

THE MADINAH CHARTER IN LIGHT OF A MODERN CONSTITUTION

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ABSTRACT

The impetus for writing this article came from the notion of Muhammad Hamidullah, a renowned twentieth-century Islamic scholar. He has described the Madinah Charter as the world's first written constitution. As the modern constitutions contain certain fundamental features embedded within them, such as the separation of powers, the rule of law, which includes the fundamental rights and liberties of the people, supremacy of the constitution, and custom of the country, this article examines the objectives and fundamental features of the Madinah Charter. The research methodology adopted in this article is a doctrinal analysis by referring to the Madinah Charter as discussed in the book by Hamidullah, *The Prophet's Establishing A State And His Succession*. From the objectives and fundamental features of the Madinah Charter, the article extracts some similarities between the objectives and fundamental features embedded in a modern constitution. This brings out the argument of whether the Madinah Charter can be recognised as the world's first written constitution despite not being categorised as a modern constitution.

Keywords: Madinah Charter, Modern Constitution, Separation of Powers, Rule of Law, Supremacy of the Constitution.

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PIAGAM MADINAH MENGIKUT KERANGKA SEBUAH PERLEMBAGAAN MODEN

ABSTRAK

Dorongan untuk menulis artikel ini datang daripada pernyataan Muhammad Hamidullah, seorang cendekiawan Islam terkenal abad kedua puluh yang telah menyifatkan Piagam Madinah sebagai perlembagaan bertulis pertama di dunia. Memandangkan perlembagaan moden mengandungi ciri-ciri asas tertentu seperti pengasingan kuasa, kedaulatan undang-undang yang merangkumi hak asasi dan kebebasan rakyat, perlembagaan sebagai undang-undang utama, dan adat dan tradisi sebuah negara, artikel ini mengkaji objektif dan ciri-ciri asas Piagam Madinah. Metodologi kajian yang digunakan di dalam artikel ini adalah analisis doktrin dengan merujuk kepada Piagam Madinah seperti yang dibincangkan oleh Hamidullah di dalam bukunya, *The Prophet's Establishing a State and His Succession*. Daripada objektif dan ciri-ciri asas Piagam Madinah, artikel ini mengekstrak persamaan objektif dan ciri-ciri asas yang terkandung di dalam perlembagaan moden. Ini membawa kepada persoalan sama ada Piagam Madinah boleh diiktiraf sebagai perlembagaan bertulis pertama di dunia walaupun tidak dikategorikan sebagai sebuah perlembagaan moden.

Kata kunci: Piagam Madinah, Perlembagaan moden, Pengasingan kuasa-kuasa, Peraturan undang-undang, Perlembagaan tertingi.

INTRODUCTION

The Madinah Charter (*Sahifah Madinah*) is one of the key documents in the Islamic history and life of Prophet Muhammad, PBUH.¹ Written in 622 A.D. or the first year of *Hijrah*, right after the two dominant tribes of Madinah, the 'Aws and the Khazraj invited and declared Prophet Muhammad, peace and blessings be upon him (PBUH) as the legitimate leader of the city-state. The Madinah Charter also came into existence more than a millennium before the constitution of the United States of America.²

¹ Muhammad Hamidullah, "The Prophet's Establishing A State and His Succession", (New Delhi: Adam Publishers & Distributors, 2007), 46-48.

² The U.S.A Constitution was written in the year 1787 whilst Madinah Charter was written in the year 622.

The Madinah Charter established a precedent for Muslims regarding the manner of interaction with other religious communities in mutually beneficial and respectful ways at a time when the rights of the minority were hardly given any political or social concern. In practice, the Charter laid down broad principles and guidelines for peaceful co-existence between the various religious communities in Madinah.³

The Charter was described as the world's first written constitution by Muhammad Hamidullah, a renowned twentieth-century Islamic scholar.⁴ It consisted of the duties and rights of the subjects of Madinah and was written after consultation with the Madinah community,⁵ which substantiated the meaning of a modern constitution as the manifestation of the will of the people on how they wanted to be governed.⁶ Seen differently, it was a code of conduct and administration to govern Madinah as a City-State.⁷ Therefore, the Charter could somehow be regarded as a constitution, owing to the fact that the will of the people of Madinah on how they wanted to be governed was manifested in this agreement.

A modern constitution operates on the principle that a government should not be free to do anything it wishes and is legally permitted to exercise its powers while being legally bound by the power and jurisdiction bestowed upon it by the constitution as a measure to protect the people.⁸ Such a setup represents the idea of limited government. The elements of separation of powers, the rule of law, and the protection of fundamental rights and liberties of the people are fundamentally incorporated into the concept of limited government.⁹

³ Ibid, 47.

⁴ Yetkin Yildirim (2009) "The Medina Charter: A Historical Case of Conflict Resolution, Islam and Christian-Muslim Relations", 20:4, 441.

⁵ Ibid, 47.

⁶ Wheare, K.C., *Modern Constitution*, (London: Oxford Publisher, 1982), 6.

⁷ Ibid, 47.

⁸ Wil Waluchow, "Constitutionalism", *The Stanford Encyclopedia of Philosophy* (Spring 2018 Edition), Edward N. Zalta (ed.), via <https://plato.stanford.edu/archives/spr2018/entries/constitutionalism/> (accessed 20 July, 2018).

⁹ Louis Henkin, "Constitutionalism, Democracy and Foreign Affairs", *Indiana Law Journal*, vol. 67, issue 4, article 1 (1992): 885-886

It is submitted that a modern constitution is built solidly upon its fundamental features, such as the elements of constitutionalism which comprise the elements mentioned earlier, as well as the constitution's supremacy and the country's custom. All these characteristics form the basic structures of a constitution.

