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Legal-Political Rhetoric, Human Rights, and the Constitution of Medina[*]

Abstract: The article demonstrates how the Constitution of Medina (622 CE) is a multidimensional rhetoric of justice that countered rampant violence in the nascent city-state known as Medina. To make this argument, the article first introduces this legal-political text and explicates the rhetorical exigence that mandated Medina's inhabitants to articulate a framework for rights and obligations. Second, the article demonstrates how the constitution unified this citizenry by (1) recognizing everyone's equal standing, equality, and rights—especially to religious freedom and justice—across their religious and tribal affiliations; and (2) establishing institutional measures that realize these rights. As rhetoric of possibility, the Constitution of Medina constituted a community and modeled rights discourse.

Keywords: Arab-Islamic rhetoric, legal-political rhetoric, constitutive rhetoric, rights, justice, peacemaking, Constitution of Medina

I n 622 CE, a small ill-defined territory known as Medina (formerly Yathrib) witnessed changes catalyzed partly by persuasive rhetoric. Hoping to end prolonged conflict and counter logics of superiority and animosity, the peoples of Medina deliberated and negotiated a solution. They drafted a legal-political document known as the Constitution of Medina (hereafter CM), which held them accountable to their "word" (agreement) and bound them relationally and politically to one another and to their

nascent city-state. The CM exemplifies the rhetoric of dissuasion from killing one another and the powerful rhetoric of possibility that ushered a new vision "in terms of their capacity to become what they are not, and [bring] to their attention things that they do not already feel, know, or understand."[1] As they negotiated, the people of Medina didn't only resolve the conflict between the members of Medina, but also articulated in the CM the rights and obligations of peoples living in Medina.[2]

The CM has been analyzed from numerous disciplinary perspectives. However, it hasn't been analyzed rhetorically. I argue that it exemplifies Arab-Islamic rhetoric of human rights that comprises both the symbolic and operational dimensions of the language of rights. To make this case, I first reflect on the CM's invisibility in rhetorical studies, shed light on its historical context and composite nature, and then address the pre-Islamic discourses of contract writing and mediation and their relation to the concept of human rights in Islam. Second, I focus on how the CM counters rights violations by articulating a discourse of rights and obligations, demonstrating how the rights to safety, life, justice, equity, and religious freedoms are affirmed. Finally, I foreground the political rhetoric used to establish an organizational structure that can actualize these rights. My analysis underlines how the CM evidences a uniquely rich rhetoric that persuaded people to unite and coordinate action, pursue justice, and affirm rights. Because the CM exemplifies an Arab-Islamic rhetoric of human rights, and because it continues to inspire articulations of rights, the CM warrants a rhetorical reading.

CULTURAL RHETORIC AND THE INVISIBILITY OF ARAB-ISLAMIC RHETORIC

In the past few decades, calls to revise and expand rhetorical studies resurged, inviting two interdependent lines of inquiry. The first—exemplified by the work of Cheryl Glenn, Carol Lipson and Roberta Binkley, Robert Tarbell Oliver, and Jacqueline Jones Royster—transcends imagined boundaries of rhetorical studies

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[1]John Poulakos, "Rhetoric, the Sophists, and the Possible." *Communication Monographs* 51.3 (1984): 215–26, p. 223–4.

[2]Arabic words were transliterated according to International Journal of Middle East Studies (IJMES) transliteration guide, which is available at <http://ijmes.chass.ncsu.edu/IJMES_Translation_and_Transliteration_Guide.htm>.

and expands its geographical terrain.[3] The second line of inquiry—evident in the often-cited Octalogs, edited collections like Michelle Ballif's, and chapters like that of Arthur Walzer and David Beard—revisits principles informing historical and historiographic studies.[4] Concomitantly, there has been some effort in the West to study Arab-Islamic intellectual contributions and rhetorical practices.

Despite multidisciplinary work, done mainly under the umbrella of Middle Eastern, literary and linguistic studies, and philosophy, rhetorics in Arabic and other Middle-Eastern languages continue to be invisible for varied reasons. First, some scholarship assumes an influence narrative, wherein rhetorical knowledge and practice are transferred from the West to the East. This scholarship focuses mainly on philosophic rhetoric in the ninth- and twelfth-century translations of and commentaries on the works of Aristotle, for example. Second, some scholarship assumes a linear *forward* movement from the past to the present, which deflects attention away from the Middle Ages and Arabia. Together, these assumptions conceal rhetorical knowledge and practice. Informed by this growing literature, this article counters these assumptions and zooms on the classical period of Arab and Arab-Islamic rhetorics and analyzes the CM (1/622) as a manifestation of legal-political rhetoric of rights.[5]

Arab-Islamic Rhetoric

Multidisciplinary literature on Arabic/Arab-Islamic rhetoric offers corrective accounts to narratives of absence or one-dimensional transfer

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[3]Cheryl Glenn, "Remapping Rhetorical Territory," *Rhetoric Review* 13.2 (1995): 287–303; Carol Lipson and Roberta A. Binkley, eds., *Ancient Non-Greek Rhetorics* (Anderson, SC: Parlor, 2009); Carol Lipson and Roberta A. Binkley, eds., *Rhetoric Before and Beyond the Greeks* (New York: State University of New York Press, 2004); Robert Tarbell Oliver, *Communication and Culture in Ancient India and China* (Syracuse, NY: Syracuse University Press, 1971); Jacqueline Jones Royster, "Disciplinary Landscaping, or Contemporary Challenges in the History of Rhetoric," *Philosophy and Rhetoric* 36.2 (2003): 148–67.

[4]For more, see Lois Agnew et al., "Octalog III: The Politics of Historiography in 2010," *Rhetoric Review* 30.2 (2011): 109–34; Michelle Ballif, ed., "Untimely Historiographies," *Rhetoric Society Quarterly* 44.3 (2014); Michelle Ballif, ed., *Theorizing Histories of Rhetoric* (Carbondale: Southern Illinois University Press, 2013); Richard Enos et al., "Octalog II: The (Continuing) Politics of Historiography," *Rhetoric Review* 16.1 (1997): 22–44; James Murphy et al., "Octalog I: The Politics of Historiography," *Rhetoric Review* 7.1 (1988): 5–49; Arthur Walzer and David E. Beard, "Historiography and the Study of Rhetoric," in Andrea Lunsford, Kirt Wilson, and Rosa Eberly, eds., *Sage Handbook of Rhetorical Studies* (Thousand Oaks, CA: Sage, 2009), 13–33.

[5]I use both Hijrī and Gregorian dating systems.

of rhetorical knowledge and practice.[6] This literature explores rhetoric, philosophy, exegesis, and poetics and highlights varied dimensions of indigenous rhetorical knowledge and practice. To illustrate, Maha Baddar troubles the narrative of a one-dimensional flow of influence in the Greco-Arabic translation movement.[7] She demonstrates that the translation movement was a home-grown response to a need for and disputes about philosophic and rhetorical knowledge at the time. To explicate the local exigencies and roots of the translation movement, she links translation to rhetorical knowledge and cultural networks, underlines the dialogic nature of Arabic commentaries, and explicates the rhetoricity of translations of classical philosophic rhetoric.

