴⁹Hamidullah, *First*, 18 & 28; Hamidullah, *The Prophet’s*, 48-49 & 55-56.

⁵⁰Qur‘ān, 4:59 in part: O you who believe! Obey Allāh, and obey the Messenger and those charged with authority among you. ...

⁵¹Anjum, “The ‘Constitution’ of Medina”.

views on the cause of the revelation of verse 4:59. One view is that ‘Ammār ibn Yāsir, a member of a military expedition sent by the Messenger (s.a.w.), took an action without any order from his leader, Khālid ibn al-Walīd, causing a dispute between them.⁵² If this view is acceptable, verse 4:59 could not serve as the basis for Articles 23 and 42, because Khālid embraced Islam only in the year 8H.⁵³ The second view is that ‘Abd Allāh ibn Ḥudhāfah al-Sahmī, sent by the Messenger (s.a.w.) as a leader on a military expedition, was angry with the members of his forces, so he made a fire and ordered his men to jump into it, but they did not obey him until they asked the Messenger (s.a.w.) whether they must obey such order. After returning to Madīnah, they told the Messenger (s.a.w.) of the order, and the Messenger (s.a.w.) explained that obedience to leaders, other than the Messenger (s.a.w.), was required in matters that were permissible only.⁵⁴ It has not come to light which expedition the Messenger (s.a.w.) sent ‘Abd Allāh ibn Ḥudhāfah al-Sahmī to lead. There were a few expeditions that the Messenger (s.a.w.) sent before the Battle of Badr, but there were many after the Battle of Badr until the demise of the Messenger (s.a.w.). ‘Abd Allāh ibn Ḥudhāfah al-Sahmī was a man from the Anṣār, but it has not come to light when he embraced Islam. Thus, Anjum’s view may not be agreeable.

Even if verse 4:59 may not be the basis for Articles 23 and 42, there are several other verses that could be the basis. Verses 7:156-158⁵⁵ are Makkan verses that order the people to follow the Messenger

⁵²as-Sayuthi, *Asbab Nuzul al-Quran*, 211.

⁵³Khalid Muhammad Khalid, *Men around the Messenger* (Islamic Book Trust, 2005), 253-254.

⁵⁴Zulkifli and Muhammad, *Asbabun Nuzul*, 216-217; as-Sayuthi, *Asbab*, 210-211.

⁵⁵Qur’ān, 7:156-158 in part:

... (Allāh) said, “I will inflict My torment on whoever I will. But My mercy encompasses everything. I will ordain mercy for those who are pious, pay *zakāh*, and those who believe in Our revelations.” (156)

“(They are) those who follow the Messenger, the unlettered Prophet, whose description they find in the Tawrah and the Injil. He commands them to do good and forbids them from evil, and permits for them what is good and forbids to them what is impure, and relieves them from their burdens and the shackles that bound them. Those who believe in him, and honour him, and support him, and follow the light sent down to him – they are successful.” (157)

(s.a.w.). Following the Messenger (s.a.w.) means obeying him (s.a.w.). There are also many Makkan verses, especially in Chapter 26 of the Qur'ān, that tell the stories of the earlier prophets – Nūḥ, Hūd, Ṣāliḥ, Lūṭ and Shu'ayb - who asked their respective peoples to obey them.⁵⁶ Thus, obedience to Allāh and His prophets, including the Messenger (s.a.w.), is essential for the Muslims. In addition, verse 39:9⁵⁷ says that obedient individuals who worship their God devoutly, described by the word “*qānit*” therein, are people of reason. Obedient here means obedient to Allāh and His Messenger (s.a.w.). So, all these verses could be the basis for Articles 23 and 42 of the Constitution.

The Constitution of Madīnah did not indicate that Banū al-Naḍīr had any right or duty under the Constitution, so it seems that Banū al-Naḍīr was not a party to the Constitution. But there was a killing of its members that Banū al-Naḍīr brought against a tribe party to the Constitution before the Messenger (s.a.w.). The slain was Ka'ab ibn al-Ashraf, a poet who had gone to Makkah after the Battle of Badr, written and sung elegies for the fallen Quraysh men at Badr, igniting the fire of revenge among the Quraysh. Thereafter, Ka'ab returned to Madīnah and blasphemed Allāh and His Messenger (s.a.w.) in his poems. The Messenger (s.a.w.) subsequently asked his Companions for one of them to kill Ka'ab for the crimes that he had committed. Muḥammad ibn Maslamah volunteered and killed Ka'ab.⁵⁸ After Ka'ab was killed,

Say, (O Prophet,) “O people! I am the Messenger of Allāh to you all. To Him belongs the kingdom of the heavens and the earth. There is no god except Him. He gives life and causes death.” So, believe in Allāh and His Messenger, the unlettered Prophet, who believes in Allāh and His revelations. And follow him, so you may be guided. (158)

⁵⁶See Qur'ān, 26:106-110, 26:124-131, 26:142-150, 26:161-163 & 26:177-179. See also Qur'ān, 20:90 on Prophet Hārūn asking his people to follow and obey him.

