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THE " CONSTITUTION OF MEDINA " SOME NOTES

The document known as the "Constitution of Medina" [1] has been studied by western scholars among whom was already J. Wellhausen who analyzed and divided the document into articles. His division was adopted by Wensinck, Watt and others, and it is also followed in the present study [2]. There are, however, certain problems in the "Constitution" which seem to remain unsolved. In the present paper an attempt is made at elucidating some of these problems [3].

1. "The Jews of Banû so-and-so"

One of the main objects of the "Constitution" was to determine the relations between the Muslims and the Jews of Medina within the framework of a new kind of unity. But whereas the identity of the Muslims who are dealt with in articles 2 - 10 of the document is fairly clear, the Jews who are treated in

1) See Ibn Hishâm, II, 147-150. This is the version of Ibn Isḥâq (d. 150H/767) which is also reproduced in Ibn Sayyid al-Nâs, I, 197-198 ; Ibn Kathîr, *Bidâya*, III, 224-226. Another version, that of al-Zuhrî (d. 124H/742), has been recorded in Abû 'Ubayd, 290-294. For an English translation of the document see Wensinck, 51 ff. ; Watt, 221 ff. ; Serjeant, II, 18 ff.

2) Serjeant, who completely ignored Wellhausen's study, cut the "Constitution" into no less than 8 separate "documents" in what seems to be a highly arbitrary manner.

3) The Arabic text of the passages studied below is provided in the appendix.

articles 25 -30, 46 are less easy to identify. The problem stems from the fact that in contrast to the Muslims who are mentioned by the names of their respective tribes, the Jews, in most cases, are merely referred to as "the Jews of" such-and-such an Arab tribe of Medîna : *Yahûd Banî 'Awf* ; *Yahûd Banî l-Najjâr* ; *Yahûd Banî l-Ḥârith*, etc.

The construction "*Yahûd Banî...*" ("the Jews of Banû...") was variously explained by western scholars. Sprenger (4) held that this expression does not refer to indigenous Jews, but merely to Arab converts to Judaism who belonged to various Medinan tribes ('Awf etc.). In other words, a phrase like *Yahûd Banî 'Awf* denotes the Arab members of Banû 'Awf who accepted Judaism (5). Convincing arguments against Sprenger were already put forward by Wellhausen (p. 129) and Wensinck (p. 69) who observed that the Arab converts to Judaism were too insignificant to be mentioned exclusively in the "Constitution". It is inconceivable that the indigenous Jews who formed nearly half the population of Medina should be totally excluded from a document designed to make Medina an indivisible unity.

In view of this, one must adopt Wellhausen's interpretation (p. 130) according to which "*Yahûd Banî...*" refers to genuine Jewish groups, who, for some reason, are called by the names of those Arab clans of Medina among whom they lived. But the identity of these groups is yet obscure. Wellhausen, followed by Wensinck and others, thought that they belonged to the great Jewish tribes, either to al-Naḍîr, Qurayẓa or to Qaynuqâ'. The fact that they are not called by the name of their own tribe served, according to Wellhausen, to identify the Jews as "clients" of the Arab Medinan tribes (6).

A crucial passage recorded by Ibn Isḥâq (7) leads, however, to the conclusion that the three great Jewish tribes of Medina are not included in the document. This passage which has already

4) *Das Leben und die Lehre des Muḥammad*, Berlin 1869, III, 23.

5) For an elaboration on Sprenger's view see Lecker, 67 ff.

6) Wellhausen, 130. See also Wensinck, 56, notes 3-4. Cf. Gil, 61.

7) Ibn Hishâm, II, 160-163.

been noticed by Watt [8] contains a list of 67 Jewish opponents of Muḥammad. In this list some Jewish groups are referred to in exactly the same way as they are in the document : *Yahûd Banî Zurayq* ; *Yahûd Banî Ḥâritha* ; *Yahûd Banî 'Amr b. 'Awf* ; *Yahûd Banî l-Najjâr*. These groups are mentioned alongside Banû l-Naḍîr, Banû Qaynuqâ' and Banû Qurayẓa who appear in the same list. The inevitable conclusion from this fact has already been drawn by Watt (p. 227) who says that some groups of Jews, distinct from the three main clans, were known as "the Jews of such-and-such an Arab clan".

A clue to the identity of these Jewish groups may be found in a passage of al-Samhûdî containing a list of the Jewish tribes who remained in Medina after the arrival of the Aws and the Khazraj [9]. Apart from the great Jewish tribes, al-Samhûdî mentions several smaller tribes, as well as groups which are not mentioned by name. The latter are either referred to as "*nâs*" ("people"), or as "*jummâ' min al-Yahûd*" ("mixed groups of Jews") [10] who dwelt in various areas of Medina [11]. The fact that these groups do not have any definite tribal affinity of their own seems to indicate that for some reason they lost their separate tribal organisation, and unlike the greater Jewish tribes they became closely associated with various Arab tribes among whom they dwelt. At least some of these nameless mixed groups seem to be identical with the Jews of the "Constitution" where they are called "the Jews of such-and-such an Arab tribe" [12].