Similarly, Abdul-Raof, al-Musawi, and Qutbuddin identify different strands of rhetorical knowledge and practice. To illustrate, Abdul-Raof and al-Musawi survey investment in expression and the perfection of language. Abdul-Raof sheds light on "the three disciplines of 'ilm al-ma'āni [word order], 'ilm al-bayān [figures of speech], and 'ilm al-badi' [embellishment]" that underscore attention to style. Al-Musawi focuses on *'ilm al-balāghah* (science of eloquence), which "covers rhetoric, eloquence, and *faṣāḥah*, or perfection and purity

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[6]Hussein Abdul-Raof, *Arabic Rhetoric* (Hoboken: Taylor & Francis, 2006); Hussein Abdul-Raof, *Qur'an Translation: Discourse, Texture and Exegesis* (Richmond, Surrey: Curzon, 2001); Reem Bassiouney, *Arabic Sociolinguistics: Topics in Diglossia, Gender, Identity, and Politics* (Washington, DC: Georgetown University Press, 2009); Deborah L. Black, *Logic and Aristotle's Rhetoric and Poetics in Medieval Arabic Philosophy* (Leiden, Netherlands: E. J. Brill, 1990); Charles E. Butterworth, "Translation and Philosophy: The Case of Averroës' Commentaries," *International Journal of Middle East Studies* 26.1 (1994): 19–35; Lachen E. Ezzaher, "Alfarabi's *Book of Rhetoric*: An Arabic-English Translation of Alfarabi's Commentary on Aristotle's *Rhetoric*," *Rhetorica: A Journal of the History of Rhetoric* 26.4 (2008): 347–91; Basil Hatim, "The Pragmatics of Argumentation in Arabic: The Rise and Fall of a Text Type," *Text— An Interdisciplinary Journal for the Study of Discourse* 11.2 (1991): 189–200; Philip Halldén, "What is Arab Islamic Rhetoric? Rethinking the History of Muslim Oratory Art and Homiletics," *International Journal of Middle East Studies* 37.1 (2005): 19–38; Tahera Qutbuddin, "*Khutba*: The Evolution of Early Arabic Oration," in Beatrice Gruendler and Michael Cooperson, eds., *Classical Arabic Humanities in Their Own Terms: Festschrift for Wolfhart Heinrichs* (Leiden: Brill, 2008), 176–273; Yasir Suleiman, *The Arabic Language and National* Identity: *A Study in Ideology* (Washington, DC: Georgetown University Press, 2003).

[7]Maha Baddar, "From Athens (Via Alexandria) to Baghdad: Hybridity as Epistemology in the Work of Al-Kindi, Al-Farabi, and in the Rhetorical Legacy of the Medieval Arabic Translation Movement" (2010), <http://gradworks.umi.com/ 34/02/3402862.html>. Accessed 10 January 2013; Shane Borrowman, "The Islamization of Rhetoric: Ibn Rushd and the Reintroduction of Aristotle into Medieval Europe," *Rhetoric Review* 27.4 (2008): 341–60.

of language."[8] Additionally, there are studies on disciplines and rhetorical genres that respond to different religious exigencies. To name a couple of studies, al-Musawi traces the exigence "to know and to let others share that understanding," which led to the emergence of Qur'ānic exegesis, *i'jāz* or the inimitability of the Qur'ān, oratory, and religious argumentation.[9] Relatedly, Qutbuddin sheds light on oratory's role in spreading the teachings of Islam in the classical period. Beyond religiopolitical discourse, there was also an interest in *'ādāb* or "the humanist pursuit of good life" and its role in Arabic knowledge construction and cultural production.[10]

Along with these strands of rhetorical developments, there is the invisible rhetoric of rights. A case in point: in the seventh century, there was a powerful discourse that sought to counter rights abuses and violence. The second aforementioned assumption results in the invisibility of this rhetoric. The term *human rights* in the world post-Universal Declaration of Human Rights (UDHR) sets expectations for the meaning, use, and circulation of human rights; eclipses the social constructedness of discourses of rights (e.g., the impact of individualist versus relational worldviews on articulation of rights); and finally deflects attention from the processes and consequences of particularizing and internalizing human rights and agency discourses.[11]

As a response to the continued invisibility of Arab-Islamic rhetoric, I revisit the CM to demonstrate how it dissuades people from rights abuse, persuasively articulates rights and establishes reciprocal obligations as well as constitutes and unites the people of Medina. When we deflect attention from texts like the CM, we uproot the dilemmas of the present, risk decontextualizing our collective achievements, and render invisible numerous lines of rhetorical knowledge and practice that might help provide answers to pressing problems.

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[8]Muhsin Al-Musawi, "Arabic Rhetoric," in Thomas O. Sloane, ed., *Oxford Encyclopedia of Rhetoric* (Oxford: Oxford University Press, 2001), pp.29–33.

[9]Muhsin Al-Musawi, "Arabic Rhetoric", cited in n. 8 above, p.30.

[10]Muhsin Al-Musawi, *The Medieval Islamic Republic of Letters: Arabic Knowledge Construction* (Notre Dame, University of Notre Dame Press, 2015), p. 178.

[11]See Benjamin Gregg, *Human Rights as Social Construction* (New York: Cambridge University Press, 2012); Gerard Hauser, "The Moral Vernacular of Human Rights Discourse," *Philosophy and Rhetoric* 4.4 (2008): 440–66; Arabella Lyon, *Deliberative Acts: Democracy, Rhetoric, and Rights* (University Park: Pennsylvania State University Press, 2013); Daniel Tagliarina, "Power, Privilege, and Rights: How the Powerful and Powerless Create a Vernacular of Rights," *APSA 2013 Annual Meeting Paper*, 2013. <http://ssrn.com/abstract=2301432>. Accessed 10 January 2014. This comparison is elaborated in *Shades of Ṣulḥ: The Rhetorics of Arab-Islamic Reconciliation* (Pittsburgh: University of Pittsburgh Press, 2016).

THE AUTHENTICITY AND TRANSMISSION OF THE CONSTITUTION OF MEDINAH

The CM contains 47 articles and is often dated 1/622. It tells the story of a community that rewrote its life by co-authoring an agreement that convinced its signatories to live together peacefully. The CM is a composite text (i.e., a number of conciliation agreements combined). The original text is not extant. The full text of the CM, however, is reproduced by Ibn Isḥāq in his *sīrah* (biography) of Muḥammad. Ibn Isḥāq is a well-known, erudite, reputable biographer. Therefore, most scholars recognize and accept his reproduction of the CM. My analysis follows the Arabic version of the text based on Ibn Isḥāq's biography of Prophet Muḥammad.[12] Scholars who question the CM's authenticity call attention to three points: (1) the original text isn't extant, (2) the text doesn't include the chain of the CM narrators or al-'*isnād*, and (3) the CM was "written" years after Muḥammad's death. Responding to these concerns, numerous scholars assert the CM's authenticity by addressing three interrelated literate practices in the Arab-Islamic classical period.[13] First, there is a consistent oral tradition, which enabled texts to be remembered and preserved. Second, there was conspicuous scholarly recognition of and investment in transmission, credibility, and veracity. '*Isnād* is one method used to trace the chain of narrators and ascertain their credibility. '*Isnād* is used to verify the authenticity of '*aḥādīth* (i.e., prophetic sayings). However, it isn't used to ascertain different historical genres including *sīrah* (i.e., biography), which recounts major, undisputed historical and political events simply because they were well-known to all. Ibn Isḥāq's *sīrah* belongs to these historical genres. Scholars who question the absence of '*isnād* seek to assess the credibility/trustworthiness of the narrator, but ignore the distinction made at the time between '*aḥādīth* and *sīrah*. Moreover, the credibility of Ibn Isḥāq as biographer/historian has been verified

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[12]The Arabic text—based on Ibn Isḥāq's biography of Prophet Muḥammad—is published in Cherif Bassiouni, "al-Wathā'iq Al-Islāmīyah [Islamic Instruments]," in Cherif Bassiouni, ed., *Al-Wathā'iq Al-Dawlīyah al-Ma'nīyah bi-Ḥuqūq Al-'Insān* [International Instruments on Human Rights], vol. II, (Cairo: Dar al-Shurūq, 2006), 23–44 (p.27–29). The English translation is published in A. Guillaume, *The Life of Muhammad. A Translation of Ishaq's Sirah Rasul Allah* (Karachi: Oxford University Press, 1955).