⁵⁷Qur'ān, 39:9:

(Are the disbelievers better) or those who are obedient and worship (their God) devoutly (*qānit*) in the hours of the night, prostrating and standing, fearing the Hereafter and hoping for the mercy of their God? Say, (O Prophet,) “Are those who know equal to those who do not know?” None will be mindful (of this) except people of reason.

⁵⁸Taqīy al-Dīn Abī al-'Abbās Aḥmad ibn 'Abd al-Ḥalīm ibn 'Abd al-Salām (known as Ibn Taymīyah), *al-Sārim al-Maslūl 'alā Shātim al-Rasūl* (Dār al-Kutub al-'Ilmīyah, 1419H/1998), 63-64; al-Mubarakpuri, *al-Rahiq al-Makhtum*, 234-237; Najeebabadi, *History*, Vol. 1, 167 & 169; Ahmad

Banū al-Naḍīr complained to the Messenger (s.a.w.) that Muḥammad ibn Maslamah of Banū Aws had killed Ka‘ab, who was a member of Banū al-Naḍīr. After hearing the complaint, the Messenger (s.a.w.) explained to Banū al-Naḍīr that Ka‘ab was killed for the crimes that he had committed. The Messenger (s.a.w.) and Banū al-Naḍīr entered into a written treaty to prevent future disputes between them. After its conclusion, the document remained with ‘Alī ibn Abī Ṭālib.⁵⁹ It should be noted that Banū Aws – of which Muḥammad ibn Maslamah was a member – was a party to the Constitution of Madīnah, whereas Banū al-Naḍīr was not. The complaint by Banū al-Naḍīr against Banū Aws for the killing of Ka‘ab ibn al-Ashraf could mean that Banū al-Naḍīr consented to refer the dispute to the Messenger (s.a.w.), and it was now up to Banū Aws to similarly consent or otherwise. However, as it was the Messenger (s.a.w.) himself who ordered the killing of Ka‘ab, he (s.a.w.) himself explained the crimes of Ka‘ab which Banū al-Naḍīr could not deny. The subsequent conclusion of the treaty between the Messenger (s.a.w.) and Banū al-Naḍīr shows that Banū al-Naḍīr had accepted the decision of the Messenger (s.a.w.) to order the execution of Ka‘ab. Otherwise, they would have fought the Messenger (s.a.w.).

The treaty between the Messenger (s.a.w.) and Banū al-Naḍīr was a peace treaty and included, based on what subsequently happened that consequently led to the war between the two parties, the law of *qiṣāṣ* and *diyyah*. Despite having concluded that treaty with the Messenger (s.a.w.), Banū al-Naḍīr attempted to assassinate the Messenger (s.a.w.) when the Messenger (s.a.w.) went to their place to request payment of *diyyah*. The attempted assassination led to a war between Banū al-Naḍīr and the Muslims.⁶⁰ There is a *ḥadīth* that the Messenger (s.a.w.) and his forces surrounded Banū al-Naḍīr, suggesting that they conclude a treaty with him, but they refused. The

Hatta, *Great Story*, 311-312; Abu Mazaya, *Sirah dan Riwayat Hidup Nabi Muhammad*, 410-411.

⁵⁹*Ibn Sa‘d’s Kitāb al-Tabaqat al-Kabir*, trans. S. Moinul Haq (Kitāb Bhavan, n.d., Vol. 2), 53; Anjum, “The ‘Constitution’ of Medina”. This document between the Messenger (s.a.w.) and Banū al-Naḍīr that ‘Alī ibn Abī Ṭālib subsequently kept might not be similar to the document mentioned under sub-topic “Drafting History of the Constitution of Madīnah” above because the latter reiterated the rules mainly affecting the Muslims, not a treaty with a non-Muslim party.