The nature of the relations between these Jewish groups and their Arab neighbours may be elucidated by means of some

8) P. 227. See also Lecker, 69. Watt, however (p. 227-228), presumes that the document originally contained articles about Qurayẓa and Naḍîr, which were later on omitted, following the elimination of these tribes. But this does not seem likely.

9) Samhûdî, I, 114-116. Cf. Watt, 192 ff.

10) For the term *jummâ'* see also Lecker 11.

11) The areas are Zuhra, Jawwâniyya, Râtij, al-Shawṭ, al-'Anâbis, al-Wâlij, Zabâla and Yathrib. For some of these places see Lecker, index.

12) And see also Watt, 194 : "By about the time of the Hijra all the lesser Jewish clans or groups in as-Samhûdî's list had lost their identity... When the Constitution of Medina deals with them they are simply 'the Jews of an-Najjâr', 'the Jews of al-Ḥârith', and so on".

additional data recorded by Ibn Isḥâq in the above mentioned list of Muḥammad's Jewish opponents. Ibn Isḥâq reports that Muḥammad's opponent from *Yahûd Banî Zurayq* was Labîd b. A'ṣam who bewitched the prophet and caused him temporary impotence (13). The affair of Labîd is, in fact, echoed in a tradition attributing to Muḥammad the statement : "The Jews of Banû Zurayq bewitched me" (14). The reports of this affair which took place after al-Ḥudaybiyya (15) are focused indeed on Labîd b. A'ṣam who is said to have been a Jewish servant of the prophet (16). In some versions he is referred to as *al-Yahûdî min Banî Zurayq* (17), or as *Yahûdî min Yahûd Banî Zurayq* (18). The most significant piece of information is included in the report of al-Wâqidî (d. 207H/823) who relates that Labîd b. A'ṣam al-Yahûdî was a *ḥalîf* among the Banû Zurayq (*wa-kâna ḥalîfan fî Banî Zurayq*) (19). This means that Ibn A'ṣam belonged to one of those Jewish groups who had established *ḥilf* relations with the Banû Zurayq and lived among them. It seems that for this reason Ibn Isḥâq specifies him as one of *Yahûd Banî Zurayq*, which literally means : the Jewish *ḥalîfs* who dwelt in the territory of Banû Zurayq.

The existence of *ḥilf* relations between the Jews and the Banû Zurayq is confirmed by Ibn Ḥajar al-'Asqalânî who, commenting on the affair of Ibn A'ṣam, says that the Banû Zurayq were a well-known Anṣârî clan of the Khazraj. Before Islam there was between many of the Anṣâr and the Jews an alliance *(ḥilf)*, fraternity *(ikhâ')* and friendship (*wudd*). (20)

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13) Ibn Hishâm, II, 162.

14) 'Abd al-Razzâq, XI, 14 : *saḥaranî Yahûdu Banî Zurayq*. See also Ibn Sa'd, II, 198.

15) Ibn Sa'd, II, 197 (from al-Wâqidî) ; *Fatḥ al-bârî*, X, 192 (Ibn Sa'd).

16) Suyûṭî, *Durr*, VI, 417. Cf. Ḥalabî, II, 105.

17) Bukhârî, VII, 178.

18) Muslim, VII, 14.

19) Ibn Sa'd, II, 197. See also Samhûdî, II, 253.

20) *Fatḥ al-bârî*, X, 192. See also Khafâjî, II, 21 : ...*wa-huwa rajul min Banî Zurayq wa-hum baṭnun mina l-anṣâr, wa-kâna baynahum wa-bayna l-Yahûdi ḥilfun qabla l-Islâm*.

The Jews who had such *ḥilf* relations with Arab clans seem to have been almost affiliated into the Arab tribes whose *ḥalîfs* they became. This is indicated in some further versions about Ibn A'ṣam in which he is referred to as a genuine Arab member of Banû Zurayq who was a *ḥalîf* to the Jews [21].

In conclusion, the phrase "*Yahûd Banî...*" refers to nameless Jewish groups, who, unlike the great Jewish tribes, did not have a territory of their own, nor a distinct tribal affinity. They had *ḥilf* relations with various Arab tribes in whose territory they dwelt and by whose names they used to be called.

The reason why these groups lost their distinct tribal organisation is, of course, most important, but it remains beyond the scope of the present study. A more relevant question in this context is why the document deals only with these Jewish groups, to the exclusion of the three greater Jewish clans. The reason is apparently connected with the primary object of the document which was to establish in Medina a special kind of unity. This unity was to be based upon *locality*, or *territory*, not on the traditional basis of kinship [22]. In this kind of unity, all groups dwelling in the territory of Medina proper were to participate. This applied, first of all, to the Aws and the Khazraj, as well as to the Muhâjirûn (Quraysh) who joined them. These groups are dealt with in the first part of the document. Apart from them, those mixed Jewish groups, who had *ḥilf* relations with the Awsî and Khazrajî clans, were also to be included in the same unity, because they shared territory with their Arab allies [23]. This point is made very clear in Abû 'Ubayd's version of the introduction to the document. It is stated that this is a document on behalf of Muḥammad, between Quraysh and the people of Yathrib, and "those who followed and joined them and *resided*

21) Bukhârî, VII, 178, VIII, 23 ; Samhûdî, II, 252 ; Ibn Kathîr, *Tafsîr*, IV, 574 (from Bukhârî).