[13]For more, see Ḥākim al-Maṭīrī, "Ṣaḥīfat al-Madinah bīna al-'Itiṣāl wa al-'Irsāl: Dirāsah Ḥadīthīah [Constitution of Medina, Communication, and Transmission: A Revisionist Study] <http://www.drhakem.com/Portals/Content/?info=T0RBekpsTjFZbEJoWjJ VbU1RPT0rdQ==.jsp>. Accessed 15 January 2017; Akira Goto, "The Constitution of Medina," *Orient* 18 (1982): 1–18.

over the centuries. Not only is he recognized as a trustworthy biographer but his teacher Ibn Hishām is as well. Furthermore, the veracity of his account of the CM has also been verified using varied standards of consistency. For example, Hamidullah and Serjeant prove the existence and authenticity of the CM text using the convergence of accounts across varied genres of reporting like *al-maghāzī* (annals of military expeditions), *Ṣaḥīḥ al-Bukhārī* (authenticated reports of *ḥadīth* and actions of the prophet), historical accounts of well-known Egyptian historian al-Maqrīzī (764/1356-845/1441), as well as textual evidence concerning diction and structure (e.g. the use of contractual terminal formula).[14] Additionally, the CM is consistent with well-known pre-Islamic/Islamic traditions of arbitration, reconciliation, and contract writing.[15]

Though the CM draws on these pre-Islamic traditions, it exemplifies a uniquely effective response to numerous pressing problems. This is why the CM has invited multidisciplinary scholarly attention. Analyzing the CM, scholars agree that it is a composite text whose parts tend to be read together.[16] Though scholars disagree in their assessment of the number and boundaries of the pacts that make up the text, the CM is recognized as (a) a record of long, multitribal *ṣulḥ* (reconciliation) pacts; (b) the first written constitution in Islam; and (c) the document that establishes Medina as a nascent city-state and

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[14]Muhammad Hamidullah, *The First Written Constitution of the World: An Important Document of the Holy Prophet* (Lahore: Ashraf Printing Press, 1994), p. 16; Robert Bertram Serjeant, "Early Arabic Prose" in Alfred Felix Landon Beeston, T. M. Johnstone, R. B. Serjeant, and G. R. Smith, eds., *Arabic Literature to the End of the Umayyad Period* (Cambridge: Cambridge University Press,1983), 114–153.

[15]For more on the debate concerning authenticity, see Ḥākimal-Maṭīrī "*Ṣaḥīfat al-Madinah,*" cited above n. 13; Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above, p. 38–40; Robert Hoyland, "Writing the Biography of the Prophet Muhammad: Problems and Solutions," *History Compass* 5.2 (2007): 581–602, p.586–9. For more on pre-Islamic and early Islamic contracts and pacts, see Robert Bertram Serjeant, "The Sunnah Jamiah, Pacts with the Yathrib Jews, and the Tahrim of Yathrib: Analysis and Translation of the Documents Comprised in the So-called 'Constitution of Medina,'" *Bulletin of the School of Oriental and African Studies* 41.1 (1978): 1–42; Robert Bertram Serjeant, "Early Arabic Prose," cited in n.14 above.

[16]Said Amir Arjomand, "The Constitution of Medina: A Sociolegal Interpretation of Muhammad's Acts of Foundation of the Umma," *International Journal of Middle East Studies* 41.04 (2009): 555–75; Ali Khan, "The Medina Constitution" (2006), 1–7, <http://papers.ssrn.com/sol3/papers.cfm?abstract-id=945458>. Accessed 15 January 2013; Robert Bertram Serjeant, "The Sunnah Jamiah," cited in n. 15 above; Uri Rubin, "The 'Constitution of Medina': Some Notes," *Studia Islamica* 62 (1985): 5–23; Yetkin Yildirim, "Peace and Conflict Resolution in the Medina Charter," *Peace Review: A Journal of Social Justice* 18.1 (2006): 109–17.

interpellates a confederation of unified citizenry who have equal rights and obligations.[17] This means that scholars recognize that the CM responds to many legal-political exigencies. The CM didn't only resolve Medina's conflicts but has also provided a rhetorical model for establishing a community based on rights and obligations. Before I initiate my rhetorical study of the CM, I shed light on Medina's history and the rising need for a multidimensional rhetorical intervention.

HISTORICAL BACKGROUND

Medina literally means "city" and was known during *al-Jāhiliyyah* (pre-Islamic period) as Yathrib. Yathrib, a fertile land, is approximately three hundred miles north of Mecca. Yathrib and Mecca's histories become interwoven in 622. Unlike Mecca, which was "an organized City-State," Yathrib was neither organized nor a city-state.[18] Despite having a population of 5,000 to 10,000 people, it didn't have well-defined boundaries, "municipal organization," or public offices. Yathrib was diverse in religious and tribal terms. Its inhabitants were mainly Jewish and pagan Arab tribes in addition to Christian and polytheist minorities. Jewish tribes had lived in Yathrib for centuries and had well-established businesses. For example, Banū Qaynuqāʿ used their capital in arms and gold trade. The two other prominent tribes, Banū al-Naḍīr and Banū Qurayẓa, owned and planted the fertile land. Similarly, al-ʾAws and al-Khazraj—the two prominent Arab tribes—owned and planted land.

Yathrib wasn't peaceful. Across ethnic and religious difference, the tribe was the main sociopolitical organizing unit. Tribal logic prevailed; tribes sought power and military dominance, fought one another, and made alliances which often didn't last. Conflict was often multi-generational and "generated numerous prisoners of war in addition to contentious blood money claims, which [in turn] greatly contributed to the hostilities."[19] The situation in Yathrib was compounded

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[17]Despite agreement on these functions of the CM, scholars differ in their analyses of the composite nature of the text. To illustrate, Serjeant contends that the CM is made up of eight different documents; Yildirim contends that there are two main pacts; and Arjomand contends that there are three. These differences point to the multidimensional nature of the CM. For more, please see Said Amir Arjomand, "The Constitution of Medina," cited in n. 16 above; Robert Bertram Serjeant, "The Sunnah Jamiah," cited in n. 15 above; Yetkin Yildirim, "Peace and Conflict Resolution," cited in n. 16 above.

[18]Muhammad Hamidullah, *The First Written Constitution*, cited in n.14 above, p. 13.

[19]Yetkin Yildirim, "The Medina Charter: A Historical Case of Conflict Resolution," *Islam and Christian-Muslim Relations* 20.4 (2009): 439–50 (p. 440; emphasis added). The expressions *blood money* and *bloodwit* refer to *diya*, a monetary restitution

by a wave of migration from Mecca, caused by religious persecution, which had social, economic and political consequences.

Mecca's population was mainly pagan and polytheistic. Islam, a new religion with many followers, threatened Meccans. Leaders of Quraysh (a prominent Meccan tribe) were hostile to the nascent religion: Hamidullah explains that soon after Muḥammad's revelation, "[P]hysical persecutions threatened the lives of many."[20] Sanctions sabotaged businesses; converts were held under siege; laborers and enslaved converts (like Bilāl ibn Rabāḥ) were flogged because they strayed from the traditional beliefs of the community and "[because of the possibility that] Prophet Muḥammad would organize Muslims in rebellion against the leadership of the city."[21] Eventually, this persecution led to two waves of Muslim migration. The first was to Abyssinia (615 CE). The second was to Yathrib (622 CE). The emigrants were welcomed and supported by the native Muslims from the al-'Aws and al-Khazraj tribes, who were known as al-Ansār (literally "the supporters"). Yathrib came to be referred to using the epithet *medinat al-nabī* (or the "city of the prophet") and then Medina/al-Medina for short.