The objective of this article is to study the Madinah Charter in light of the modern constitution. It is submitted that the fundamental features that can be extracted from the definitions and objectives of a constitution are as follows¹⁰:-

¹⁰ Aristotle, *Politics*, translated from Ancient Greek by B. Jowett (Cambridge: Hackett Publishing Company, 1998), 75.

Hans Kelsen, *The Justice Constitutionelle*, Paris, 1928. (Referred to by Luminita Dragne, "Emergence of the Constitution", *International Journal of Academic Research in Economics and Management Sciences*, Jan 2014, vol.3, no.1, 198).

Thomas Paine, "Definition of Constitution", 56-57 <https://books.google.com.my/books/about/Rights_of_Man.html?id=hghCAAAAcAAJ&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q=antecedent&f=false>

Robin West, "Thomas Paine's Constitution", 89 *Va. L. Rev.* 1413-1461 (2003), 1414, via <<http://scholarship.law.georgetown.edu/facpub/283/>>

Henry Saint John Bolingbroke, *Dissertation Upon Parties*, (London, 1735), Letter X.

Wheare, K.C., *Modern Constitution*, (London: Oxford University Press, 1966)

Ibid.

Jan-Erik Lane, *Constitutions and Political Theory*, (United Kingdom: Manchester University Press, 2011),

John Graham & Elder C. Marques, "Understanding Constitutions: A Roadmap for Communities", <<http://www.metisportals.ca/cons/wp-content/uploads/2009/02/understanding-constitutions.pdf>>

Mark Elliot, *The UK Constitution*, *The Cambridge Companion to Comparative Constitutional Law*, (Cambridge: Cambridge University Press, 2019).

Robert L. Maddex, *Constitutions of the World*, (Washington, D.C.: CQ Press, 2008), 470-472

Richard B. Morris, *The Framing of the Federal Constitution* (Washington, D.C: Division of Publications, National Park Service, U.S. Department of the Interior, 1986), 80-81.

- (1) to form a limited government by adopting the doctrine of separation of powers in order to obtain stability and harmonious social order;
- (2) establishing a sovereign government to uphold the rule of law;
- (3) to protect the fundamental rights and liberties of the people via the rule of law;
- (4) to start a fresh by placing the constitution as the supreme and the highest law of the land; and
- (5) to preserve the elements of the custom of the country.¹¹

Horst Dippel, *Modern Constitutionalism*, (New York: Cornell University Press, 2002), 2.

Charles Howard McIlwain, *Constitutionalism: Ancient & Modern*, (Indianapolis: Liberty Fund Press, 2008), 21.

David Fellman, *Constitutionalism*, (New York: Alphascript Publishing, 1973), 491-492.

Eric Barendt, "Separation of Powers and Constitutional Government", *Public Law*, (1995): 601.

Richard Bellamy, "The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy", *Political Studies*, (1996): 437.

William B. Gwyn, *The Meaning of the Separation of Powers: An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution*, (New Orleans: Tulane University Press, 1965), 60.

Dicey, A.V., *An Introduction to the Study of Law of the Constitution*, (London: Macmillan, 1915), xcvi.

Maru Bazezew, "Constitutionalism", *Mizan Law Review*, vol. 3, no. 2 (2009): 364.

¹¹ Merriam Webster Dictionary, <<https://www.merriam-webster.com/dictionary/doctrine>> (accessed 20 June, 2019).

Duhaime Law Dictionary, <<http://www.duhaime.org/LegalDictionary/C/Constitution.aspx>> (accessed 20 June, 2019).

Lexico Dictionary, <<https://www.lexico.com/definition/constitution>>

Cambridge Dictionary, <

<https://dictionary.cambridge.org/dictionary/english/constitution>>

Macmillan Dictionary, <

<https://www.macmillandictionary.com/dictionary/british/constitution>>

In doing so, this article is divided into four parts. Part One begins with a discussion on the objectives of the establishment of the Madinah Charter by Prophet Muhammad PBUH. Part Two proceeds to look into the Charter's fundamental features. Part Three scrutinises the Charter's significance to the history of mankind. Part four examines similarities between fundamental features of the Charter and modern constitutions. This part is pivotal because it establishes the notion that the Charter pioneered certain essential elements embedded in modern constitutions, and these elements subsequently became the foundation of modern constitutions.

The authors begin the article with Part One on the objectives of Prophet Muhammad PBUH in establishing the Madinah Charter.

OBJECTIVES OF THE MADINAH CHARTER

Based on the origin of the Madinah Charter,¹² it is submitted that the Charter was established with two main objectives. First, for Prophet Muhammad PBUH to create a sovereign nation that allowed Islam to flourish and later spread to other countries. During the early days of Islam, oppressive and unjust nations such as Makkah (Mecca) would impede the growth of the new religion. The visionary Prophet Muhammad PBUH saw the opportunity to establish a nation based on Islam when the people of Madinah came to Makkah during the Hajj season and requested the Noble Messenger to become their leader in Madinah.¹³

Using the Madinah Charter as a foundational document, the city-state of Madinah, under the leadership of the Prophet, has been portrayed as an excellent example of the Islamic government of a nation.¹⁴ Provisions of the Charter subtly portrayed the beauty of Islam, which demonstrated itself as a tolerant religion with excellent economic and social governance with Prophet Muhammad PBUH at the helm. The freedom for the Jews to practise their religion as granted in the Charter attested to this fact. Additionally, in terms of the

¹² Ibid, 22-62.

¹³ Ibid, 22-62.