22) See also Watt, 241-242 ; Denny, 44-45.

23) The same applies apparently to the groups mentioned in articles 31-34 (Tha'laba, Jafna, Shuṭayba), but the identification of each of them is quite problematic. See e.g., Gil, 61-62 ; Serjeant, II, 28 ; Lecker, 70 ff.

with them'' [24].

As for the greater Jewish tribes, they had their own territory outside the main Arab districts, [25] so that the question of their position in the new territorial unity was apparently less urgent than that of the rest of the Jewish groups. But the fact that the greater tribes are not dealt with in the document does not mean that Muḥammad did not have similar prospects concerning them. As will be seen below, he did wish to establish close relations with these tribes as well, but there was no cause to deal with them in the ''Constitution''. The direct aim 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.

2. The *ḥaram* of Medina

That the main basis of the new unity was to be a territorial one is indicated in article 39 : ''the inner part (*jawf*) [26] of Yathrib is sacred *(ḥarâm)* for the people of this document. [27]. In making the territory of Medina a protected *ḥaram,* Muḥammad put it on a level with the *ḥaram* of Mecca.

Serjeant [28] suggests that the declaration of the *taḥrîm* of Medina took place ''sometime after the failure of the prophet's enemies to take Medina at the battle of al-Khandaq at the earliest''. Serjeant bases his view on the statement of al-Samhûdî (I, 76) who, relying on Ibn Ḥajar, places the declaration of the *taḥrîm* after Muḥammad's return from Khaybar, i.e., in 6 or 7 A.H. Al-Samhûdî's statement seems to be the main reason for Serjeant's hypothesis that the paragraph about the *taḥrîm* of Medina is much later than other parts of our document. But Ibn Ḥajar

24) Abû 'Ubayd, 291 : ... *wa-man tabi'ahum fa-laḥiqa bihim* fa-ḥalla ma'ahum ... The words *fa-ḥalla ma'ahum* are omitted in Ibn Hishâm.

25) See also Watt, 227, and the map on p. 152.

26) For ''*jawf*'' cf. Serjeant, II, 34 ; Gil, 56.

27) This statement was also included in the *ṣaḥîfa* allegedly preserved in the scabbard of 'Alî's sword. See 'Abd al-Razzâq, IX, 263 ; Bukhârî, III, 26, IV, 122, 124-125, VIII, 192, IX, 119-120 ; Muslim, IV, 115, 217 ; Abû Dâwûd, I, 469. Cf. Serjeant, I, 5 ff. ; Gil, 46-47.

28) I, 9-10. See also II, 34.

himself [29] on whom al-Samhûdî relies bases his opinion concerning the date of the *taḥrîm* of Medina on traditions recorded by al-Bukhârî [30], belonging to a special type which cannot lead to any chronological conclusions. In these traditions Muḥammad's statement concerning the *taḥrîm* of Medina is coupled with a statement about the virtues of the mountain of Uḥud, as well as with a prayer concerning the wellfare of Medina. Such utterances are reported to have been made by Muḥammad also upon returning from 'Usfân [31] where he spent some days following the affair of al-Ḥudaybiyya (6 A.H.) [32], as well as upon returning from Tabûk (9 A.H.) [33]. In each case, these traditions seem to ascribe to Muḥammad various declarations concerning the virtues of Medina, in order to stress his joy at seeing the town, whenever he returned from a dangerous journey.

A different tradition which does not fall into this pattern seems to indicate that the *ḥaram* of Medina was actually decreed much earlier. It is reported that on his way to the battle of Badr (2 A.H.), the prophet stopped at a place called al-Suqyâ where he prayed for the people of Medina, invoking Allâh to bless them with plenty of foodstuffs and to protect them against disease. The prayer concludes with the announcement that the prophet declares Medina to be a *ḥaram*, just as Abraham declared Mecca to be a *ḥaram* [34]. This tradition seems to place the *taḥrîm* of Medina in its proper context, namely, the preparation for the battle against Mecca. It indicates that one of the first steps taken by Muḥammad already before Badr, was to declare Medina to be of the same sacred position as that of Mecca. Its territory was made sacred, with strict rules against bloodshed, and its inhabitants were expected to protect and be devoted to it just as Quraysh were devoted to their own *ḥaram*.

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29) See *Fatḥ al-bârî*, IV, 71.

30) Bukhârî, IV, 42, 43-44, VII, 99. See also Wâqidî, II, 712.

31) Muslim, IV, 117-118.

32) Wâqidî, II, 616.

33) Bukhârî, III, 26 ; Muslim, IV, 123-124.

34) Wâqidî, I, 22. See also 'Abd al-Razzâq, IX, 262 ; Suyûṭî, *Durr*, I, 121 (from Aḥmad). Cf. Tirmidhî, XIII, 272 ; Khargûshî, fol. 199a.

This declaration was also included in the "Constitution" which means that the new unity Muḥammad intended to establish in Medina had a clear holy nature, its main object being to protect the sacred territory of Medina against its enemies.

The two articles preceding the declaration of the *ḥaram*, (no. 37, 38) also deal with the subject of protection. Both the Jews and the Muslims must finance the war expenses by paying the *nafaqa*, and they must help each other against whoever fights the people of this document. From a report of al-Zuhrî it is clear that the Jews not only participated in financing the war expenses but also took an active part in the battles ; their share in the booty was equal to that of the Muslims (35).