⁶⁰Al-Mubarakpuri, *al-Rahiq*, 293-296; Najeebabadi, *History*, Vol. 1, 183; Ahmad Hatta, *Great Story*, 345-348; Abu Mazaya, *Sirah*, 515-519.

next morning, the Messenger (s.a.w.) went to Banū Qurayzah with his army and asked them to sign a treaty with him, and Banū Qurayzah obliged. Thereafter, the Messenger (s.a.w.) returned to fight Banū al-Naḍīr.⁶¹ There was already a concluded treaty between the Messenger (s.a.w.) and Banū al-Naḍīr. So, the *ḥadīth* that the Messenger (s.a.w.) asked Banū al-Naḍīr to conclude another treaty could mean that although the concluded treaty had been materially breached by Banū al-Naḍīr, the Messenger (s.a.w.) - who could consider the treaty to have been terminated and punish Banū al-Naḍīr accordingly - was asking Banū al-Naḍīr to renew its commitment to have peace between them. In the same *ḥadīth*, Banū Qurayzah concluded a treaty with the Messenger. The *ḥadīth* does not tell the contents of the treaty between the Messenger (s.a.w.) and Banū Qurayzah, but a later event, described later in this paragraph, shows that the treaty imposed peace between them and an obligation to defend against external aggression, and provided for the peaceful settlement of tribal disputes. The contents of this treaty might be in line with the Constitution of Madīnah. During the Battle of the Trench, when Madīnah was under siege, the Messenger (s.a.w.) sent several Companions, including Sa‘ad ibn Mu‘ādh, the leader of Banū Aws, to remind Banū Qurayzah, who was an ally of Banū Aws before the arrival of the Messenger (s.a.w.) in Madīnah, that Banū Qurayzah had a treaty obligation with the Messenger (s.a.w.) to defend Madīnah together with the Muslims from external foes. But Banū Qurayzah tore the written treaty and said that they had no such treaty obligation with Muḥammad (s.a.w.).⁶² The treaty that Sa‘ad was reminding Banū Qurayzah to observe was the treaty that they signed with the Messenger (s.a.w.) before the Messenger (s.a.w.) resumed his fight with Banū al-Naḍīr, mentioned in the above *ḥadīth*. After their defeat by the Muslims, Banū Qurayzah requested that they be adjudicated. Both parties agreed to choose Sa‘ad ibn Mu‘ādh as the adjudicator.⁶³ Article 42 of the Constitution of Madīnah specifically named Prophet Muḥammad (s.a.w.) as the adjudicator between disputing tribes. It may be assumed that the content of the treaty in this aspect might not be entirely similar to Article 42 of the Constitution. Even if it was similar, the appointment

⁶¹Abū Dāwud, *Sunan Abī Dāwud*, *ḥadīth* no. 3004, <https://sunnah.com/>.

⁶²Al-Mubarakpuri, *al-Rahiq*, 305; Ahmad Hatta, *Great Story*, 361; Abu Mazaya, *Sirah*, 540; Najeebabadi, *History*, Vol. 1, 193.

⁶³Al-Mubarakpuri, *al-Rahiq*, 312-313; Najeebabadi, *History*, Vol. 1, 196; Ahmad Hatta, *Great Story*, 368-370; Abu Mazaya, *Sirah*, 554.

of Sa'ad was not contrary to Article 42. It is submitted that the Messenger (s.a.w.) could not be a proper adjudicator in the dispute involving himself and Banū Qurayzah, and that the Messenger (s.a.w.) delegated the power of adjudication – with the consent of the other party to the dispute - to Sa'ad ibn Mu'adh to decide. The decision by Sa'ad was carried out, and this implementation shows the obedience to the Messenger (s.a.w.).

The scopes of Articles 23 and 42 were wide enough to cover not only judicial settlement. It is submitted that the provisions covered legislative authority as well. At the time when verses of the Qur'ān were being revealed, reference to Allāh in these two provisions would mean reference to the Qur'ān. Legal texts were revealed in order to address specific issues that occurred,⁶⁴ or in order to answer legal questions posed by the Companions and the non-Muslims.⁶⁵ The two provisions also provided for reference to the Messenger (s.a.w.) who could issue rulings or *fatāwā* on legal issues.