Though al-Ansār hosted the emigrants, there was a concern about economic competition or liability. Many emigrants had neither home nor trade. Those without a home were allowed to live in the newly built mosque; those without a trade developed new skills mainly in agriculture. Competition over labor forced some to buy and work on new land. The poor were supported by their fraternity (*'ikhā'*) with al-Ansār, whereas those who were wealthy traded and accumulated wealth. Concerns about emigrants' economic burden, accumulated wealth, anticipated changes in the economic stratification and life in Medina bred general discontent.

Moreover, there was increasing political tension: "While some [tribes] sought external military assistance, which only exacerbated the conflicts, many were making preparations for the enthronement of 'Abdallah ibn Ubay ibn Salul," who was from the dominant Arab tribe al-Khazraj.[22] In contending tribal communities, the rise to leadership of a member of one of the tribes would unlikely lead to stability.

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that recognizes a wrongdoer's aggression that resulted in a fatal injury/killing. Medina's bloodwit disputes hampered amicable coexistence.

[20]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above, p. 13.

[21]Yetkin Yildirim, "The Medina Charter," cited in n. 19 above, p. 440.

[22]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above, p. 14.

Rather, it would foretell further struggle over leadership. Medina was, in short, in a state of chaos and imminent war.[23]

RHETORICAL INTERVENTION: THE RHETORIC OF JUSTICE AND THE ARTS OF SUASION

Decades-long grievances, political and economic tensions, Meccans' history of religious persecution and dislocation as well as simmering discontent became "controlling exigence[s],"[24] which mandated transformation and a culturally-grounded, rhetorical intervention. Transformation entailed "establish[ing] a political organization, creat[ing] a military defense for the city, reconcil[ing] tribal hostilities, defin[ing] local rights and obligations, and address[ing] the issues of the growing immigrant refugee population from Mecca."[25] To realize these goals, Medinians composed agreements/contracts, which typically "[re]configure the rights and duties that are to apply to their interaction with each other" and to live together peacefully.[26] Agreements/contracts signal an interest in justice, which is a central *topos* of legal rhetoric. "Justice, arguably, is a relational concept. . . . [and] the matter of justice has been focused on the configuration of rights and duties and therefore on relations vis-a-vis others."[27] Legal rhetoric is "a way of acting with others . . . and a way of acting with a certain set of materials found in culture."[28] In this case, Medinians resorted to both mediation and contract writing, two well-known rhetorical modalities to them, to end conflict and restore justice.

Additionally, contracts/agreements have political consequences. Explicating the constitutive and political dimensions of legal rhetoric, James Boyd White explains that debates about justice "[establish] in performance a response to the questions, 'what kind of community should we, who are talking the language of the law, establish with each other . . .? What kind of conversation should the law constitute,

[23]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above, p. 13–15.

[24]Lloyd F. Bitzer, "The Rhetorical Situation," *Philosophy and Rhetoric* 25.1(1992): 1–14, p. 7.

[25]Yetkin Yildirim, "The Medina Charter," cited in n. 19 above, p. 440.

[26]Dan Wielsh, "Relational Justice," *Law and Contemporary Problems* 76.2 (2013): 191–2011, p.192.

[27]Dan Wielsh, "Relational Justice," cited in n. 26 above, p.191.

[28]James Boyd White, "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life," *The University of Chicago Law Review* 52.3 (1985): 684–702.

should constitute the law?'"[29] Against imminent conflict, the CM's articles responded to lurking questions regarding the right to life, equality, and immanent value of members of Medina across their tribal and religious affiliations. These questions exceeded their immediate legal and socio-political goals. Further illuminating the political potential of rhetoric of justice and law, Dan Wielsh explains that contractual rhetoric "function[s] both as an entry point for emergent rationalities to influence the normative configuration set out by the parties and as a transmission device to make specific private orders normatively binding throughout society."[30] Medinians chose to rewrite life in Medina.

As Medinians pursued justice and peace, they crafted together the CM, which became a constitutive and political-legal document. Not only was justice the goal and topic of their deliberation, but peaceful coexistence, which is a central *topos* of political rhetoric, was also their conspicuous goal. The CM's response to Medina's problems resulted in a discourse of human rights that arose in contrast to Medina's legal and political dilemmas. Uniquely, the CM brings together the tradition of writing agreements, the rhetoric of rights pursuit, and constitutive rhetoric whereby a community comes into being. This rhetorical richness dissuaded the peoples of Medina from violence and persuaded them to live together amicably. In what follows, I explicate the culturally-grounded rhetorical discourse used to counter violence, address justice questions, and affirm rights.

Justice: Mediation and Contract Writing

The first cultural resource Medinians drew on was mediation. Peoples in Arabia recognized mediation, arbitration, and adjudication as conflict resolution methods. Prophet Muḥammad, who was known as a prudent and trustworthy arbiter in Mecca, was chosen to serve as a mediator for Medina's pluralistic community.[31] A mediator rhetorically leads conflicting parties by (1) detangling problems (i.e., fractioning) and (2) guiding discursive activities through negotiation toward a persuasive, just process and outcome.[32] To (re)define political and social reality, Medina's tribes came together, identified and

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[29]James Boyd White "Law as Rhetoric," cited in n. 28 above, p. 690.

[30]Dan Wielsh, "Relational Justice," cited in n. 26 above, p.191.

[31]Yetkin Yildirim, "The Medina Charter," cited in n. 19 above, p. 442.

[32]Maley, Yon. "From Adjudication to Mediation: Third Party Discourse in Conflict Resolution." *Journal of Pragmatics* 23.1 (1995): 93–110; For more on fractioning, see Yetkin Yildirim, "The Medina Charter," cited in n. 19 above.

separated problems, articulated their grievances, were dissuaded from warfare as *the* solution, and were persuaded that alliance and conciliatory measures are viable methods to realize their rights and goals. Though this was a difficult task—considering intra- and inter-tribal problems (e.g., revenge and blood-money conflict)—its success is documented in the CM, which is a binding non-aggression pact and a "code of action."[33]

In addition to mediation, there was also a tradition for writing contracts and non-aggression pacts. The work of Jawād ʿAlī (Iraqi historian) and Robert Bertram Serjeant (Middle Eastern Studies scholar) traces this tradition to pre-Islamic times. In ʿAlī's *al-Mufaṣṣal fī Tarīkh al-ʿArab qabl al-ʾIslām*, contract writing is an established tradition to ratify agreements, holding everyone accountable to the agreed upon clauses.[34] Generally speaking, contracts can be considered an operational form of justice because they are used to guarantee "compliance of actions with given legal norms."[35] In rhetorical terms, agreements hold a persuasive power that compels signatories to act in accordance with its terms. As long as its persuasive power lasts, the signatories bind themselves and others to these agreements.

The CM "was drawn up in the form of a non-aggression pact" and clearly draws on contract writing as rhetorical and cultural resource.[36] The CM identified itself as *kitāb* and *ṣaḥīfa* (i.e., epistle, deed, or document) in the preamble, "meaning a code of action or a charter of duties," reclaiming social and political order.[37] The *topos* of justice is conspicuous, and the CM's signatories drew on rhetoric's suasory power, before and after drafting, to end tribally driven logics of superiority and animosity (the cause of many of Medina's woes), detangle problems, and negotiate acceptable solutions. All of these rhetorical processes can be traced in the CM, which comprises a preamble and two major pacts. The first focuses on the needs of

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[33]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above, p. 16.