¹⁴ Haza Hanurhaza Md Jani, Nor Zalina Harun, Mazlina Mansor, Ismawi Zen, "A Review On the Medina Charter In Response to the Heterogenous Society in Malaysia", *Proceda Environmental Sciences* 28 (2015): 93.

economy, the Prophet prohibited the practices of unjust transactions to prevent oppression and protect the interests of the society.¹⁵

In line with the Quranic provision, verse 58 in Surah *An-Nisa*, the Noble Messenger of Allah portrayed the principle of justice in governing Madinah via the Madinah Charter:

"Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing".¹⁶

The Charter's second objective was to provide a new beginning for a nation that was heavily embroiled in past internal strife. This was accomplished by regulating the warring tribes of Madinah. During the pre-Islamic period, the Arab inhabitants of Madinah were divided into 12 tribes dominated by the 'Aws and Khazraj, who were pagans worshipping Manat, the chief goddess of Makkah. Of the ten Jewish tribes, the Bani Qurayza, Bani al-Nadir and Bani Qaynuqa were the most dominant, and approximately half of the Madinah residents comprised of Jews. Having been expelled from Palestine by the Roman Emperor Hadrian, most fleeing Jews made their way from Judea to Madinah. These tribes had always been fighting each other for generations, while some, regardless of religion, sought superiority and dominance over others via military means. A long history of aggression aggravated such hostilities, resulting in high numbers of prisoners of war, in addition to contentious blood money claims.¹⁷

Therefore, the Madinah Charter was drawn up by the Prophet in an attempt to resolve the conflict by extinguishing the fire of enmity between the warring tribes. Prophet Muhammad PBUH made them one community with a common goal and aspiration, effectively tackling this major problem.¹⁸

On the other hand, the framers of a modern constitution strive to achieve several objectives which are mostly interrelated. A government

¹⁵ Azyati Azhani Mohd Marzuki, Wan Kamal Mujani, Azmi Aziz, Ermy Azziaty Rozali, "Application of the Wasatiyah Concept to the Formation of the Medina Charter", *International Journal of West Asian Studies* Vol. 5 No. 2 (1-15) (2013), 6.

¹⁶ *An-Nisa*: 58.

¹⁷ *Ibid*, 440.

¹⁸ *Ibid*, 47-49.

should have only limited power. This idea formed the basis of most modern constitutions.¹⁹ Within a constitution, such rules and regulations are necessary to provide a check and balance for the government.²⁰ In a given people-led system, the constitution is usually seen as a mechanism to restrict the power of government branches.²¹

Under the separation of powers, a modern constitution establishes a limited government whereby individual scope and jurisdiction are provided to the branches of the government, such as the executive, the judiciary and the legislature.²²

There is also a need to understand the effect of limited government as opposed to the concept of absolute government, apart from the principle of limited government. Absolute government is a form of government in which a single person, usually a king or queen, holds absolute, autocratic power.

Modern Constitution theory develops the limited government principles of separation of powers and promulgates the rule of law theory. Briefly, separation of powers indicates there must not be overlapping of powers, membership and institutions among these branches of the government.

Meanwhile, the rule of law is a basic concept that aims at preserving and protecting the people's fundamental rights, avoiding abuse of powers and promoting equality and equitable principles.

Madinah Charter can be taken as a model for limited government, although separation of powers may not be the outstanding element in the Charter. Madinah Charter does not exactly provide for a total separation of powers, but the values that the Charter introduced was a doctrine of limited powers (of branches of the government). In addition, it is obvious in its provisions that Madinah Charter is a Bill

¹⁹ Elliot Bulmer, *What is Constitution? Principles and Concepts*, International IDEA Constitution-Building (Stockholm: International IDEA, 2011), 13.

²⁰ Ibid, 7.

²¹ John Graham & Elder C. Marques, "Understanding Constitutions: A Roadmap for Communities", <<http://www.metisportals.ca/cons/wp-content/uploads/2009/02/understanding-constitutions.pdf>>(accessed 9 October, 2019).

²² Ibid, 10.

of Rights for all Madinah inhabitants, disregarding their origins, race, tribes or religion.

A limited government cannot arbitrarily encroach on the fundamental rights and liberties of the people.²³

A nation's constitution thus guarantees the fundamental rights and liberties of the people. As a subject of the constitution, the government cannot encroach on these rights and liberties. Thus, the constitution prevents the government from interfering with individual rights and liberties while at the same time acting as a shield against such interference.²⁴ This objective stands upon the principle of the rule of law, where nobody is above the law. No one, not even the government, has the power to act beyond the power given by the constitution since the constitution is the supreme law of the land.

The concept of fundamental rights and liberties has an indivisible and intrinsic relationship with the rule of law. The subjects of a constitution under the rule of law of limited government (unlike the absolute government) must be guaranteed their fundamental rights. In this concept, the constitution imposes a limitation upon the executive, the legislature and judiciary branches' powers. All branches become powerful observers and protectors of the rights of the people for a free and democratic life. This will ensure that each and every branch of the government does not transgress the limitation imposed upon them.

Under the absolute government, the ruler was the face of justice, and as such, he could make, remake, suspend or even break the law. His position as a ruler is not under but above the law. The ruler can even discard the fundamental rights of the people under his territory. The history of humankind is one of the reasons why fundamental rights are guaranteed and protected for the subjects of a constitution. It shows a clear transition from Absolutist to a democratic government which upholds the rule of law.

In addition, it must always adhere to the principle embodied in the constitution.

²³ Ibid, 8.

²⁴ Ibid, 13.

By placing the constitution as the supreme law of the land, nations began to look to the constitution as a way of establishing the need to start afresh once they accepted the notions of limited government controlled by a constitution. This is where nations began drawing up the governance principles on how they wanted to be governed. Due to events that have taken place in the history of a country, societies may desire a fresh start in certain circumstances.²⁵ Instances such as the handing over of colonies back to their indigenous people or when a war is won against colonisers are situations where the inhabitants would call for a constitution. The United States of America (U.S.A) as a nation was established with the notion to form a country which is free from the shackles of the British Crown and lift the people as true sovereigns of the nation in 1787. Besides the desire to begin afresh, most importantly, the wish to establish a government free from the clutches of their colonisers is a primary motive. This notion of independence is crucial in building a free nation and upholding the rule of law. A society that has been led by the experience of being colonised would have the desire to have its own sovereign government and a constitution that aptly forms the basis of that government.²⁶

The values that the society holds dear based on their customs or the nation's historical development are usually reflected in a modern constitution.²⁷ The constitution would preserve custom which has been in existence within the community for a long time. Such values are very important in governing society; hence it has to be part of the constitution. In the African continent, the preamble of the Swaziland constitution states that it is necessary to blend customary institutions with those of democratic society.