By the Constitution of Madīnah, the Messenger (s.a.w.) had the executive, judicial and legislative power in the State of Madīnah.⁶⁶ The Constitution did not provide for a separation of powers. All the powers were concentrated in the hands of the Messenger (s.a.w.), and he (s.a.w.) acted in all those capacities, so that he (s.a.w.) would be an example to every Muslim who holds power either as a member of the executive, as a *mufī*/legislator, or a judge. A Muslim head of State or head of government has to follow the conduct of the Messenger (s.a.w.) in governing and administering the State. A *mufī* or legislator - in issuing *fatāwā* or enacting statutes - has to follow the way the Messenger (s.a.w.) exercised *ijtihād*. A judge has to follow the precedent of the Messenger (s.a.w.) in conducting proceedings in court. It should be noted that the Messenger (s.a.w.) was infallible and never abused his power. In fact, there were instances when the Messenger (s.a.w.) welcomed civil and tort cases being brought against himself if he had done any wrong against any person.⁶⁷

⁶⁴Mohamad Akram Laldin, *Introduction*, 164-167; Bilal Philips, *Evolution*, 6-7.

⁶⁵Mohamad Akram Laldin, *Introduction*, 167-168; Bilal Philips, *Evolution*, 7.

⁶⁶Hamidullah, *First*, 18; Hamidullah, *The Prophet's*, 49.

⁶⁷Hamidullah, *First*, 19; Hamidullah, *The Prophet's*, 49.

A Muslim State that plans to draft a modern constitution based on the Constitution of Madīnah as an example should not place all powers in the hands of one person, because no one else is infallible. In addition, the constitution should establish limitations on the powers of the organs of the State to prevent abuse of power. For example, the Abbasid did not have a constitution, but, during the era of Caliph Hārūn al-Rashīd, who reigned from 786 to 809, they established the post of *Qādi al-Quḍāh* (Chief Justice), who was bestowed with the highest judicial authority.⁶⁸ The Ottomans had a constitution only in 1876, but during the reign of Sultan Murad II, who ruled from 1421 to 1451, they established the post of *Shaykh al-Islām* (the Grand *Muftī*), who issued *fatāwā*.⁶⁹ In these instances, the power of the Caliph or the Sultan was reduced to largely executive authority. Having a written constitution can provide a clear framework for defining and limiting the powers of the executive, the judiciary and the *muftī*/legislature.

Consultation

The Constitution of Madīnah was drafted after consultation with the people concerned.⁷⁰ This act was in line with verse 42:38, which praises individuals who conduct their affairs by mutual consent. Chapter 42 is a Makkan chapter, which means that the Chapter was revealed before the migration and thus before the drafting of the Constitution. Article 37(a) of the Constitution provided that there should be seeking of counsel and advice between the Jews and the Muslims in the matter of defence.⁷¹ The Messenger (s.a.w.) did practise consultation with the Anṣār and the other Companions, in many matters, including defence and treatment of prisoners of war.

⁶⁸Mohd Hisham Mohd Kamal, “An Islamic Perspective on the Rule of Law”, *IIUMLJ* 30, no. 2 (2022): 208.

⁶⁹Mohd Hisham, “The Rule of Law”, 208.

⁷⁰Hamidullah, *First*, 16; Hamidullah, *The Prophet's*, 24-25, 47 & 137-138.

⁷¹Constitution of Madīnah, Article 37(a) provided:

And verily the Jews shall bear their expenses (of war) and the Muslims shall bear their expenses. And verily they must help each other against anyone who fights the parties to this document. And verily between them there must be counsel and advice and righteousness without sin. ...

Goodness (*Ma'rūf*)

Goodness was enjoined repetitively in Articles 3-12 of the Constitution of Madīnah. There were already a few Makkan verses on enjoining good and forbidding evil, namely: verses 7:157⁷² and 31:17. For example, verse 31:17 reads:

(Luqmān said,) “O my dear son! Establish prayer, and encourage what is good and forbid what is evil, and endure patiently whatever befalls you. Verily this is a resolve to aspire to.

Anything that is good, right, or just is goodness. Enjoining good is goodness, and forbidding evil, wrong, or injustice is also goodness. For example, after the Messenger (s.a.w.) promised rewards in the Hereafter, ‘Uthmān ibn ‘Affān purchased a well in Madīnah and made it a *waqf* for the community.⁷³

Justice

Articles 3-11, 25-33, and 47 of the Constitution of Madīnah repetitively upheld justice and rejected injustice. In the Qur’ān, justice was commanded in many verses, including verse 16:90 that was revealed before the Messenger (s.a.w.) migrated to Madīnah and drafted the Constitution. The verse reads:

Allāh commands justice, the doing of good, and liberality of kith and kin, and He forbids all shameful deeds, evil and rebellion: He instructs you, so that you may receive admonition.