[34]For more, please see Chapter 59 titled "Contracts and Commitments" in Jawād ʿAlī, *al-Mufaṣṣal fī Tarīkh al-ʿArab qabl al-ʾIslām*, vol. 2 < http://mandaeannetwork.com/ Mandaean/books/other/almfsl_fi_tarikh_alarb_kbl_alislam_Jawad_Ali_sabians_ mandaeans_mandaeannetwork_2.htm#_Toc71361581> Accessed 15 March 2017; Robert Bertram Serjeant "Early Arabic Prose," cited in n. 14 above.

[35]Dan Wielsh, "Relational Justice," cited in n. 26 above, p.191.

[36]Yetkin Yildirim, "The Medina Charter," cited in n. 19 above, p. 441.

[37]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above, p. 16.

the Muslims (articles 3–23); the second addresses the needs of the Jewish (articles 24–46).[38]

The first pact was between the emigrants and al-'Anṣār, including their political allies (i.e., Jews and polytheist groups who were in alliance with al-'Aws or al-Khazraj). The pact had two interdependent goals. It aimed for establishing a political alliance between al-'Anṣār (natives) and *muhājirūn* (emigrants). Therefore, it is classified as a confederation treaty. The pact also aimed for resolving disputes regarding those killed or imprisoned. The signatories were persuaded to end cycles of revenge between al-'Aws and al-Khazraj, to accept conflict resolution measures (e.g., paying bloodwit and redeeming prisoners); conditions binding the agreeing parties (i.e., "with the kindness and justice common among believers") were clearly identified.[39] The first pact, therefore, outlined solutions in articles 3–23 to division and cycles of revenge.

The second pact focused on the Jewish tribes, responded to intra- and inter-group conflict, and sought to allay the fears of different communities of one another and unify members of the nascent community. To illustrate, article 37 is "a declaration intended to allay Jewish apprehensions about their security."[40] Similarly, since (emigrant) Muslims were concerned about imminent attacks by Meccans, there was a need to address Medina's internal front and to draft a peace treaty to unite Jewish and Muslim tribes and coordinate their political action: "[L]ike a jamā'ah (collective body) of them, their word and hands being one." This unity entailed the obligation to defend one another. Serjeant explains "that Muhammad 'when he arrived in Medina, had made an agreement with its Jews that they should not aid (*yu'īnu*) anyone against him, and that if any enemy made an unexpected treacherous attack on him (*dahimahu*) they would support him.'"[41] The communal need to coordinate political action also entailed "mutual advice and consultation." The pact, therefore, seeks to allay fears, establish security, and unify the people of Medina.

Read together, both pacts enlist the power of rhetoric in the form and product of deliberations about ways to respond to problems and coordinate Medinians's efforts toward justice and peace. However, the CM articles are more than a trace of deliberations and negotiations

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[38]For more on this section of the CM, see the explanation of the different documents in Bertram Serjeant, "The Sunnah Jamiah," cited in n. 15 above.

[39]Though I reference here article 4, this is consistent with articles 4 through 11.

[40]Bertram Serjeant, "The Sunnah Jamiah," cited in n. 15 above, p.32.

[41]Bertram Serjeant, "The Sunnah Jamiah," cited in n. 15 above, p. 26 and p. 25–26, respectively.

that preceded and resulted in the writing of these pacts, for both pacts affirmed the immanent value of human life as well as numerous rights.[42] When the articles exceeded their immediate goal of resolving conflict, they also assumed a political and visionary role: They refashioned the relation between different tribes and advocated equal rights to life, to fair justice practices, and to equal standing.[43]

Vison: The Rhetoric of Rights

The discourse of rights is never affirmed or realized in a social, cultural, or political vacuum. Violations of rights often constitute the rhetorical exigence within which rights discourses emerge. Typically, human rights are defined as "moral rights that all human beings are entitled to, just by virtue of being human." Human rights are "natural" (i.e., not conditional), "are not earned and cannot be denied on the basis of race, creed, ethnicity, or gender."[44] Medina confronted two contending discourses, that of rights and that of might. The first was a discourse affirming the might and right of the wealthy and dominant. This discourse was sustained by tribal logic, caused Medina's conflict-ridden sociopolitical dynamics, and undermined the dignity and prosperity of Medinians. The second relates to the rise of a powerful doctrinal discourse of rights in Islam, which affirms the rights of peoples across religious, social, racial, ethnic, and gender divides. The CM counters the discourse of might and rights denial. It is a crucial iteration of the emerging discourse of rights, for it affirms numerous rights, including the rights to life; right to fairness, equal protection of the law, and nondiscrimination regardless of race, ethnicity, or origin; and the right to religious freedom.[45]

The discourse of rights in Islam foregrounds the sanctity of life and affirms rights, which are consistently assaulted by power abuse. The discourse of human rights is but a sliver of this discourse, which covers individual and collective rights of *all* creatures including vegetation and animal life. Articulations of rights in Islam draw on foundational texts like Qur'ān, Ḥadīth, and varied politicoreligious discourses. To illustrate, Qur'ān and Ḥadīth articulate a belief system informed by

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[42]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above.

[43]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above.

[44]Michelle Maiese, "Rights," in Guy Burgess and Heidi Burgess, eds., Conflict Research Consortium, August 2003. <https://www.beyondintractability.org/essay/rights/>. Accessed 24 May 2011. See also Abdul Aziz Said, "Precept and Practice of Human Rights in Islam," *Universal Human Rights* 1.1 (1979): 63–79, p.63.

[45]Cherif Bassiouni, "al-Wathā'iq al-Islāmīyah," cited in n. 12 above, p. 24.

justice, right, and truth. This "is a belief system predicated fully upon *Haqq*, which is the Arabic word for right. But *Haqq* is also truth. It is justice. It is duty. It is the word of the Divine. [Al]*Haqq* is God. The essential characteristic of human rights in Islam is that they constitute obligations connected with the Divine and derive their force from this connection."[46] Additionally, there are prominent politicoreligious articulations of human rights before and after the CM. For example, in Prophet Muḥammad's last speech (10 AH/630 CE), known as *khuṭbat al-wadā'* (farewell speech), the equality of all Muslims and all peoples, as well as the rights of women, are affirmed. Similarly, in Abū Bakr's address to Muslims (11AH/631CE), their political rights to hold political leadership accountable and their equality before the law are affirmed.[47]

The discourses of rights in Islam refer, therefore, to a bundle of rights, which can be grouped as two informative taxonomies, that of *ḥuqūq Allāh* (rights of God) and *ḥuqūq al-'ibād* (rights of people). *Ḥuqūq al-'ibād*—the subject of human rights discourse—comprises three clusters of rights, namely basic human rights, the rights of citizens, and the rights of people at war.

- Basic human rights include the rights to life, safety, a basic standard of living, freedom, justice, equality, the choice to cooperate or not, and respect of chastity (mainly in reference to women).
- The rights of citizens include personal, civic, and political rights. They protect the security of (private) life, property, personal freedom, honor, freedom of expression, conscience, and conviction. They affirm the rights to protest against tyranny, to be treated equally before the law (including accountability of rulers), to participate in state affairs, and to be protected from arbitrary imprisonment or retribution.
- The rights of combatants and noncombatants regulate the relation between people during and after war and obligates Muslims to honor treaties. These rights protect noncombatant women, children, and the elderly; monks in monasteries; and people in places of worship. The rights of combatants include prohibition against torture and mutilating dead bodies and repatriation if killed during combat. As to property, the law of war and peace prohibits pillage and destruction of public and private property.[48]

Though the CM doesn't represent the different discourses that address human rights in Islam, it affirms some rights from these three clusters.

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[46]Abdul Aziz Said, "Precept and Practice," cited in n. 44 above, p.63.

[47]For more on human rights instruments in early Islam, see Cherif Bassiouni, "al-Wathā'iq al-Islāmīyah," cited in n. 12 above.