In South America, Peru, for instance, provides guarantees to the autonomous organisation of indigenous communities the right to autonomy and self-government.

In North America, recognition of customary law in the constitution of Canada reflects the element of custom in a constitution. Aboriginal rights are broadly recognised in the Canadian constitution rather than providing detail as to what those rights are. It reaffirms all

²⁵ Ibid, 6.

²⁶ Ibid, 12

²⁷ Ibid, 13.

existing aboriginal and treaty rights and preserves such rights, including land claims.²⁸

Many similarities can be observed between the objectives of the Madinah Charter as established by Prophet Muhammad PBUH and that of the modern constitution. This article continues with Part Two, which looks into the fundamental features of the Madinah Charter.

FUNDAMENTAL FEATURES OF THE MADINAH CHARTER

The 47 clauses of the Madinah Charter largely focused on handling the relationship between the tribes, or *kabilah* in Madinah. Most of these tribes at that time had grown tired of the incessant inter-tribe wars that had begun long before the arrival of the Prophet to Madinah. However, during that time, the city lacked a leader who was agreed upon and chosen by most of the people. Owing to Prophet Muhammad PBUH's reputation and stature in Makkah, he was appointed and accepted as Madinah's leader. Acting as a central figure, the Prophet stood as a leader who was able to mediate among the tribes.²⁹

It is important to note that the establishment of the Charter had completely changed the condition of Madinah. A city steeped in the religious, cultural and social order was once rife with warring tribes. The tribes reached a mutual understanding to be bound by the same fundamental law which formed the basis for all inhabitants.³⁰ In other words, a heterogeneous society in Madinah was united by the contents of the Madinah Charter.³¹

Several fundamental features can be extracted from the contents of the Madinah Charter, namely the religious, political, social,

²⁸ Constitution of the Kingdom of Swaziland Act 2005. Constitution of Peru 1993, Article 89. Constitution of Canada 1982, Article 35.

²⁹ Yetkin Yildirim (2009) "The Medina Charter: A Historical Case of Conflict Resolution, Islam and Christian-Muslim Relations", 20:4, 442.

³⁰ Farhat Naz Rahman, 201.

³¹ Heterogenous according to Merriam-Webster Dictionary is diverse. Hence a heterogenous society means "a diverse society which consist of people from different religion, ethnicity or culture".

customary, legal, defence, and economic features, as well as the position of the Jews in the social order of Madinah.³²

Article 1 of the Charter indicates its political feature via the position of Prophet Muhammad PBUH as the political leader of Madinah and society's recognition of him as their leader.

The said Article states:

"This is a document from Muhammad the Prophet PBUH, governing relations between the Muslims among the Quraysh and the people of Yathrib and those who may be under them and fought wars alongside them".

This article serves as proof of Prophet Muhammad's PBUH political leadership of Madinah by the major of the population.³³

Two provisions, namely Article 23 and Article 42, prescribed Prophet Muhammad's PBUH authority as the leader. It was stated in Article 23 that:

"Whenever you differ regarding anything, the matter shall be referred to Allah and Muhammad".

Article 42 conferred similar authority upon Prophet Muhammad PBUH, which states:

"Whenever there is a dispute or controversy between the people of this document from which trouble is feared, the matter is to be referred to Allah and His Messenger Muhammad PBUH. Allah will be with whomever righteously acts upon the fulfilment and goodness of this document".

These provisions showed that Prophet Muhammad PBUH was regarded as the highest leader, and all must be subjected to his decisions. As clearly reflected in Article 23 of the Madinah Charter, Prophet Muhammad PBUH served as the arbitrator and mediator in quarrels or dissatisfaction. As an impartial outsider, through his leadership, the Prophet was able to arbitrate effectively.³⁴

³² Ibid 5-7.

³³ Ibid 5-7..

³⁴ Ibid, 442.

As the messenger of Allah, receiving guidance and direct instruction from Allah, he could settle disputes in the best way.³⁵ This is clearly stated in the Quran in Surah *an-Nisa'* verse 59:

"O you who have believed, obey Allah and obey the messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger if you should believe in Allah and the Last Day. That is the best [way] and best in result".³⁶

The Madinah Charter also incorporated the customs of the people, which is considered an important feature of the Charter. These customs were included as a sign of acknowledgement of such traditions. As the leader of Madinah, the Prophet Muhammad PBUH did not replace customs embodied in the community's system with a new practice alien to the people. One example of a custom that remained in the Madinah Charter is the payment of blood money.³⁷ It is prescribed in Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 21 of the Charter.

In the history of the world and where the feature of religion and religious freedom is concerned, the Madinah Charter is possibly the first recorded constitutional document to confer rights regarding the practice of various religions within a state. For example, Article 25 of the Charter gave the Jewish freedom to practice their religion. Most importantly, the same Article assured the society of Madinah of such freedom. This is considered one of the remarkable steps undertaken by the Prophet, which has resulted in the inhabitants of Madinah, who had previously lived with hatred and animosity, being united.³⁸ As stated in Article 25:

"And the Jews of Bani 'Awf are regarded as one community with the believers. The Jews have their religion, and the Muslims have theirs. This also applies to their clients and themselves. Whomever is guilty of oppression or sin will only wrong themselves and their families".