⁷²Qur’ān, 7:157:

(They are) the ones who follow the Messenger, the unlettered Prophet, whose description they find written in their Tawrah and the Injil. He commands them to do good and forbids them from evil, and permits for them what is good and forbids to them what is impure, and relieves them from their burdens and the shackles that bound them. Those who believe in him, honour him and support him, and follow the light sent down to him will be successful.

⁷³Sh. Omar Suleiman, *40 Hadiths on Social Justice: The Right to Water, Food, and Shelter* (Yaqeen Institute for Islamic Research), 4-5, <https://f.hubspotusercontent10.net/hubfs/4713562/40HadithLectureNote/s/40onSocialJustice-Week-8.pdf>. accessed April 2, 2024.

When verse 16:90 was revealed, it solidified the faith of ‘Uthmān ibn Maz‘ūn and increased his love for the Messenger (s.a.w.). ‘Uthmān was among the Muslims who migrated to Abyssinia in the first migration that happened in the 5th year of Prophethood.⁷⁴ So, verse 16:90 must have been a Makkan verse.

Justice means righteousness or fairness and involves equality and equity, whereas injustice means transgression or oppression.⁷⁵ For example, when a man accused his wife of committing adultery with another man, the Messenger (s.a.w.) said to the accuser, “Either you bring forth proof (i.e. four witnesses) or *ḥadd* punishment (of 80 lashes) will be inflicted on your back.”⁷⁶

Right to Life

The right to life was protected by Articles 3-11, 21, and 36 of the Constitution of Madīnah, which prescribed the law of *qiṣāṣ* and maintained the Arab custom of *diyāh*. The basis of these constitutional provisions was verse 17:33⁷⁷ that prohibits homicide and authorises the heir of a slain to demand *qiṣāṣ*. Chapter 17, of which verse 17:33 is part, is a Makkan chapter.

The killing of Ka‘ab ibn al-Ashraf was an execution ordered by the Messenger (s.a.w.) for the crimes of treason and blasphemy that Ka‘ab had committed, which Banū al-Naḍīr could not deny. These crimes, if not punished, might affect peace and inter-religious co-existence in Madīnah, destroy the *ummah*, and jeopardise the territorial integrity of the city-state. Here, the law of *qiṣāṣ* was not applicable.

⁷⁴Encyclopedia of the Companions, “Uthman bin Maz‘un (r.a.)”, *Questions on Islam*, <https://questionsonislam.com/article/uthman-bin-mazun-ra>, accessed July 26, 2025; Khalid, *Men around the Messenger*, 225.

⁷⁵Tufail Ahmad Qureshi, “Justice in Islam”, *Islamic Studies* 21, no. 2 (1982): 36-44.

⁷⁶Al-Bukhārī, *Ṣaḥīḥ*, *ḥadīth* no. 4747, <https://sunnah.com/>; Bilal Philips, *Evolution*, 6; Mohamad Akram Laldin, *Introduction*, 166.

⁷⁷Qur’ān, 17:33 in part:

... And do not kill any one whom Allāh has forbidden except for a just cause, and whoever is slaying unjustly, We have indeed given to his heir authority, so let him not exceed the just limits in slaying; surely, he is aided.

Equality

Article 16 of the Constitution of Madīnah provided that, “And verily to the Jews who follow us belongs help and equality....” If the view of Muhammad Hamidullah is accepted that Articles 1-23 of the Constitution of Madīnah were initially concluded between the Messenger (s.a.w.) and the Muslims, Article 16 - at that stage - applied to individual Jews who were together with the Arab tribes in accepting the authority of the Messenger (s.a.w.). Their numbers could be very small at that time, so they just joined the Arab tribes. Later, their numbers grew, and six Jewish groups from the Aws and Khazraj tribes represented themselves independently of the Arab tribes in accepting the authority of the Messenger (s.a.w.).

Verse 49:13 provides for the equality between the two sexes and between nations and tribes⁷⁸ may not be the basis for Article 16, because Chapter 49 was revealed only in the year 9H. There was no provision in the Constitution that specifically provided equality between the two sexes. The first verse revealed on the equality between the two sexes is verse 3:195, which provides:

So, their God has answered them, “Verily, I will not allow the work of any worker among you, whether male or female, to be lost: you are of one another. So, those who emigrated, and were evicted from their homes, and were harmed in My cause, and fought and were killed - I will surely write off from them their misdeeds, and I will surely admit them to gardens beneath which rivers flow as reward from Allāh, and Allāh has with Him the best reward.” (Emphasis added)

It has not yet come to light when this verse was revealed. A woman said that she had not heard the Qur’ān mentioned specifically about women emigrating. Subsequently, verse 3:195 was revealed,⁷⁹ promising rewards for men and women who, among other things, “emigrated” and “fought”, which means that the verse was revealed after the migration and after a battle. It should be noted that Nusaybah

⁷⁸Qur’ān, 49:13 in part:

O humankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, so that you may know each other. Verily, the most honoured of you in the sight of Allāh is (he who is) the most pious of you ...