3. "Umma"

The name of the new unity declared by the "Constitution" is "*umma*". Western scholars who studied the meaning of this term in the document were aware of the fact that it must be examined according to its meaning in the Quran, where, in most relevant cases, it has a pure religious connotation. But, as we are about to see, this term is associated in our document with the Jews, from which fact all scholars inferred that "*umma*" in the "Constitution" is devoid of any religious connotation, merely representing a "loose political unity" (36). These scholars seem to be unanimous also that the position granted to the Jews within the new unity of the *umma* put them on an inferior level with respect to the Muslims. Wellhausen (p. 134) contends that the document "displays a certain distrust of the Jews" who are not expected to accept Islam. Denny (p. 44) holds that the Jews are treated as a "sub-*umma*" distinct from the Muslims who form a "closed" *umma* of their own. Gil (p. 63-65) maintains that the document

35) 'Abd al-Razzâq, V, 188 : *kâna Yahûdu yaghzûna ma'a l-nabiyyi* (ṣ) *fa-yushimu lahum ka-sihâmi l-Muslimîn*. Cf. Tirmidhî, VII, 49. And see also Suhaylî, II, 252 : *wa-kâna li-l-Yahûdi idh dhâk naṣîbun fi-l-maghnami idhâ qâtalû ma'a l-Muslimîn...*

36) Wellhausen, 131. See also Wensinck, 52, note 1 : "*Ummah* : here exclusively political unity". Watt, 241 : "... the *ummah* is no longer a purely religious community". Serjeant, I, 12 : "It is entirely political, not religious..." Serjeant, II, 4 : "*Ummah* is basically a political confederation..." Gil, 50 : "... in this document *umma* simply means 'a group' ".

does not grant the Jews any special position at all, but rather reflects Muḥammad's anti-Jewish policy which had its direct results in the elimination of the Jews after Badr.

None of these assumptions seem to be borne out by the text of the document. There seems to be no reason why the meaning of the term *umma* in the "Constitution" should be different from its meaning in the Quran, the only surviving document which stems from the same period and environment.

The term *umma* first appears in the document in article 1, which deals with the Muslims of Quraysh and Yathrib, and with those who joined and strove together with them, i.e., the Jews. Concerning all these groups it is stated : *innahum ummatun wâḥidatun min dûni l-nâs* — they are one *umma*, to the exclusion of — or apart from — (all other) people [37].

When looking for clues in the Quran to the meaning of this article, it is not merely the term *umma* which must be trailed, but rather the locution : "*umma wâḥida*" ! This phrase occurs in the Quran no less than nine times [38]. In all cases with no exception it denotes people united by a common *religious* orientation, in contrast to people divided by different kinds of faith. The conclusion with respect to article 1 of the "Constitution" is, therefore, inevitable. This article declares that the Muslims of Quraysh and Yathrib, as well as the Jews, constitute one unity, sharing the same religious orientation, thus being distinct from all the rest of the people who adhere to other kinds of faith. It is thereby clear that the new unity is designed to be based not only on common sacred territory but also on common faith.

The next occurrence of the term *umma* is in article 25. For this article we have two parallel versions. That of Ibn Isḥâq reads : *wa-inna Yahûda Banî ʿAwf ummatun maʿa l-mu'minîn...* [39]. The second version is that of Abû ʿUbayd (p. 293) which is recorded on the authority of al-Zuhrî : *wa-inna Yahûda Banî*

37) For the phrase "*min dûni l-nâs*" see Serjeant, II, 21. For another interpretation see Gil, 49-50.

38) II/213 ; V/48 ; X/19 ; XI/118 ; XVI/93 ; XXI/92 ; XXIII/52 ; XLII/8 ; XLIII/33.

39) Ibn Hishâm, II, 149.

'Awf wa-mawâliyahum wa-anfusahum ummatun mina l-mu'minîn... The most crucial variation in these versions is the preposition annexed to the word *umma*. In Ibn Isḥâq it is (*umma*) *ma'a*, whereas in Abu 'Ubayd it is (*umma*) *min* (40). According to Serjeant (II, 9), the version of Abû 'Ubayd is "defective", and he prefers to it that of Ibn Isḥâq. It seems, however, that as far as the present passage is concerned, the version of Abû 'Ubayd is the original one, because, as we shall presently see, the construction *umma mina l-mu'minîn* accords with Quranic style, whereas *umma ma'a l-mu'minîn* does not.

The expression *umma mina l-mu'minîn* seems to denote : "an *umma* of believers". The preposition *min* is used here *li-l-bayân*, or *li-l-tabyîn*, i.e., to make clear, to explain (41). This *min* precedes the definite term *al-mu'minîn* which is designed to explain the preceding indefinite term *umma*. This means that in article 25 "the Jews of Banû 'Awf" are labeled as an "*umma* of believers". The same applies to the rest of the Jewish groups mentioned in the subsequent articles.