The Madinah Charter also contained social features besides customs and religious matters. The inhabitants were integrated by Prophet

³⁵ Ibid, 12.

³⁶ An-Nisa': 59.

³⁷ Ibid, 8.

³⁸ Ibid, 8.

Muhammad PBUH as one unit and not as separate, independent entities.³⁹ This was stated in Article 2 of the Charter:

"They are a people (Ummah) as distinguished from the rest of mankind".

One *ummah* with the same responsibility towards the country regardless of their religion or ethnicity can aptly be applied to describe the inhabitants of Madinah.⁴⁰ Thus, by integrating the inhabitants under common responsibilities, the Charter promoted unity and prevented internal animosity. Article 13 of the Charter also exhibited some other social features. It states that:

"Pious believers whom fear Allah shall oppose the rebellious elements and those that attempts to acquire anything by force or guilty of sin or enmity or corruption among believers. If anyone is guilty of any such act, all the believers will raise their hands against him even if he is the son of any one of them".

The bond between the tribes in Madinah, who were previously at war with each other, was further strengthened by Article 13, which reflected the importance of unity of the *ummah* against any injustice or enmity among them.⁴¹

The Charter also possessed certain legal features in which rules and regulations were laid out for society to follow. As drafted by Prophet Muhammad PBUH, the Charter generally applied Islamic laws. However, non-Muslims were allowed to practice their own family law and customs.⁴²

Economic fairness was another fundamental feature of the Charter. Filled with unjust practices, unfair practices were already in existence before Prophet Muhammad PBUH established the city-state. By virtue of the Charter, the Prophet PBUH immediately prohibited transactions which involved *riba'* (interest). Wealth was also divided

³⁹ Yusri Mohd Ramli & Tg. Ghani Tg. Jusoh, "Najib Razak's 1Malaysia and Charter of Medina's One Ummah: Comparative Perspective", *International Journal of Business and Social Science*, vol. 3, no. 2, (2012): 98.

⁴⁰ Ibid, 98.

⁴¹ Ibid, 440.

⁴² Ibid, 6-8.

among the people to avoid concentration among the well-off. This move was essential to reduce the gap between the wealthy and the poor, failing which equality, peace and prosperity of the people would not be achieved.⁴³

Next, the Madinah Charter protected national security, which can be considered a critical defence feature.⁴⁴ As clearly stated in Article 44, it was demanded on the inhabitants of Madinah to defend the city from external threats:

"They (the parties to this pact) shall undertake to aid each other against whomever attacks Yathrib".

This obligation was imposed, regardless of whether they were Muslims or non-Muslims, as they were already constituted as one *ummah*.⁴⁵

In a different provision, the Charter acknowledged the position of the Jews. This may be considered another important feature of the Charter. The Jews, who accounted for most of the non-Muslim population in Madinah, had been guaranteed their safety and security as long as they abide by the conditions and requirements of the Charter.⁴⁶ It is important to note that the Charter did not oppress non-Muslims both socially and in religious matters. This led the Jews to follow the Madinah Charter, which resulted in the reduction of internal strife between Muslims and non-Muslims.⁴⁷ Article 47 of the Charter guaranteed the safety and security of the non-Muslims as follows:

"This document will not protect an unjust man or a violator of pledge. He who goes out is secure and who stays in Medina is safe, except he who acts unjustly or in violation of the pledge. Allah is the Protector of him who is righteous and God-fearing".

⁴³ Ibid, 6-8.

⁴⁴ Ermy Azziaty Rozali, Lukman Ibrahim, Md Yazid Ahmad, Izziah Suryani Mat Resad, AzmulFahimi Kamaruzaman and EzadAzraaiJamsari, "Rasulullah's (PBUH) Administration: Model Of Good Governance", *International Journal of Advanced Research*, 8(10), (2020), 1201.

⁴⁵ Ibid, 7.

⁴⁶ Ibid, 7.

⁴⁷ Ibid, 96-97.

While Article 47 provided for the safety and security of those who abide by the Charter, this guarantee excluded those who commit oppression and violated the provision of the Charter. Article 47:

“This document will not protect an unjust man or a violator of pledge. He who goes out is secure and who stays in Medina is safe, except he who acts unjustly or in violation of the pledge. Allah is the Protector of him who is righteous and God-fearing”.

As a comparison, fundamental features of a modern constitution include:-

- (1) to form a limited government by adopting the doctrine of separation of powers in order to obtain stability and harmonious social order;
- (2) establishing a sovereign government to uphold the rule of law and protect the fundamental rights and liberties of the people;
- (3) to start afresh by placing the constitution as the supreme and the highest law of the land and
- (4) to preserve the element of the custom of the country.

Based on the above discussion, it is submitted that similarities can be extracted from both the fundamental features of the Madinah Charter and the modern constitutions. Next, the article scrutinises the significance of the Charter to the history of mankind before examining the similarities of the Charter to the modern constitutions.

SIGNIFICANCE OF THE MADINAH CHARTER

A region mired in and seeking to reduce such conflict requires a clear and wise vision.⁴⁸ A magnificent document called the Madinah Charter established social and legal order within the region, which focused on communal action based on the law to achieve justice and emphasised the importance of avoiding armed conflict. The Madinah Charter as a tool for conflict resolution was of apparent significance during its time.⁴⁹ By serving as the third-party mediator among the tribes, Prophet

⁴⁸ Ibid, 198.

⁴⁹ Ibid, 441.