⁷⁹As-Sayuthi, *Asbab*, 177-178; Zulkifli and Muhammad, *Asbabun Nuzul*, 190-191.

bint Ka'ab bravely fought to defend the Messenger (s.a.w.) from the enemies in the Battle of Uḥud⁸⁰ that happened in the year 3H. No female Companion fought at Badr, so verse 3:195 could have been revealed after the Battle of Uḥud. So, the verse could have been revealed after the drafting of the Constitution of Madīnah.

The verse on equality that could be the basis for Article 16 is verse 53:32 that reads:

Verily your God is ample in forgiveness. He knows you well when He creates you from dust, and when you are hidden in your mothers' wombs. Therefore, do not consider yourselves pure. He knows best as to who is pious.

Chapter 53 is a Makkan chapter. Verse 53:32 thereof reminds human beings not to consider themselves pure nor elevate themselves. Everyone is created from dust, so everyone is equal. During the time of the Messenger (s.a.w.), if a Jewish baby died, the Jews would say that the baby was among the truthful (*ṣiddīqīn*). When the Messenger (s.a.w.) knew this, he (s.a.w.) said, "The Jews lied, because no soul is created by Allāh in his mother's womb except that it is prescribed for him fortune or misfortune." Subsequently, verse 53:32 was revealed.⁸¹

It should be pointed out that Article 16 of the Constitution provided that the Jews were equal to the Muslims, and verse 53:32 was revealed following a claim by the Jews that they were more than equal.

Freedom of Religion

Article 25 of the Constitution of Madīnah prescribed for the Jews of Banū 'Awf, "... for the Jews their religion and for the faithful Muslims theirs". Articles 26-33 prescribed the same right to the other eight Jewish groups. These provisions guaranteed Jewish groups the right to remain in their Jewish religion and to practise it.

Verse 2:256, which provides, "Let there be no compulsion in religion ..." was not the basis of the provisions for the freedom of religion for the Jewish groups. The reason is that verse 2:256 was

⁸⁰Muhammad 'Ali Qutb, *Women around the Messenger*, trans. 'Abdur-Rafi 'Adewale Imam (International Islamic Publishing House, 2008), 184-186; al-Mubarakpuri, *al-Rahiq*, 267; Abu Mazaya, *Sirah*, 432-433 & 462-463; Najeebabadi, *History*, Vol. 1, 176.

⁸¹As-Sayuthi, *Asbab*, 707-708; Zulkifli and Muhammad, *Asbabun Nuzul*, 696.

revealed only after the Battle of Banū al-Naḍīr, which happened in year 4H. When the Jews of Banū al-Naḍīr were expelled from Madīnah - among them were many children of Anṣār, the people of Anṣār wanted to get the custody of their children and forced them to embrace Islam. Then Allāh revealed verse 2:256.⁸²

Revealed before the Migration were verses 10:99-100, which read:

And if it had been your God's will, they would all have believed – all who are on earth! Will you then compel humankind, against their will, to believe! (99).

No soul can believe, except by the will of Allāh, and He will place doubt on those who are unmindful. (100)

Verses 10:99-100 could serve as the basis for the provisions in the Constitution on freedom of religion for the Jews. Even the Judaized Arabs of Banū al-Naḍīr, who breached their treaty of peace with the Messenger (s.a.w.) and were not a party to the Constitution of Madīnah, could not be compelled to embrace Islam. Verse 2:256 reiterated verses 10:99-100.