The usage of *min li-l-tabyîn* in juxtaposition with *umma* is typical to Quranic style. In sûra XXVIII/23 Moses is said to have met at the well of Madyan "*ummatan mina l-nâs*" — an *umma* (consisting) of (various) people. In VII/38 there is mention of various *umam* consisting of *jinn* and mankind : *umamin... mina l-jinni wa-l-insi*. Similar constructions may be found in early *ḥadîth*. For instance, there is a tradition stating that whenever a group of Muslims, including 100 persons at least, prays over a dead man, its intercession for him is accepted. The expression "a group of Muslims" is : *ummatun mina l-muslimîn* (42).

The fact that the Jews are labeled in the "Constitution" as an *umma* of "believers" fits in with what we know about the far-reaching concessions Muḥammad was willing to make in the first

40) Abû 'Ubayd's version has also been preserved in Ibn al-Athîr, I, 68, as indicated in Serjeant, II, 40, note 41.

41) See Wright, II, 137-138. One of the examples adduced there is : *ikhwânunâ hâ'ulâ'i mina l-anṣâr* - "these brethern of ours, the Anṣâr".

42) Muslim, III, 53 ; Tirmidhî, IV, 247.

Medinan period, in order to reconcile the Jews. As pointed out by Watt (p. 200), "Muḥammad's appeal to the Jews was an appeal to become Muslims or rather 'believers' ". In fact, Muḥammad was ready to accept the Jews as "believers" merely on the basis of monotheism. As Watt has put it (p. 200) : "There is some justification for thinking that at some period during the first year or so at Medina (not necessarily in the first months) Muḥammad contemplated a religious and political arrangement which would give a measure of unity but would not demand from the Jews any renunciation of their faith or acceptance of Muḥammad as a prophet with a message for them..." "Such an appeal for reconciliation on the basis of monotheism and nothing else" is found by Watt (p. 201) in Quran III/64 (tr. Watt) :

> "Say : 'O People of the Book, come to a word (which is) fair between us and you, (to wit) that we serve no one but God, that we associate nothing with Him, and that none of us take others as Lords beside God".

Precisely this policy seems to form the point of departure for article 25 of the "Constitution" which recognizes the Jews as *"mu'minûn"*. This attribute stands for a special position granted to the Jews within the new *umma wâḥida* of Medina. To begin with, the Jews as *mu'minûn* were entitled to complete protection. This observation is based on some Quranic passages in which it is stressed that the *mu'minûn* are entitled to *amn* — security. Quran VI/82 for instance, [43] reads :

> *alladhîna âmanû wa-lam yalbisû îmânahum bi-ẓulmin, ulâ'ika lahumu l-amnu wa-hum muhtadûn.*
>
> Those who are *mu'minûn* and do not mix their *îmân* with mischief, to them security is due and they are on the right path.

The same idea recurs in XXIV/55, where Allâh promises the *mu'minûn* to make them survive (other people) and establish their *dîn* for them, and replace their fear with security (*amn*).

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43) For this verse cf. also Serjeant II, 14, with a somewhat speculative interpretation.

Being recognized as *mu'minûn*, the Jews were also entitled to keep to their own *dîn*, as is stated explicitly in the subsequent stipulation of article 25, which must now be examined : "*li-l-Yahûdi dînuhum wa-li-l-Muslimîna dînuhum*.. [44]. The meaning of this declaration may be elucidated by means of some Quranic passages addressed to the People of the Book. Quran XLII/15 reads :

> "... Say : 'I believe in whatever book Allâh has sent down... Allâh is our Lord and your Lord. We have (the reward for) our deeds, and you have (the reward for) your deeds. (*lanâ a'mâlunâ wa-lakum a'mâlukum*). There is no dispute between us and you...' ".

A similar statement is found in II/139 (cf. also XXVIII/55), and it seems that the Quranic phrase *lanâ a'mâlunâ wa-lakum a'mâlukum* is an appropriate clue to the meaning of *li-l-Yahûdi dînuhum wa-li-l-Muslimîna dînuhum*. The latter clause seems to convey the idea that the *dîn*, i.e., religion, of both parties has equal merit so that each party has the right to go on adhering to its own *dîn* [45].

It is clear now that within the *umma wâḥida* which separated all monotheistic groups of Medina from other people, the Jews were given the position of "*umma* of believers", thus being distinguished from all other monotheistic (Muslim) members of the *umma wâḥida*. Their recognition as *believers* provided them with the privilege to stick to their own Jewish *dîn* while enjoying complete protection. This was indeed a far-reaching concession on the part of Muḥammad designed to win the Jews over to his cause.

The locution *umma mina l-mu'minîn* seems to represent a technical, or legal term which, with some variations, could be

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44) This is the version of Ibn Isḥâq. Abû 'Ubayd has *wa-li-l-mu'minîn* instead of *wa-li-l-Muslimîn*. Gil 63 reads "*dayn*" instead of "*dîn*", taking this word to denote responsibility for debts. But such an interpretation requires the preposition "*alâ*" instead of "*li*", as is also the case in article 37 : "*wa-inna 'alâ l-Yahûdi nafaqatahum wa-'alâ l-Muslimîna nafaqatahum*".

45) And cf. also CIX/6 : "*lakum dînukum wa-lî dînî*". But this passage is less relevant being addressed to the "*kâfirûn*", not to the People of the Book.

applied to any other group of people which, upon joining the Muḥammadan unity, was granted the privilege to keep to its former condition, thus being distinguished from other groups of the same unity. Several years later, this attribute was indeed applied to another group as well, an Arab one, which, unlike the Jews, actually embraced Islam. It was the tribe of Thaqîf.