Muhammad PBUH had set the first example of legally mandated conflict resolution in Muslim history.⁵⁰

Article 2 of the Charter enumerated the idea of one community, which was a step in the right direction toward resolving the conflict among the tribes in Madinah.⁵¹ The act of creating a new tribe out of persons from diverse backgrounds was indeed a revolutionary move taken by the Prophet.⁵² This could be considered the first step towards the idea of nationality, where people from different races and religions adhere to the entity founded on the identity of ideology.⁵³

Prophet Muhammad PBUH then prohibited any separate agreement from being made with the enemy of Islam to avoid further internal friction among Muslims.⁵⁴ This was enumerated in Article 17:

"The peace of the believers (of the State of Madinah) is whole and cannot be divided (a part of the population cannot be at war with the outsiders while a part is at peace). No separate peace will be made by anyone in Madinah when believers are fighting in the path of Allah, unless it (this peace) is the same and equally binding on all".

The Madinah Charter also prohibited the act of arbitrarily killing. This was reflected by heavy punishment, namely retaliation (*qisas*) that awaits the killer as stated in Article 21:

"If any non-believer kills a believer without good cause, he shall be killed in return unless the next of kin are satisfied (with blood money). All the believers are united against him and it is not permissible for them not to act against him".

These provisions in the Madinah Charter had helped extinguish the conflict between the tribes that had existed for years before the advent of Islam to Madinah, which then opened up a new trajectory for the city-state to prosper, leaving behind its dark past.⁵⁵

Interestingly, the philosophy of peace-making embedded in the Charter exists not for one particular place and a moment; instead, its

⁵⁰ Ibid.

⁵¹ Ibid, 55.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid, 9.

⁵⁵ Ibid, 11.

practical and timeless significance applies to the whole world.⁵⁶ In the present era, globalisation has expanded the extent of conflict worldwide. Variations of philosophical, religious and cultural backgrounds have contributed to modern conflicts.⁵⁷ In other words, the issues which raised the conflicts in the present times are similar to that of the Madinah time, whereby Prophet Muhammad PBUH had provided an example of how to deal with such conflicts.⁵⁸ This can be seen in the provision of the Charter, which offered approaches to conflict resolution involving groups professing different religions and cultures.

In short, Prophet Muhammad PBUH established the Charter with great wisdom and provided a continuous solution towards overcoming existing conflict.⁵⁹ The Charter has shown ways to build and establish political and social interaction and can be considered an excellent model of generating dialogue in a diverse society.⁶⁰ The Charter would be an important example that must be discussed and referred to in the demographic of the current conflict. Although the Modern Constitution comes with the fundamental features such as the separation of powers, rule of law and supremacy of constitution, yet the internal conflicts in a country and the external conflicts among the countries still exist and it seems like there is no solution to solve the conflicts. During Prophet's Muhammad (PBUH) time, the Madinah Charter manages to solve the conflicts among the people of Madinah. As such, the Madinah Charter could be an important example to be discussed as a reference to solve the current conflict of the people in the world.

Currently, in India, Muslims (minority) are being oppressed by the government.

The Madinah Charter had several other significance besides being a tool for conflict resolution, including the practical application

⁵⁶ Ibid, 200-201.

⁵⁷ Ibid, 109.

⁵⁸ Ibid, 115-116.

⁵⁹ Ibid, 200.

⁶⁰ Ibid., 201.

of Islamic principles within a multi-cultural society.⁶¹ The Islamic principles generally practised by Prophet Muhammad PBUH did not contradict the custom and culture of people of different faiths in Madinah.⁶² The Prophet allowed the community to practise their own religion. This proof that the Charter allows the freedom of religion. As mentioned in the Quran Surah al-Baqarah verse 256:

“Let there be no compulsion in religion”.

This led to the acceptance of the Charter as the foundational document and Prophet Muhammad PBUH as the central authority.⁶³

The Madinah Charter addressed a combination of ritual and worldly rules and regulations. Although the Madinah Charter addressed the combination of ritual and worldly rules and regulations, it has similarities with the fundamental features of the Modern Constitution. This is because it was drafted by Prophet Muhammad PBUH based on the revelations (*wahy*) from Allah S.W.T.⁶⁴ Hence, it is clear that this document possesses certain apparent and hidden wisdom.

In Islam, the economy has its own principles, such as the prohibition of *Riba'*. For example, the economic aspect of the Madinah society also recovered thanks to the Madinah Charter⁶⁵, which upholds the main principle of Islamic economy, namely to be just when conducting a business transaction⁶⁶ The Prophet PBUH prohibited the collection of *riba'* (interest), which before the arrival of Islam was the usual business practice. *Riba'* by its nature, contains the element of unjust transaction and oppression towards the contracting parties. Hence it was disallowed and put out of practice, resulting in improving people's unity and preventing dissatisfaction.⁶⁷

⁶¹ Kassim Ahmad, “A short Note on Madinah Charter”, via http://kassimahmad.blogspot.com/2013/04/the-madina-charter_24.html (accessed 15 September, 2020).

⁶² Ibid, 11.

⁶³ Ibid, 99.

⁶⁴ Ibid, 11.

⁶⁵ Ibid, 12.

⁶⁶ Ibid, 12.

⁶⁷ Ibid, 12.

The existence of positive values within Madinah's inhabitants formed another significance of the Charter. The brotherhood among the people regardless of their races/religions under the concept of one ummah. Prophet Muhammad PBUH succeeded in establishing a community of brotherhood with equal rights and responsibilities through the concept of one *ummah*.⁶⁸ By enabling such cooperation, Prophet Muhammad PBUH could also integrate the Ansar and Muhajirin for the benefit of the city of Madinah and Islam. The combination was intended to extinguish the feeling of *assobiyah* (spirit of kinship) between them and to let the spirit of Islam flourish.⁶⁹ Assobiyah refers to the feeling that one's tribe (or any other social solidarity or grouping – the clan, nation, region, ethnicity, race, etc.) is superior to another or to all others, and the priority is given to their own group. It is the opposite of the concept of one ummah, as mentioned above.

Brotherhood through the concept of one ummah will also create stability and harmonious social order, which is the ultimate goal of a nation.