THE CONSTITUTION OF MADĪNAH DID NOT CONTAIN ALL ISLAMIC CONSTITUTIONAL LEGAL PRINCIPLES

The Constitution of Madīnah did not contain all Islamic constitutional legal principles and all human rights, because at the time of its drafting, some principles had not yet been revealed. In other words, the divine bases were not available yet for the Messenger (s.a.w.) to include the principles therein. This fact shows that the Messenger (s.a.w.) did not say or do anything unless there was a divine basis. Thus, Muslim leaders should ensure that any policy they implement is in line with the *Sharī'ah*. For example, before expressing consent to an international human rights treaty and subsequently guaranteeing such rights in the constitution, Muslim leaders must ensure that the human rights

⁸²Al-Qurṭubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, Vol. 3, 182; al-Shawkānī, *Fath al-Qadīr*, Vol. 1, 304; Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, Vol. 1, 321; Abū Dāwūd, *Sunan, ḥadīth* no. 2682, <https://sunnah.com/>.

provisions are compatible with the *Sharī'ah*.⁸³

One example of Islamic constitutional legal principles that were not revealed yet at the time of the drafting of the Constitution of Madīnah is the equality between the two sexes, which has been discussed above. Other principles include *jizyah* on non-Muslim subjects, the prohibition of *ribā*, the right to property, freedom of expression and the rights of children. These principles were subsequently provided in the Qur'ān and recognised by the Messenger (s.a.w.). For example, *jizyah* is mentioned in verse 9:29.⁸⁴ The verse is part of verses 9:1-40, which were revealed in the month of Shawwal, year 9H. The Messenger (s.a.w.) was busy hosting deputations of people who wanted to embrace Islam, so he (s.a.w.) sent Abū Bakr al-Ṣiddīq to lead the pilgrimage. After the verses were revealed, the Messenger (s.a.w.) sent 'Alī ibn Abī Ṭālib to read out the verses to the pilgrims.⁸⁵ In the month of Dhū al-Ḥijjah, year 9H, a Christian delegation from Najrān visited the Messenger (s.a.w.) in Madīnah and accepted the obligation to pay *jizyah*.⁸⁶ So, the law of *jizyah* was revealed after the drafting of the Constitution of Madīnah.

The prohibition of *ribā* is also not prescribed in the Constitution of Madīnah. There is a Makkan verse, namely: verse 30:39,⁸⁷ that states

⁸³Mohd Hisham Mohd Kamal et al., “Harmonisation of Shari'ah and International Law in Treaty Making, Treaty Ratification and International Norm Creation”, *IIUM Law Journal* 32, no. 2 (2024): 39-48.

⁸⁴Qur'ān, 9:29:

Fight those who believe not in Allāh nor the Last Day, nor hold that forbidden which has been forbidden by Allāh and His Messenger, nor acknowledge the religion of truth, from among the People of the Book, until they pay *jizyah* with willing submission, and feel themselves subdued.

⁸⁵Abū 'Abd Allāh Muḥammad ibn Aḥmad al-Anṣārī al-Qurtubī, *al-Jāmi' li-Aḥkām al-Qur'ān* (Dār al-Kutub al-'Ilmiyyah, n.d., Vol. 8), 44; Najeebabadi, *History of Islam*, Vol. 1, 236; Abdullah Yusuf Ali, *The Meaning of the Holy Quran* (Amana Corporation, 1992), 435; al-Mubarakpuri, *al-Rahiq*, 426; Ahmad Hatta, *Great Story*, 532-533; Abu Mazaya, *Sirah*, 701-704.

⁸⁶Abu Mazaya, *Sirah*, 719-721; Najeebabadi, *History*, Vol. 1, 238-239; al-Mubarakpuri, *al-Rahiq*, 441-442; Ahmad Hatta, *Great Story*, 542-543.

⁸⁷Qur'ān, 30:39:

And whatever loans you give, (only) seeking interest at the expense of people's wealth will not increase with Allāh. But whatever charity you

that Allāh removes blessings from *ribā*, but the verse does not prohibit *ribā*.⁸⁸ *Ribā* is prohibited by verse 3:130,⁸⁹ which was revealed after the Battle of Uḥud,⁹⁰ which occurred after the drafting of the Constitution. The prohibition was reiterated by verses 2:275-279.⁹¹ Verses 2:278-279 were revealed following a dispute on a pre-Islamic *ribā* transaction between two (2) tribes of Makkah after the Messenger (s.a.w.) had gained control of the city in the year 8H.⁹² Although the prohibition of *ribā* is not prescribed in the Constitution of Madīnah, this fact cannot be used by modern Muslim States to justify failure to prohibit *ribā*. However, as the process to fully eliminate *ribā* is complex and risky, Muslim States may take time to gradually develop Islamic banking systems.

give, (only) seeking the pleasure of Allāh—it is they whose reward will be multiplied.