The negotiations between the prophet and Thaqîf which took place in 9 A.H., after the fall of Ṭâ'if, were surveyed most thoroughly by M.J. Kister who has shown (p. 11) that the privileges bestowed upon them "were generous and amounted almost to a measure of autonomy". From Kister's study (p. 7 ff.) it is clear that apart from exemption from paying certain taxes, Thaqîf were allowed to retain their former territorial rights. Their land (known as Wajj) and city (Ṭâ'if) were declared inaccessible to anyone else, and it was to remain their exclusive domain. They were allowed to go on planning the building of Ṭâ'if as they liked, and governors were to be appointed only from amongst themselves. These privileges were granted exclusively to Thaqîf in order "to reconcile their hearts to Islam".

The text of the treaty which granted Thaqîf these rights has been recorded by Abû 'Ubayd, and in view of what has been said thus far, it is not surprising to find that Thaqîf are labeled in this treaty as *ummatun mina l-Muslimîn* — an *umma* of Muslims (46). This means that Thaqîf, while becoming an integral part of the Muslim community, are, at the same time, recognized as an *umma*, thus remaining distinct from the rest of the Muslims, due to several exceptional privileges. Since Thaqîf were never monotheists, they could not, of course, be recognized merely as *mu'minûn*, like the Jews. In both cases, however, the position of *umma* was granted by Muḥammad as a far-reaching concession designed to win these groups over to Muḥammad's cause.

46) Abû 'Ubayd, 277. The text of this treaty has already been touched upon by Lecker (80-81), with respect to the version : *wa-inna Yahûd Banî 'Awf... amanatun mina l-mu'minîn* (see below note 54).

4. The date of the "Constitution"

Wensinck (p. 70-71) supposes that when the "Constitution" was drawn up, the break with Judaism had already occurred, and Muḥammad realised that a common basis with the Jews was impossible. The above examination shows, however, that the document clearly reflects the hopes of Muḥammad for winning the Jews over to his cause. This means that it stems from the period preceding the break with the Jews, and it may well be that it was drawn up a very short time after the Hijra [47]. This observation is supported by some reports recorded by al-Wâqidî. In one of them it is stated : "When the apostle of Allâh came (to Medina) he made an agreement *(ṣâlaḥa)* with Qurayẓa and al-Naḍîr, and (with) the Jews who were in Medina..." [48]. This report draws a clear line between the main Jewish tribes (Qurayẓa, Naḍîr) and the rest of the Jews who dwelt in Medina. Only the latter seem to be identical with those dealt with in the "Constitution". But al-Wâqidî's report indicates that Muḥammad tried to establish similar relations with the main Jewish tribes as well. Elsewhere, al-Wâqidî actually states that when Muḥammad came to Medina he wished to make peace with all the sections of the Medinan population [49]. Another report of al-Wâqidî which refers to the same period says : "When the apostle of Allâh came to Medina, all the Jews made truce with him. He wrote a document *(kitâb)* between himself and them, and he joined each group to its allies *(wa-alḥaqa... kulla qawmin bi-ḥulafâ'ihim)* [50]. This statement obviously refers to those articles in the "Constitution" in which each Jewish group is mentioned as the "Jews of" its respective allied Arab tribe [51].

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47) See also Gil, 49 ; Serjeant, II, 26.

48) Wâqidî, II, 454. Cf. also Wellhausen 128 ff. ; Gil, 59.

49) Wâqidî, I, 184 : *fa-arâda rasûlu llâhi (ṣ) ḥîna qadima l-Madîna istiṣlâḥahum kullahum wa-muwâda'atahum*. For this report cf. Lecker, 64 ff.

50) Wâqidî, I, 176.

51) For this report see also Wellhausen, 128 ; Watt, 196 ; Serjeant, I, 7, II, 25-26 ; Gil, 59.

5. The attitude of later generations to the "Constitution"

The fact that article 25 of the "Constitution" recognizes the Jews as an "*umma* of believers" created a grave dogmatic problem for scholars of later Islam. For, as a result of the well-known "break with the Jews" which occurred shortly after the conclusion of the "Constitution", the Jews came to be regarded as enemies of Islam, and no one could dream now of labeling them as "believers" (52).

For this reason, the old document had either to be suppressed, or re-interpreted, or even, reshaped. The attempts at suppressing the document altogether are reflected in the fact that its text is entirely missing in the works of al-Wâqidî, al-Balâdhurî and al-Ṭabarî (53).

An obvious attempt at re-interpreting the existing text is discernible in Abû 'Ubayd's commentary on the phrase *ummatun mina l-mu'minîn*. In his perception, the attribute "*mu'minîn*" does not stand for the Jews but rather for the Muslims ; accordingly, the *min* no longer functions as *min li-l-bayân* but rather as *li-l-tab'*îḍ i.e., to indicate a part of a whole. The entire passage is conceived by Abû 'Ubayd as declaring the Jews to be an *umma* forming part of the Muslims. He explains that this was meant only in the sense that the Jews must support the "believers" (i.e., the Muslims) against their enemies by paying the *nafaqa* which was imposed on them by the prophet (54). The declaration *li-l-Yahûdi dînuhum wa-li-l-mu'minîna dînuhum* is taken by Abû

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52) There is evidence that already in the battle of Uḥud (3 A.H.), Muḥammad himself labeled the Jews as "*ahl al-shirk*". See Wâqidî, I, 215-216.