This corresponded to the notion that there is nothing that sets apart a Muslim from another except their level of piety, as mentioned in the Quran in Surah *al-Hujurat*, verse 13:

"O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted".

The Madinah Charter had created the opportunity to show that Islamic laws are applicable and suitable to be implemented in a diverse society.⁷⁰ Hence, it became the foundation for introducing the Islamic concept of governance.⁷¹ Islamic laws were implemented in Madinah to provide justice to non-Muslims and Muslims.⁷² Wrongdoers were judged and punished according to the rulings in the Quran.

⁶⁸ Ibid, 97-99.

⁶⁹ Zaleha Embong, "Conflict Management in the Constitution of Medina: An Analysis", *International Journal of Academic Research in Business & Social Sciences* vol. 8, no. 12 (2018), 401.

⁷⁰ Ibid, 97.

⁷¹ Ibid, 47.

⁷² Ibid.

All matters of differing opinions regarding anything, disputes or controversy between the people in Madinah shall be referred to Allah and Prophet Muhammad (PBUH). Although Prophet Muhammad (PUH) could decide on his own, yet he consulted his people and did not practice as an absolutist leader. Prophet Muhammad (PBUH) applied the principle of shura to resolve matters which are not mentioned in detail in the Quran. This can be implied that Prophet Muhammad (PBUH) was practising the separation of powers and not using his veto power to obtain a decision. Prophet Muhammad PBUH had also laid down the principle of *syura* (consultative decision) to resolve matters which had not been mentioned in detail in the Quran, though, in certain situations, the Prophet Muhammad PBUH would abide by the revealed solutions of the Quran by Allah S.W.T. without the need for *syura*.⁷³

Having discussed the objectives, fundamental features and significance of the Madinah Charter in Parts One, Two and Three, the article proceeds to Part Four to examine similarities between the Madinah Charter and the modern constitution.

THE MADINAH CHARTER'S SIMILARITIES TO THE MODERN CONSTITUTION

As already discussed, a significant event in the history of Islamic civilisation was the establishment of the Madinah Charter, which propelled Madinah to become the first successful Muslim nation. As discussed in Part Two, compared to the modern constitution, the contents of the Madinah Charter apparently possessed similarities to the former in terms of certain fundamental features such as constitutionalism, the supremacy of the constitution, and custom.

Although the Madinah Charter may not strictly adhere to the elements of constitutionalism and supremacy of the constitution as described in modern constitutions, it could be argued that similarities still exist between the two principles. There are provisions protecting the people's rights in both the Madinah Charter and Modern Constitutions, e.g. Article 31 of the Madinah Charter states :

⁷³ Ibid, 12.

“The Jews of Bani Tha'laba shall possess the same rights as the Jews of Bani 'Awf. Whomever is guilty of oppression and sin will only wrong themselves and their families”.

The Charter and the modern constitution point toward establishing a limited government to protect the people's rights; hence this is not a far-fetched conclusion.

Constitutionalism is the first fundamental feature of the modern constitution. The elements of separation of powers and the rule of law propagate the idea of limited government, giving rise to the concept of constitutionalism.⁷⁴ It may also be suggested that the elements of the separation of powers and the rule of law existed within the Madinah Charter. However, the Charter differs from the structure of the modern constitution, which provides a clear separation between the three branches of government. For example, although the authority of the Prophet Muhammad PBUH appeared to dominate all spheres of government, the reliance on the *Syura* in making executive decisions as well as references made to the revelation of Allah when making judicial decisions and legislating laws could be regarded as a form of judicial and legislative powers that the Prophet Muhammad PBUH exercised with caution and not based on his own whims and fancies.⁷⁵

Two general principles guide the elements of the rule of law; namely, there must be rules, and such rules must be capable of being followed.⁷⁶ The rules and regulations within the Madinah Charter pointed toward the existence of these elements of the rule of law. Most of the Articles in the Madinah Charter contain rules that are capable of being followed.

When discussing the element of the rule of law, one of the significant features of the modern constitution, which are closely related to it, is fundamental rights and liberties. The modern constitution possesses these features.⁷⁷ Article 25 of the Charter also contained a similar feature, in which the following is stated:

⁷⁴ Ibid, 885-886.

⁷⁵ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Second Revised Edition (Kuala Lumpur: Ilmiah Publisher, 2000), 52.

⁷⁶ Margaret Jane Radin, “Reconsidering the Rule of Law”, *Boston University Law Review*, vol. 69, no.4 (1989): 785.

⁷⁷ Ibid, 80-81.

"And the Jews of Bani 'Awf are regarded as one community with the believers. The Jews have their religion and the Muslims have theirs. This also applies to their clients and themselves. Whomever is guilty of oppression or sin will only wrong themselves and their families".

The Madinah Charter allowed non-Muslims, under this article, to practise their religion. This indicates that the Charter had long recognised equality, justice and the protection of religion, life, intellect, dignity and property, which also meant the protection of fundamental rights and liberties, all of which are featured in any modern constitution. Thus, it could be argued that the Madinah Charter indeed had some essential traits of a modern constitutional document. Interestingly, western civilisation has always claimed to be the proponents of human rights via the existence of fundamental rights and liberties granted in the Magna Carta.⁷⁸ However, provisions of the Madinah Charter indicated otherwise. Freedom of religion had existed in the Charter 593 years before it was introduced within the western civilisation.

Minority ethnicity was also recognised by the Charter, evident from the instance where Prophet Muhammad PBUH acknowledged the rights of minority tribes as provided in Article 35 of the Charter, which states:

"The nomadic allies of the Jews will be given the same treatment as the Jews".

Even the sub-branches of the tribe were explicitly recognised by Prophet Muhammad PBUH as embodied in the Madinah Charter.