[48]For more on different types of rights/obligations, see Sayyid Abū al-A'lá Mawdūdīy, *Human Rights in Islam* (Lahore, Pakistan: Islamic Publication, 1977).

More importantly, the CM points to three characteristic *topoi* of these discourses: the immanent value of human beings and life; the equality of all people (regardless of race, ethnicity, color, tribal affiliation, socio-political standing, wealth, native/emigrant status, or religion); and the right/obligation to be a responsible community member. The CM affirms rights from these three clusters and centers equality, freedom from imposition, and justice in the face of powerful and persuasive discourses of might.

Because the tribe—the predominant social organization—maintained hierarchies, the powerful were often less accountable and the right to justice was asymmetrically distributed. Tribal allegiance and justice practices fueled the struggle for dominance and exacerbated rights violations. Additionally, the advent of the Meccan *muhājirūn* (emigrants), their religious persecution in Mecca, and their *'ikhā'* (fraternal sponsorship/relation) with al-'Ansār brought to sharp relief the question of religious pluralism. Within this complex sociopolitical reality, the peoples of Medina wanted to both ward off harm to life and livelihood (negative rights) and to guarantee their right to life, equality, and freedom (positive rights).[49] They co-authored a "code of action or a charter of duties,"[50] as noted earlier, which affirmed numerous rights. I focus only on the rights to religious freedom, equality, life, and pursuit of justice.

The Rights to Religious Freedom and Equality

The rights to equality and to freedom of belief and practice are intimately connected in the CM. The religious freedom of Muslims and Jews—and other religious groups—are addressed in article 25, which asserts that "the Jews have their religion and the Muslims have theirs." This article is consistent with the "principal idea of spiritual freedom to practice one's religion as one believes it: 'to you be your Way, and to me mine.'"[51] Arjomand asserts that "[t]he lasting effect and significance of the CM . . . stems from its laying the foundations of the classic Muslim system of religious pluralism."[52]

The CM affirms equality for everyone *within* and *across* different groups and regulates alliances. Muslims are equals; Jews are equals;

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[49]Yetkin Yildirim, "Peace and Conflict Resolution," cited in n. 16 above, p. 110–11.

[50]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above, p. 16.

[51]Ali Khan, "The Medina Constitution," cited in n. 16 above, p. 6. The quotation comes from chapter 109 and verse 6 in the Holy Qur'ān.

[52]Said Amir Arjomand, "The Constitution of Medina," cited in n. 16 above, p. 556.

all religious groups are equals. Their equality is clearly and repeatedly articulated. To illustrate, in the preamble, all groups make "one community (*umma*) to the exclusion of all men," and in this *umma*, first the equality between emigrant and native Muslims and then the equality of all the Jewish tribes is affirmed. The equality of emigrant and native Muslims is conspicuous in the CM's first section where they are explicitly addressed. In addition to the small group of one hundred Meccan emigrants, a total of nine native tribes of Medina are explicitly referenced in the CM, namely Banū 'Awf, Banū Sā'ida, Banū al-Ḥārith, Banū Jusham, Banū al-Najjār, Banū 'Amr ibn 'Awf (Banū 'Amr ibn 'Awf), Banū Auf, Banū al-Nabīt, and Banū al-'Aws. Khan explains that native and emigrant Muslims made up "the community of believers" or *ummat-al mummunin*, which "dissolves the distinction between natives and immigrants, offering principles of equality and justice to all Muslims, regardless of their origin of birth, nationality, tribe, or any other ethnic or racial background. It does not allow natives to have superiority over immigrants or vice versa."[53] By affirming the equality of all Muslims, the CM formulates persuasive grounds for unity that counter violence and transcend tribal, national, ethnic, cultural origins and socioeconomic differences.

Similarly, the CM's second section underscores the equality of all Jewish tribes regardless of their tribal or political affiliations (This is the mirror image of the first part of the CM, which addresses Muslims). Because Muḥammad wanted to unite all inhabitants of Medina, the CM addresses Jewish groups in a way that affirms both their equality to one another and to Muslims. The CM uses the general terms *yahūd* and *al-yahūd*, or "Jews" and "the Jews," respectively. The CM also recognizes Jews who identified with Arab clans as *equal* political associates because they didn't have the same standing of the main Jewish tribes.[54] A brief explanation of Medina's sociopolitical dynamics helps explain *how* and *why* Jews are referenced in the CM.

Arab tribes, who migrated from the south of Arabia (Yemen), comprised the two prominent groups, al-'Aws and al-Khazraj, whereas the main Jewish tribes, who migrated from the north, comprised al-Naḍīr,

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[53]Ali Khan, "The Medina Constitution," cited in n. 16 above, p. 3.

[54]I agree with Rubin that one of "[t]he direct aim[s] of this document was confined to determining the position of the Arab tribes of Medina in relation to those Jewish groups who shared in their territory." However, the use of two different forms of reference to the general Jews as well as the Jewish clients of Arab tribes invites a reading that includes the three main prominent tribes (al-Naḍīr, Qurayẓa, Qaynuqā') who also resided in Yathrib. Uri Rubin, "The Constitution of Medina," cited in n. 16 above, p.10. It is important to note that scholars do not explicate the categorical reference to "the Jews" in articles 24, 35, 37, and 38; they tend to focus on clients of Arab tribes.

Qurayẓa, and Qaynuqā'. Smaller Jewish communities didn't have specific tribal affinities and lived in different parts of Medina. Rubin explains that "unlike the greater Jewish tribes they became closely associated with various Arab tribes among whom they dwelt."[55] Scholars refer, therefore, to *'aḥlāf* ("alliances;" singular *ḥilf*) between Jewish groups and Arabs, which predated Islam.[56] These Jewish *'aḥlāf* were clients of Arab tribes, dwelled in the same territory, were known as the Jews of Arab tribes, and had become crucial to their community, for they were part of a relational matrix that Rubin represents as "an alliance (*ḥilf*), fraternity (*ikhâ'*) *and* friendship (*wudd*)."[57]

The CM addresses Jewish groups in three conspicuous ways, underlining their equality to one another and to Muslims. First, the CM represents all Jewish tribes and clans as equals to Muslims in the italicized part of article 25 using what seems to be a categorical reference: "The Jews of Banū 'Auf are one community with the Believers (*the Jews have their religion and the Muslims have theirs*), their freedmen and their persons except those who act unjustly and sinfully, for they hurt but themselves and their families." Secondly, different tribes and political associates are named and their equality is affirmed, for the Jewish community wasn't represented as monolithic.[58] Therefore, the CM, in articles 25 through 35, goes to great lengths to refer to each community by name: the Jews of Banū 'Awf, the Jews of Banū Al-Najjār, the Jews of Banū al-Ḥārith, the Jews of Banū Sā'ida, the Jews of Banū Jusham, the Jews of Banu al-'Aws, the Jews of Banū Tha'laba, the Jews of Jafna (a clan of Banu Tha'laba), and the Jews of Banū al-Shuṭayba. "This comprehensive recognition of each distinct Jewish group in a separate Article of the Constitution bestows equal dignity and respect upon all Jewish tribes with whom the social contract was made, rejecting the concept that some Jews are superior to others."[59]

Third, their equal rights and responsibilities are affirmed and detailed; these range from financial independence, to solidarity, to the rights to form political alliances and to religious belief and practice. To illustrate, the community is obliged to all members of the Jewish community in article 16: "To the Jew who follows us belong help and equality." Likewise, their religious rights are represented as an obligation. As indigenous Muslims of Medina were obligated to

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[55]Uri Rubin, "The Constitution of Medina," cited in n. 16 above, p. 7.

[56]Said Amir Arjomand, "The Constitution of Medina," cited in n. 16 above; Uri Rubin, "The Constitution of Medina," cited in n. 16 above.