53) Cf. Wensinck, 63.

54) Abû 'Ubayd, 296 : ... *innamâ arâda naṣrahumu l-mu'minîna wa-mu'awanatahum iyyâhum 'alâ 'aduwwihim bi-l-nafaqati llatî sharaṭahâ 'alayhim*. A similar perception is reflected in Ibn al-Athîr, I, 68 (s.v. "*umma*") : ... *yurîdu annahum bi-l-ṣulḥi lladhî waqa'a baynahum wa-bayna l-mu'minîna ka-jamâ'atin minhum, kalimatuhum wa-aydîhim wâḥida*. Modern scholars seem to be under the influence of the same perception. See, for instance, M. Hamidullah, "Sources of Islamic law - a new approach", *Islamic Quarterly*, I, 1954, 207, where "*umma mina l-mu'minîn*" is rendered : "a community forming part of the believers...". The preposition "*min*" was

'Ubayd to express the contrast between the true Islamic *dîn* and the false Jewish one [55].

An attempt at reshaping the original text of the document is reflected in Ibn Isḥâq's version of article 25. As seen above, in this version the Jews are declared to be "*ummatun ma'a l-mu'minîn*". The replacement of the original *min* by "*ma'a*" is obviously designed to stress that the "*mu'minûn*" are distinct from the Jews, exclusively representing the Muslims [56].

Only in this manner the re-interpreted and reshaped text of the "Constitution" could gain access into some works of early Muslim historiographers.

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also perceived in the sense of "from", which brought about the introduction of the version : *wa-inna Yahûd Banî 'Awf... amanatun mina l-mu'minîn* (Lecker 82). Another version : *wa-inna li-Yahûdi Banî 'Awf... dhimmatan mina l-mu'minîn* (Lecker 83).

55) Abû 'Ubayd, 296 : *fa-ammâ l-dîn, fa-laysû minhu fî shay'in. a-lâ tarâhu qad bayyana dhâlika fa-qâla : 'li-l-Yahûdi dînuhum wa-li-l-mu'minîna dînuhum.*

56) The terms *îmân/mu'minûn/âmana* were indeed conceived by Muslim scholars as referring exclusively to Muslims. In some early traditions, "*îmân*" signifies the inner persuasion of the true Muslim, whereas "*islâm*" refers only to the external acceptance of this faith. See, for instance, the statement of the prophet : "*al-islâmu 'alâniyatan wa-l-îmânu fî-l-qalbi*" (Aḥmad, III, 134-135 ; Suyûṭî, *Durr*, VI, 100 ; Ṭabarsî, XXVI, 98). And see also : "*aslama l-nâsu wa-âmana 'Amr b. al-'Âṣ*". (Tirmidhî, XIII, 232 ; Aḥmad, IV, 155 ; Ibn al-Athîr, I, 70). The same perception was read into the interpretation of Quran XLIX/14 : "*qâlati l-a'râb : 'âmannâ'. qul : 'lam tu'minû, wa-lâkin qûlû : aslamnâ...*". For details see the commentaries.

APPENDIX
Selected articles from the "Constitution" (Ibn Isḥâq's version)

بسم الله الرحمن الرحيم. هذا كتاب من محمد النبي صلى الله عليه وسلم بين المؤمنين والمسلمين من قريش ويثرب، ومن تبعهم فلحق بهم (فحلّ معهم)[1] وجاهد معهم.

١. – انهم امّة واحدة من دون الناس.

٢٥. – وان يهود بني عوف امّة من[2] المؤمنين، لليهود دينهم وللمسلمين دينهم، مواليهم وانفسهم، الا من ظلم واثم فانه لا يوتغ الا نفسه واهل بيته.

٢٦. – وان ليهود بني النجار مثل ما ليهود بني عوف.

٢٧. – وان ليهود بني الحارث مثل ما ليهود بني عوف.

٢٨. – وان ليهود بني ساعدة مثل ما ليهود بني عوف.

٢٩. – وان ليهود بني جشك مثل ما ليهود بني عوف.

٣٠. – وان ليهود بني الاوس مثل ما ليهود بني عوف.

٣١. – وان ليهود بني ثعلبة مثل ما ليهود بني عوف الا من ظلم واثم فانه لا يوتغ الا نفسه واهل بيته.

٣٧. – وان على اليهود نفقتهم وعلى المسلمين نفقتهم. وان بينهم النصر على من حارب اهل هذه الصحيفة. وان بينهم النصح والنصيحة والبر دون الاثم. وانه لا يأثم امرؤ بحليفه وان النصر للمظلوم.

٣٨. – وان اليهود ينفقون مع المؤمنين ما داموا محاربين.

٣٩. – وان يثرب حرام جوفها لاهل هذه الصحيفة.

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(١) الزيادة من ابي عبيد، ١٤٧.

(٢) ابن اسحاق : « مع ». والتصحيح من ابي عبيد، ٢٩٣.