⁷⁸ The Magna Carta according to Encyclopedia Britannica is a document guaranteeing English political liberties that was signed by King John on 15 June 1215, under pressure from his rebellious barons. By declaring the king to be subjected to the rule of law and documenting the liberties held by "free men", it provided the foundation for individual rights in Anglo-American jurisprudence. Among the Magna Carta's provisions were clauses providing for a free church, reforming law and justice and controlling the behaviour of royal officials. The charter also provides that the barons may choose 25 representatives to serve as a form of security to ensure the preservation of the rights and liberties that had been enumerated. Above all, the Magna Carta guaranteed that government or the royal would be limited by the written law of the land.

There is another translation of Article 35 of the Charter by Muhammad Hamidullah states:

“And verily the sub-branches (bitanalt) of the Jews shall have the same rights as the original member.”

It is clear from the translation by Muhammad Hamidullah that the sub-branches of the Jews tribe is explicitly recognised by the Prophet in the Charter.

Meanwhile, the elements of the supremacy of the constitution and the reliance on custom existed within the Charter. Such supremacy was applied so long as the provisions were in line with the teachings of the Qur'an and Sunnah of the Prophet. Referring to Article 23 and Article 42 of the Madinah Charter. Article 23 states:

“Whenever you differ regarding anything, the matter shall be referred to Allah and to Muḥammad PBUH”.

Article 42 states:

“Whenever there is a dispute or controversy between the people of this document from which trouble is feared, the matter is to be referred to Allah and His Messenger Muḥammad PBUH. Allah will be with whomever righteously acts upon the fulfillment and goodness of this document”.

The revelation of Allah and the sunnah of the Prophet Muhammad (PBUH) are the supreme law under Shariah. The term ‘Sunnah’ refers to any ruling of Prophet Muhammad PBUH which was based on the ‘*ilham*’ or inspiration from Allah.⁷⁹ This is an important feature of the Charter which made a direct reference to the name of Allah at the beginning of the Charter. In beseeching Allah's name, all the subjects of Madinah, both Muslims and non-Muslims, agreed to be governed by the laws set by the Almighty in what is known as the *Shariah*. Therefore, although Article 23 mentioned, “*Whenever you differ regarding anything, the matter shall be referred to Allah and Muhammad,*” this means that, in essence, reliance should be made to the position of the *Shariah* in any particular matter. Article 47 recognised the supremacy of the Charter, where any person who

⁷⁹ Ibid,53.

violated any terms of the pledge will no longer be protected by the Charter.

Custom is established as a silent code which has long existed in the community and is usually not in writing.⁸⁰ Put simply, custom possesses the force of law among individuals in a community. The element of custom exists in most modern constitutions throughout the world, inserted as part of the clauses in a country's constitution and is duly protected by the constitution. The custom may differ among countries, making each country's modern constitution unique and different from one another. Essential elements of custom typically preserved by the modern constitution include dominant religion, cultures, class, ethnicity and ideology.⁸¹

Interestingly, the feature of custom existed in the Madinah Charter. The Charter heavily took into account the custom of the local people, which led the Prophet Muhammad PBUH to adopt customary practices into the Charter. This is evident from the provisions of Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 21 of the Charter. Besides that, the custom element was visible through Article 25 on religion and related to the recognition of minority ethnicity in Madinah through Article 35.

Provisions in Article 3 – 12 and Article 21 of the Charter also relate to elements of custom, where the practice of paying blood money to the family of a murder victim was recognised. Payable to the victim and the victim's family, blood money signified an apology. Accepting such payment indicated that the victim's family accepted the apology.⁸² A sign of acceptance towards the apology is when the family of the victim accepts the payment of blood money.⁸³ As stated in Article 21 of the Madinah Charter:

"If any non-believer kills a believer without good cause, he shall be killed in return unless the next of kin are satisfied (with blood

⁸⁰ *R. v Secretary of State for Foreign and Commonwealth Affairs*, [1982] 2 All E.R. 118.

⁸¹ *Ibid*, 13-14.

⁸² Huda. "Blood Money in Islam". Learn Religions, 18 May, 2017. <https://www.learnreligions.com/blood-money-in-islam-2004418>

⁸³ Huda, "Blood Money in Islam", <<https://www.learnreligions.com/blood-money-in-islam-2004418>>(accessed 23 September, 2020).

money). All the believers are united against him and it is not permissible for them not to act against him".

The practice of paying blood money among the Arabs predates Islam. The compensation required for taking life during pre-Islamic times was ten camels, and 15 subsequently increased to 100 camels after the arrival of Islam, a practice that Prophet Muhammad PBUH endorsed.⁸⁴

All the instances mentioned above indicate that the custom element existed in the Madinah Charter. Prophet Muhammad PBUH accepted the established tradition and custom of the local community.

CONCLUSION

In conclusion, it is submitted that the Madinah Charter possessed certain fundamental features of a modern constitution. It cannot be dismissed as a mere anecdotal document which embodies a pure manifesto that holds no forces of law. It is, instead, a legal, constitutional document with significant value in governing a nation. Thus, the Madinah Charter pioneered certain fundamental features that became the foundation of the modern constitution despite not being categorised as a modern one.

It is submitted that long before the United States established a modern constitution in the 18th century, the Madinah Charter had already introduced some fundamental features of a constitution. This proves that the Charter had an advanced system regarding the idea of a constitution long before the modern constitutions were established.

More importantly, it can be concluded that the notion of a limited government had already existed within the Madinah Charter, whereby the acceptance of the Madinah Charter was to ensure that the powers of persons who govern a state, even if it involved a prophet of God, were subjected to check and balance through specific provisions within the constitution itself.

⁸⁴ Encyclopaedia Britannica Online, "Diyah", <<https://www.britannica.com/topic/diyah>>(accessed 23 September, 2020).