[57]Uri Rubin, "The Constitution of Medina," cited in n. 16 above, p. 8.

[58]Ali Khan, "The Medina Constitution," cited in n. 16 above.

[59]Ali Khan, "The Medina Constitution," cited in n. 16 above, p. 4.

protect the rights of Muslim emigrants, all Muslims were obligated to recognize and protect the rights of other religious groups. Accordingly, article 25 specifically underlines the rights to belief and practice: "Jews have their religion and the Muslims have theirs." Additionally, their political right to form (external/internal) alliances is pronounced by article 35, which states that "[t]he close friends of the Jews are as themselves." This assertion complements the stipulation that the enemies of the Jews won't be aided, which is articulated in the second half of the aforementioned article 16: "He [the Jew] shall not be wronged nor shall his enemies be aided."

In effect, the CM affirms the equality of all the people of Medina regardless of religious and tribal affiliation. In a context where Muslim emigrants were a minority and with the anticipated rise of the political power of Muslims, there was a need to affirm the equality of all, regardless of religious affiliation or political power. It is in relation to these two aspects of the life of Medinians that the CM recognizes and affirms the rights of Jews in varied ways.

The Rights to Life and to Seek Justice

Medina's conflicts and contentious blood money disputes left its tribes—as noted earlier—concerned about their safety and their right to the pursuit of justice. This history mandated the affirmation of two distinct but interrelated rights. The first is the right to life and its complementary right to safety. The second is the right to justice. The right to life is assumed, and it provides the context for the right to justice, which is explicitly stated and institutionalized in the CM. In Qur'ān and Ḥadīth, the word *nafs* ("self") refers to the subject protected by the right to life. *Nafs* "has been used in general terms without any distinction and particularization" to affirm the undeniability of the right to life, which is conferred by God.[60] The injunction to protect *al-nafs* obligates CM signatories not just to abstain from killing any soul regardless of their "citizenship," creed, religious affiliation, race, or class but also to protect *nafs's* safety. Protecting its safety *minimally* entails also warding off the threat of destruction caused by injury, illness, or starvation.

Within this frame of reference, the right of *nafs* to be honored and avenged, when its right to life is breached by fatal injury, and the right to justice, which is breached with indiscriminate revenge or

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[60]Sayyid Abū al-A'lá Mawdūdīy, *Human Rights in Islam*, cited in n. 48 above, p. 5.

persecution, were affirmed and became persuasive. Numerous articles
underlined the right to justice and the sanctity of life. "Articles 19, 21,
22, and 40 established the course of law for Yathrib."[61] Clearly, these
articles addressed community members' responsibility and right to
pursue justice (e.g., paying blood money), promote peace, rise against
offenses and treachery, and punish murderers. Since blood money dis-
putes were prevalent, the CM addressed blood money disputes in a
number of articles. For example, article 21 affirmed the right to seek
qaṣāṣ (justice)—implying punitive justice—or conciliation by paying
diya or blood money: "Whoever is convicted of killing a believer with-
out good reason shall be subject to retaliation unless the next of kin is
satisfied (with blood money), and the believers shall be against him
as one man, and they are bound to take action against him."
Moreover, articles underlined everyone's equality before the law. To
illustrate, article 13 stated that "[t]he God-fearing believers shall be
against the rebellious or him who seeks to spread injustice, or sin or ani-
mosity, or corruption between believers; the hand of every man shall be
against him even if he be a son of one of them." Tribal logic, which jus-
tified favoritism and taking sides with one's tribe, is the backdrop
against which the right to justice and equality before the law are affir-
med in this way. Rightly, Hamidullah explains that "in . . . the admin-
istration of justice, none would be permitted to take sides or show any
favouritism to one's relations or even to save one's own son from the
course of law."[62]

The CM's articulation of these rights dissuaded people from
recourse to violence and provided a discourse that guided Medina's
community as it resorted to justice to solve problems. Put differently,
the articles prove that they were successfully dissuaded and, therefore,
bound themselves to their agreements. But, the CM's articulation of
rights is unique. Not only did the CM have clear, long-term moral
and relational goals, but it also sought to build a community that
affirmed and protected rights. If we are to read the rhetoric of rights
as more than a critique against rights abuses, then we need to pay atten-
tion to rhetorical moves that enable the move toward actualizing rights.

My analysis foregrounds a central difference between human
rights as conceived of in the CM and as conceived of and critiqued
by studies of the rhetorics of human rights.[63] Scholarship written in

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[61]Yetkin Yildirim, "The Medina Charter," cited in n. 19 above, p. 443.

[62]Muhammad Hamidullah, *The First Written Constitution*, cited in n. 14 above,
p. 28.

[63]For more on rhetorics of human rights, please see, Erik Doxtader, "The
Rhetorical Question of Human Rights—A Preface," *Quarterly Journal of Speech* 96.4

the context of the UDHR is to a great extent informed by rights in relation to citizens whose rights are affirmed and realized or denied by a state and state actors. In this context, the state (or state actors) operates as a political authority that can sponsor rights realization or regulate punitive measures for rights violators/withholders. The CM is indeed a unique document, a document signed and coauthored—in many ways—by all its signatories to resist tribal law, which was the authority that underwrote rights in medieval Arabia. Tribal law, however, was notorious for rights violations, for a right (i.e., right to) is what is right (i.e., right that) as conceived by the mighty and powerful within tribes. Indeed, tribal law stood still and in effect advocated numerous rights violations.[64] It is within this context that the CM charts a code of conduct within which the community can realize rights. None of these rights could have been realized without calling forth a different political community.

ACTUALIZING A NASCENT VISION

Uniquely, in the CM, the articulation of rights is matched with actualization measures. Because there was no "institution" or authority but the tribe to actualize rights and to offer punitive measures to hold human rights violators accountable, the CM had to simultaneously envision an alternative worldview and subject. This visionary rhetoric constitutes people and groups. The CM names and interpellates new subjects—the citizens of Medina—and binds them legally, relationally, and politically to one another and to a nascent city-state that has both jurisdictional and jurisprudential power. The rhetorical work done to interpellate this community is evident in the interpellation of Medina as *umma* or a nation as well as making a claim to jurisdictional and jurisprudential power. According to Maurice Charland, constitutive rhetoric responds to crisis when the need arises to "interpellate" or "hail" addressees, calling forth a collective identity and different possibilities.[65] The rhetoric of naming and refashioning

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(2010): 353–79; Gerard Hauser, "The Moral Vernacular of Human Rights Discourse," cited in n. 11 above; Gerard Hauser, *Prisoners of Conscience: Moral Vernaculars of Political Agency* (Colombia: University of South Carolina, 2014); Arabella Lyon, *Deliberative Acts*, cited in n. 11 above.

[64]For example, the rights to life and to social and economic justice were continuously denied by practices like female infanticide, overworking and underpaying the poor, and false contractual practices and usury, which resulted in enslavement and forced prostitution. Tribal logic was part of a dominant worldview that casually denied the humanity of many. For more, please see chapters 46 on social standing and 56 on justice in Jawād 'Alī, *al-Mufaṣṣal*, cited in n. 34 above.

