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The 'Constitution of Medina': Muhammad's First Legal Document * BY MICHAEL LECKER

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Finally, one or two minor points: The names ‘Haleem’, ‘Warraq’, and ‘Zeid’ should be listed, both in the main text and in the bibliography, as ‘Abdel Haleem’, ‘Ibn Warraq’ and ‘Abou Zeid’, and ‘*Qur’ān*’ need not be italicized.

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The ‘Constitution of Medina’: Muhammad’s First Legal Document

BY MICHAEL LECKER (Princeton, NJ: The Darwin Press, 2004), 227 pp. Price HB \$35.00. EAN 978–0–87850–148–9.

Michael Lecker provides us with a monograph exclusively focused on a single legal document from the time of the Prophet. Among both specialists in Islamic studies and the general public, this document is commonly known as the ‘Constitution of Madina’. Yet the creators of the document called it ‘*kitāb*’—literally, ‘a written document’. The book derives from the author’s Ph.D. thesis submitted in Hebrew to the Hebrew University in Jerusalem, in 1982.

Muslim historians and jurists have been familiar with this important document for centuries, and aware of its legal and theological implications for Islamic law. It was first brought to the attention of scholars in the West at the end of the nineteenth century by Wellhausen, who accepted it as an authentic document from the time of the Prophet. Since then, such leading orientalist as Goldziher, Gil, Serjeant, Goto, U. Rubin and J. B. Simonsen have studied various aspects of it.

Among the many scholars who have researched this document, Muhammad Hamidullah’s work has had the greatest impact on both Muslims and non-Muslims, perhaps because he ‘often employed political science terminology’ (Lecker, p. 1). Hamidullah described the document, which preceded the Magna Carta by several centuries, as ‘the earliest written constitution, promulgated by a sovereign for his own statal conduct, both in internal and foreign affairs’.

The document, the importance of which is duly emphasized by Lecker, has many implications for Islamic law regarding constitutional rights, relations with non-Muslims, minority rights and, in particular, freedom of religion. It is also highly important in Islamic political theory and in discussions of the concept of an Islamic state, about which there has been much controversy for several decades among contemporary Muslims.

Yet the relevance of the ‘Constitution of Madina’ for such subjects as the conduct of Muslim states, Islamic law and political theory are not explored in the book, which limits itself to meticulously presenting the critical edition of the document and its English translation. The book treats the document merely as an historical one, although the actions of the Prophet have been the source of

inspiration for Muslims throughout the ages. Therefore the contribution Lecker aims to make in this book is to provide us with a carefully prepared edition of the document. Although they are not as comprehensive, there have been several previous scholarly attempts to prepare a critically edited text of the document to provide a genuine foundation for discussion about it and for exploring its legal and political implications. Among these earlier works is the critical edition by Muhammad Hamidullah in his well-known book, *al-Wathā'iq al-Siyāsiyya*, which is not mentioned by Lecker. Hamidullah also offered a detailed analysis of the document in his other works and publicized it as the first written constitution in the world.

Lecker's book gives the impression of research notes rather than a coherent work. The first 34 pages (pp. 5–39) and the last 73 pages (pp. 88–181) are dedicated to the critical edition and translation of the document. The first chapter is on the 'Text and Translation'. Chapter 4 reproduces the translation of the articles related to the 'The Treaty of the Mu'minūn', while Chapter 5 does the same for the articles concerning 'The Treaty with the Jews', although Lecker adds a comparison to some previous translations from both treaties. Unfortunately, these comparisons are based on random selections from earlier translations rather than a systematic analysis of all of them. This is a structural problem with the book—both redundancy and lack of systematic analysis are evident in many places. This does not make for easy reading.

Furthermore, Lecker does not add anything new to previous research on the document and its interpretation, and his claims are sometimes far from being grounded. For instance, he makes the distinction between *mu'minūn* and *muslimūn* (as mentioned in the document) by saying 'I shall argue that [...] the Mu'minūn were from Quraysh and Yathrib while the Muslimūn were from Yathrib' (p. 43). Lecker goes a long way, though in vain, to prove that only the believers from Yathrib were referred to as *muslimūn* and not as *mu'minūn* in the document. Every student of Islamic studies, however, knows that the terms *mu'minūn* and *muslimūn* have nothing to do with the geographical or tribal affiliation. The claim undermines the scholarly value of the book. It raises the obvious question: was a settlement conducted between *mu'minūn* and *muslimūn*—as Lecker argues—and the people of Quraysh and Yathrib were both *mu'minūn*, then who were the parties that signed the treaty? In other words, if the term *mu'minūn* as used in the Constitution was intended to include both the believers from Quraysh and Yathrib, would they not constitute a single group and a single party? Lecker is misled by focusing exclusively on the document when he argues that 'If this analysis, based on the text of the *Kitāb* itself, is correct, it follows that the Muslimūn were from Yathrib, not from Quraysh and Yathrib' (p. 44). However, a historical document can never be correctly understood unless placed in its particular historical, linguistic and cultural context. This is what Lecker's argument fails to do.

Overall, the book has three major failings. First, Lecker does not explore the implications of the document for Muslim legal and political thought and practice, which is what one expects given the existing literature on this subject. Second, the book lacks systematic organization and suffers from redundancy as it

provides the translation of the document several times. Third, the author's interpretations are not based on the cultural and social context of the Constitution but are exclusively focused on the text, which misleads him on a number of occasions.

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Martyrdom in Islam

BY DAVID COOK (Cambridge: Cambridge University Press, 2007), 206 pp. Price PB £14.99. ISBN 0-521-85040-1.

The author devotes nine chapters to the concept of martyrdom in Islam in its many narratives of martyrs and martyrdom, following discussion in Chapter 1 of 'Martyrdom in Religions' in general. According to Cook, among the general features of martyrological narrative is the creation of 'a boundary between belief systems', between the martyr and the other, understood as different and opposing to the extent that it is 'an absolute evil upon which the audience can focus their revulsion'. Martyrdom narrative in Judaism and Christianity is discussed in this chapter but on non-Abrahamic religious tradition the author is silent.

In the next chapter 'Martyrdom in the Genesis of Islam', the author reflects on various aspects of the verses of Qur'an as interpreted by famous Muslim exegetes, specifically on accounts of the battles waged during the early years. The discussion is further supplemented with references to events recorded in the books of *ḥadīth* and the life history of the Prophet.

The definition of a martyr in Islam is expanded and elaborated in the chapter on 'Legal Definitions, Boundaries and Rewards of the Martyr'. Martyrdom in Islam is not limited to men but also includes women who died during childbirth. A widened definition of a martyr covers 'anyone who died a worthy death and should be admitted immediately into paradise' (p. 33). For women, their best *jihād* is a righteous *ḥajj* (p. 34). The author makes a clear point that the 'lurid descriptions of the reward of the martyr are entirely absent from the legal literature' and that 'most scholars accepted that there is no real element of suicidal attack in a single combat'. The author reserves the discussion of martyrs in their missionary service to Chapter 5.

Chapter 4, on 'Sectarian Islam: Sunni, Shiite and Sufi martyrdom', notes that Muslims are not exempt from internal strife and conflicts that led to the formation of various sects. The author discusses the interpretation of martyrdom according to the Sunnis, the Shi'a, and other sects, including the Kharijis. The Sufis, a designation that cuts across legal and theological boundaries, is treated as a sect too, even though the scope of the term includes figures from the central heartlands of Islam to the peripheral lands of the Malay world.