⁸⁸Abū ‘Abd Allāh Muḥammad ibn Aḥmad al-Anṣārī al-Qurtubī, *al-Jāmi‘ li-Aḥkām al-Qur‘ān* (Dār al-Kutub al-‘Ilmiyyah, n.d., Vol. 14), 25.

⁸⁹Qur‘ān, 3:130:

O you who believe! Do not consume interest, multiplying it many times over. And be mindful of Allāh, so you may prosper.

⁹⁰As-Sayuthi, *Asbab*, 155, 158 & 162; Abū ‘Abd Allāh Muḥammad ibn Aḥmad al-Anṣārī al-Qurtubī, *al-Jāmi‘ li-Aḥkām al-Qur‘ān* (Dār al-Kutub al-‘Ilmiyyah, n.d., Vol. 4), 130.

⁹¹Qur‘ān, 2:275-279:

Those who consume interest will not stand (on Judgement Day) except like those driven to madness by Satan’s touch. That is because they say, “Trade is no different than interest.” But Allāh has permitted trading and forbidden interest. Whoever—after having received warning from his God—refrains, he may keep previous gains, and his case is left to Allāh. And as for those who persist, they are the residents of the Fire. They will be there forever. (275)

Allāh has made interest fruitless and charity fruitful. And Allāh does not like any ungrateful evildoer. (276)

Verily, those who believe, do good, establish prayer, and pay alms-tax will receive their reward from their God, and there will be no fear for them, nor will they grieve. (277)

O you who believe! Be mindful of Allāh, and give up outstanding interest if you are (true) believers. (278)

If you do not, then beware of a war with Allāh and His Messenger! But if you repent, you may retain your principal—neither inflicting nor suffering harm. (279)

⁹²As-Sayuthi, *Asbab*, 125-126; Zulkifli and Muhammad, *Asbabun Nuzul*, 123-125; al-Qurtubī, *al-Jāmi‘*, Vol. 3, 234-235.

Modern Muslim States can prescribe all constitutional principles and guarantee human rights as contained in the Qur'ān and the *Sunnah*, notwithstanding that such principles were not explicitly provided in the Constitution of Madīnah, in their respective constitutions. The two-phase drafting of the Constitution of Madīnah shows that the process of developing a State constitution can be done gradually. For example, the constitutions of Muslim States may have guaranteed the right to life and personal liberty to everyone, and their penal laws may have prescribed punishments for the crimes of murder and kidnapping. This guarantee can be strengthened by providing in the constitution an explicit prohibition of enforced disappearance, safeguards for detainees, rights of the victims and their families, and the independent power of the court to hold State officials accountable, and by criminalising enforced disappearance as more heinous than kidnapping.⁹³

CONCLUSION

The Constitution of Madīnah was not the only document that the Messenger (s.a.w.) concluded with the peoples of Madīnah. In addition, there were treaties with Banū al-Naḍīr and Banū Qurayzah, and the document that was in the possession of 'Alī ibn Abī Ṭālib mentioned under the sub-topic "Drafting History of the Constitution of Madīnah" above.

Although the Constitution of Madīnah was the result of consultations with the concerned peoples, including non-Muslims, its legal principles remained based on the Qur'ān. Nothing in the Constitution of Madīnah was contrary to the general policy of Islam, and nothing therein was not in harmony with the life and mission of the Messenger (s.a.w.).⁹⁴

The Constitution of Madīnah embedded several fundamental Islamic constitutional principles, such as *ummah*, territorial integrity,

⁹³Mohd Hisham Mohd Kamal et al., *A Project to Study and Analyse the Compatibility of Malaysian Laws with The International Convention for The Protection of All Persons from Enforced Disappearance* (SUHAKAM, 2022), 21, 32-35 & 60.

⁹⁴Hamidullah, *First*, 39-40; Hamidullah, *The Prophet's*, 64.

jihād, obedience to the Messenger (s.a.w.), and consultation, as well as guaranteed several human rights. These principles were already revealed in the Qur'ān. These principles were general because the establishment of the State of Madīnah was still at its early stage, and not all legal texts of the Qur'ān had been revealed at that time.

Thus, modern Muslim States should not simply use the Constitution of Madīnah as a model constitution in drafting their respective constitutions. Otherwise, there will be principles in the Qur'ān that will not be included in the constitutions, and consequently, the countries will not be effectively and efficiently administered. In addition, all powers should not be placed in the hands of only one or a few persons, because no one other than the Messenger (s.a.w.) is infallible. Otherwise, abuse of power is most likely to occur.

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