Medinians is evident because both the signatories and the goal of the CM are named: "(1) This is a document from Muhammad the prophet (governing the relations) between the believers and Muslims of Quraysh and Yathrib, and those who followed them and joined them and labored with them. (2) They are one community (umma) to the exclusion of all men." Clearly tribes and clans of Medina are "hailed" as a unified citizenry, or "one community."[66] The people interpellated by the CM are equally valued, transcend their tribal affiliations, and their lives are protected and nurtured. This community develops a sociopolitical contract, makes a jurisdictional claim to its territory, and has both internal and external sovereignty.[67]

As a nascent sociopolitical entity, it is distinct from other peoples and is identified as "one community (*umma*) to the exclusion of all men." What united the peoples of Medina as citizens—despite the fact that until then they had tended to define themselves as tribes, a typical characteristic of tribal communities—is a form of an *in actu* sociopolitical contract. As Khan, a law scholar, explains, this contract is

> an actual agreement among real people of diverse ethnic and religious groups. This reality based social contract is not even a theory or an inspirational constitution to be implemented in the future. The Medina constitution offered social contract in real time, in real space, to real people through a real agreement, hundreds of years before the theory of social contract gained widespread approval, mostly in the West.[68]

The social contract is a result of a multidimensional effort that recognizes the identity, rights, and interests of different groups while affirming the qualities of interdependence, brotherhood, and obligation that can bind them as a political community. Its establishment necessitates claims to jurisdictional and jurisprudential power, which are indispensable for the articulation of rights.

The jurisdictional claim is evident in the second article, in which the interpellated community is defined negatively in terms of "the exclusion of all [other] men." Muḥammad wanted to establish a

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[65]Maurice Charland, "Constitutive Rhetoric: The Case of the Peuple Québécois." in Thomas B. Benson, ed. *Landmark Essays on Rhetorical Criticism* (Davis, California: Hermagoras Press, 1993). 213–25.

[66]Yetkin Yildirim, "The Medina Charter," cited in n. 19 above, p. 441.

[67]For more on sovereignty, see Eric Brahm, "Sovereignty," September 2004. "Beyond Intractability," Ed. Guy Burgess and Heidi Burgess. Conflict Research Consortium. <http://www.beyondintractability.org/essay/sovereignty/>. Accessed 15 April 2009; Daniel Philpott, "Sovereignty: An Introduction and Brief History," *Journal of International Affairs* 48.2 (1995): 353–68.

[68]Ali Khan, "The Medina Constitution," cited in n. 16 above, p. 3.

"territorial unity." This territorial claim implied people identifying with land and land being identified with its people, who become geographically, spatially, and politically bound together. This goal might be dismissed as unimportant or inessential. However, persecution faced in Mecca underlines the importance of sovereignty (i.e., the ability to control one's affairs, including the right to religious belief and practice and to be free from imposition). In Mecca, Muslim converts couldn't ward off religious persecution because their sovereignty was undermined. Establishing territorial unity, and its attendant affirmation of sovereignty, enabled the affirmation of religious freedom and collective and organized resistance against impending danger from the powerful Quraysh, who had earlier persecuted the small Muslim minority in Mecca.

In addition to this territorial claim, there arose a need for a claim to jurisprudential power (i.e., a claim to the authority to provide a mechanism to manage and regulate relations, power dynamics, and pursuit of justice, including the articulation and realization of rights). The CM—assuming the goals of a charter—is a founding, guiding, and regulatory document that "spells out in detail the rights and duties" of the Medina tribes (stakeholders) and names the "powers and mechanisms for good . . . governance" and peace-making.[69] Among many indications of the use of this rhetoric to operationalize rights discourse, the CM coordinated action toward the pursuit of justice when it spelled out principles and values that guided its agreements and recognized customary dispute resolution practices, which I address very briefly below.

The CM spells out principles and values (like equal rights to safety, security, and solidarity) that guide its pursuit of justice (i.e., constitutional potential). With the backdrop of these values/principles, the CM, for example, establishes justice as a worthy good in the community and identifies how this good is to be realized. A case in point, the CM affirms existing customary dispute resolution practices—a mechanism for managing power abuse and righting wrongs. The CM recognizes not only the different tribes or associations by name but also their resources for the pursuit of justice, affirming in article 3 their right to their *sharā'i'* or customary bloodwit practices. Rather than elide their differences or assimilate them into a uniform, idealized

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[69]Mohammad Haron, Zeinoul Abedien Cajee, and Suleman Essop Dangor, "Initiating Transformation, Visualizing a Future: The Case for Constructing a Charter for Muslims in South Africa," *Journal of Muslim Minority Affairs* 31.4 (2011): 615–30.

representation of justice, the CM affirms their cultural justice resources as one of the measures governing and regulating their relations.

Moreover, the CM provided a mechanism to maintain the pursuit of justice when impeded. Article 42 sheds light on this mechanism in relation to dispute resolution: "If any dispute or controversy likely to cause trouble should arise it must be referred to God and to Muhammad the apostle of God. God accepts what is nearest to piety and goodness in this document." This article, in addition to giving precedence to the autonomy of communities, identifies another central resource/authority that can help realize these communities' right to justice. Only when they fail to resolve their own conflicts are they supported by such central authority, namely divine law and their chosen arbiter, Muḥammad, to resolve conflicts. Accordingly, the charter spells out legally binding terms that regulate the groups' relations to one another and their city-state, which is the jurisprudential dimension of the CM. These legally binding terms resolve imminent conflict, proactively ward off others (e.g., power struggles over leadership and tribal dominion, economic competition, escalations of bloodwit disputes), and establish a governing system that helps the community realize their rights.

By creating contracts and by articulating principles and rights that help build Medina as a political unit, the CM exemplifies a responsive legal-political rhetoric. However, this is true of the immediate audience addressed. As the text was transmitted and remembered throughout the centuries, it assumed different rhetorical goals. The Constitution of Medina has an evocative power: it continues to inspire political (re)visions for different communities and across ideological divides.

An Evocative Rhetoric: Disclosing Possibilities

The CM continues to inspire because it manifests an often-long-awaited possibility of peaceful coexistence. Explaining the rhetoric of possibility, Kirkwood notes that "disclosing possibilities is central to the rhetorical enterprise."[70] The rhetoric of possibility makes us engage "the subjunctive mood of culture, the mood of maybe, might be, as if; it can 'be described as a fructile chaos, a storehouse of possibilities'."[71] To illustrate, Haron, Cajee, and Dangor write about

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[70]William G. Kirkwood, "Narrative and the Rhetoric of Possibility," *Communication Monographs*, 59 (1992): 30–47, p. 31.
    [71]Victor W. Turner quoted in William Kirkwood, "Narrative and the Rhetoric of Possibility," cited in n. 70 above.

how South Africa's Muslim Community drew on the political vision and conciliatory wisdom of the CM.[72] Not only was the CM seen as a persuasive and inspiring model for the desired Muslim community in South Africa (where Muslims are a minority) but also for Islamists and liberals in Egypt (where Muslims make up the religious majority) after the January 25 Revolution, 2011. Surprisingly, before and during the drafting of the 2012 Egyptian constitution, numerous scholars and public figures brought up the CM as an exemplar of a conciliatory constitution that addresses the varied, and at times conflicting, needs of a pluralistic society. For example, Dr. Muḥammad Salīm al-'Awwā—an Egyptian presidential candidate in the 2012 elections, who is a lawyer and a writer specializing in Islamic Law and arbitration—spoke at different points during the election year about the CM as an exemplary constitution, establishing and supporting a civilian state. His argument partly sought to explain the political constructedness of "Islamic state" and its lack of historical accuracy; to allay fears of an "Islamic state," especially in relation to minority rights; and to demonstrate how articulations of rights have an enduring presence in the Arab world.

In addition to its uniqueness and evocative rhetoric, the CM's suave power to end conflict and establish peace and rights in Medina contributes to our understanding of rights articulation and of Arab/Arab-Islamic rhetorical practices to end violence. More important, the study of the CM sheds light on the tradition of writing pacts and the articulation of rights as a response to Arab-Islamic rhetorical exigencies. To date, these practices are under the rhetorical radar and, therefore, deserve deliberate investment in their study.

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[72]Mohammad Haron, Zeinoul Abedien Cajee, and Suleman Essop Dangor, "Initiating Transformation," cited in n. 69 above.