ABBREVIATIONS

'Abd al-Razzâq	:	'Abd al-Razzâq, *al-Muṣannaf*, ed. Ḥabîb al-Raḥmân al-A'ẓamî, Beirut, 1970.
Abû Dâwûd	:	Abû Dâwûd, *Sunan*, Cairo 1952.
Abû 'Ubayd	:	Abû 'Ubayd Ibn Sallâm, *Kitâb al-amwâl*, ed. M. Khalîl Harâs, Cairo 1968.
Aḥmad	:	Aḥmad b. Ḥanbal, *al-Musnad*, Cairo 1313H/1895, repr. Beirut n.d.
Bukhârî	:	al-Bukhârî, *Ṣaḥîḥ*, Cairo 1958.
Denny	:	F.M. Denny, "Ummah in the Constitution of Medina", *JNES*, XXXVI, 1977, 39-47.
Fatḥ al-bârî	:	Ibn Ḥajar al-'Asqalânî, *Fatḥ al-bârî sharḥ ṣaḥîḥ al-Bukhârî*, Bûlâq, 1310H/1883, repr. Beirut n.d.
Gil	:	M. Gil, "The Constitution of Medina : a reconsideration", *IOS*, IV, 1974, 44-65.
Ḥalabî	:	al-Ḥalabî, *al-Sîra al-Ḥalabiyya*, Cairo 1320H/1902, repr. Beirut n.d.
Ibn al-Athîr	:	Ibn al-Athîr, *al-Nihâya fî gharîb al-ḥadîth wa-l-athar*, ed. al-Zâwî, al-Ṭanâḥi, Cairo 1965.
Ibn Hishâm	:	Ibn Hishâm, *al-Sîra al-nabawiyya*, ed. al-Saqqâ, al-Abyârî, Shalabî (I-IV), repr. Beirut 1971.
Ibn Kathîr, *Bidâya*	:	Ibn Kathîr, *al-Bidâya wa-l-nihâya*, repr. Beirut, 1974.
Ibn Kathîr, *Tafsîr*	:	Ibn Kathîr, *Tafsîr al-Quran al-'aẓîm*, Cairo, Dâr al-Fikr, n.d.
Ibn Sa'd	:	Ibn Sa'd, *al-Ṭabaqât al-kubrâ*, Beirut 1960.
Ibn Sayyid al-Nâs	:	Ibn Sayyid al-Nâs, *'Uyûn al-athar*, repr. Beirut, n.d.
Khafâjî	:	Shihâb al-Dîn al-Khafâjî, *Nasîm al-Riyâḍ fî sharḥ shifâ' al-qâḍî Iyâḍ*, Cairo 1327H/1909.
Khargûshî	:	Abû Sa'd al-Khargûshî, *Sharaf al-nabî*, MS, BL, Or. 3014.
Kister	:	M.J. Kister, "Some reports concerning al-Ṭâ'if" *JSAI*, I, 1979, 1-18.
Lecker	:	M. Lecker, *On the prophet Muḥammad's activity in Medina*, Ph. D. thesis, Hebrew University, Jerusalem 1982 (in Hebrew).
Muslim	:	Muslim, *Ṣaḥîḥ*, Cairo 1384H/1915.
Samhûdî	:	al-Samhûdî, *Wafâ' al-wafâ bi-akhbâr dâr al-Muṣṭafâ*, Cairo 1326H/1908.
Serjeant, I	:	R.B. Serjeant "The 'Constitution of Medina' " *The Islamic quarterly*, VIII, 1964, 3-16.
Serjeant, II	:	R.B. Serjeant, "The *sunnah jâmi'ah* pacts with the Yaṯrib Jews, and the *taḥrîm* of Yathrib...", *BSOAS*, XLI, 1978, 1-42.

Suhaylî	:	al-Suhaylî, *al-Rawḍ al-unuf*, ed. 'Abd al-Ra'ûf Sa'd, Cairo 1973.
Suyûṭî, *Durr*	:	al-Suyûṭî, *al-Durr al-manthûr*, Cairo 1314H/1896, repr. Beirut n.d.
Ṭabarsî	:	al-Ṭabarsî, *Majma' al-bayân fî tafsîr al-Quran*, Beirut 1957.
Tirmidhî	:	al-Tirmidhî, *ṣaḥîḥ*, in Ibn al-'Arabî al-Mâlikî, *'Âriḍat al-aḥwadhî*, ed. al-Ṣâwî, n.d. n.p.
Wâqidî	:	al-Wâqidî, *Kitâb al-maghâzî*, ed. J.M.B. Jones, London 1966.
Watt	:	W.M. Watt, *Muḥammad at Medina*, Oxford, 1956.
Wellhausen	:	J. Wellhausen, *Muḥammad's Constitution of Medina*, (= *Skizzen und Vorarbeiten*, IV, Berlin, 1889), tr. and ed. by W. Behn, in A.J. Wensinck, *Muḥammad and the Jews of Medina*, Freiburg im Breisgau 1975, 128-138.
Wensinck	:	A.J. Wensinck, *Muḥammad and the Jews of Medina*, tr. and ed. by W. Behn, Freiburg im Breisgau 1975.
Wright	:	W. Wright, *A Grammar of the Arabic language*, 3rd edition, Cambridge 1967.