

A BRIEF OVERVIEW OF EARLY ISLAMIC STATES' STRUCTURES

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Abstract

Studies on state involve a broad historical spectrum beginning from prehistorical political units to modern nation-states. In this context, social contract is accepted as a concept of modern world, in connection with emerging of the nation state, and it is shaped in a culture mainly within the states in Europe and America which have Christian majority in population. However, historical facts indicate that in the course of the history, examples of social contracts also existed before the modern nation-state era, and at different regions of the world. This study focuses on early Islamic states as an example of the said occurrences and aims to provide a brief overview of the state structure of them. Within this scope, considering the historical facts of the Prophet and Rashidun Caliphate era of the Islamic history, although the historical data related to the said period is scarce, the social contract which was enacted by the main social and religious groups of Medina in 622 provides adequate elements to understand the main structure of the state at a very basic level. Thus, it can be stated that the first Islamic state established in Medina was based on a social contract, had a constitution in its unique character, forming not a secular but a religious pluralistic state, created its unique legislative and judiciary structure, and the ruler was authorized with the explicit written consent of the governed. However, after the Rashidun Caliphate period, the Islamic state structure departed from its uniqueness and Islamic states became dynasties which had similarities to their contemporary governments.

Keywords: *State, state structure, early Islamic states, social contract, Islam*

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ERKEN DÖNEM İSLAM DEVLET YAPILARINA KISA BİR BAKIŞ

Özet

Devlet üzerine çalışmalar, tarih öncesi siyasi birimlerden başlayıp modern ulus-devletlere kadar uzanan geniş bir yelpazeyi içermektedir. Bu kapsamda, sosyal sözleşme, ulus-devletlerin ortaya çıkışına bağlı olarak gelişen, modern dünyaya ait ve esas olarak, nüfuslarının çoğunluğunu Hristiyanların oluşturduğu Avrupa ve Amerika'daki devletlerin kültürlerinde şekillenen bir kavram olarak kabul edilmektedir. Ancak, tarihsel olgular, sosyal sözleşmenin, tarihsel seyirde, modern ulus-devletler döneminden önce ve dünyanın Avrupa ve Amerika dışındaki bölgelerinde de var olduğuna işaret etmektedir. Bu çalışma, söz konusu durumun varlığına bir örnek olmak üzere Erken Dönem İslam devletlerine odaklanarak, bu devletlerin yapılarına kısa bir bakış ortaya koymayı amaçlamaktadır. Bu çerçevede, Medine'nin ana sosyal ve dini grupları tarafından 622 yılında imzalanmış olan sosyal sözleşme, Peygamber ve Dört Halife döneminin tarihsel olguları dikkate alındığında, her ne kadar döneme ilişkin kaynaklar yeterli değilse de devletin temel yapısını anlamaya çok temel düzeyde yetecek kadar imkân sağlamaktadır. Dolayısıyla, Medine'de kurulan ilk İslam Devletinin, sosyal sözleşmeye dayandığı, kendine özgü bir anayasası olduğu, seküler değil ancak dinsel çoğulcu nitelikte olduğu, kendine özgü yasama ve yargı teşkilatı oluşturduğu ve yöneticinin yönetenlerin açık yazılı rızasına dayalı olarak yetkilendirildiği ifade edilebilir. Ancak, Dört Halife döneminden sonra, İslam'a özgü devlet yapısı özgünlüğünden ayrıştırılmış ve İslam devletleri, çağdaşları hanedanlıklarla benzer özellikleri olan yönetimlere dönüşmüştür.

Anahtar Kelimeler: *Devlet, devlet yapısı, erken dönem İslam devletleri, sosyal sözleşme, İslam*

Introduction

As a major determinant of state structures, social contract is a concept of the modern world considered in connection with emerging of the nation state, shaped in a culture mainly within the states in Europe and America which have Christian majority in population. So, it is accepted as a production of modern western world and it spread around the world in the course of the history.¹ The latest occurrence of such a wave is seen in the political era of Arab world named as Arab Spring. The movement of Arab Spring is deemed as mainly adopting the western social contract concept in the form of constitution to the former -full or semi- monarchic

¹ THORNHILL, Chris, **A Sociology of Constitutions, Constitutions and State Legitimacy in Historical-Sociological Perspective** Cambridge University Press, Cambridge, 2011, p. 327.

countries. Although it has some patterns in regards with Islam, it is mainly the adaptation of modern Western concept to the Islamic countries.² Thus, the envisaged state structure in Arab Spring does not directly reflect the substantive and original state structure understanding of Islam.³ In order to reveal the state structure in original Islamic thought, it seems proper to focus on the social, legal, and political life of early Islamic states. From this point of view, this paper tries to explore the social, legal, and political life of early Islamic states in order to determine the original state structure in Islam. However, a general exploration of Islamic history reveals that, although at the beginning Islam itself was a very original movement in religious aspect of society, Islamic governmental culture did not reflect such an extreme departure from pre-Islamic social, legal, and political life. However, it does not mean that Islamic state structure was mostly depending on pre-Islamic period and reflects only an advanced version of it. In contrast, it seems that Islam created a unique understanding of state structure, but it also had adopted some institutions of pre-Islamic period.⁴ However, this uniqueness of Islamic state structure did not last long. Actually, it seems proper to state that the pure unique period of Islamic states begins with the establishment of first Islamic state in 610 and ends with the death of last Rashidun Caliphate in 661.⁵ Immediately after this period, the structure of the Islamic state departed from its unique form⁶ and turned to a dynastic sovereignty.⁷ Therefore, this study limited its scope to the period of early Islamic states that has unique characteristics, and tries to explore the state structure and the constitutional understanding of Islamic states between 610 and 661. Additionally, as the data and information related to said period is not ample, it is convenient to aim a brief overview, and not to be assertive about providing a detailed analysis on the subject.

To achieve said task, first chapter of this paper focuses on the concept of constitutionalism as a form of social contract and its relation to Islam. Second chapter provides a brief history of Islam in order to allow the reader to get acquainted to the main course of Islamic history. Third chapter explores the emergence of the first Islamic state, and the social, legal, and political life of that

² For more information, please see **Constitutionalism in Islamic Countries: Between Upheaval And Continuity**, Edited by Rainer Grote and Tilmann J. Röder, Oxford; New York: Oxford University Press, 2012.

³ MALLAT, Chibli, "Islam and the Constitutional Order", **The Oxford Handbook of Comparative Constitutional Law**, Ed. M. Rosenfeld, & A. Sajó, Oxford, Oxford University Press, 2012, p. 1292.

⁴ WATT, W. Montgomery, **Islamic Political Thought**, Edinburgh University Press, Edinburgh, 1998, p. 6-9.

⁵ AHMED, Istihag, **The Concept of An Islamic State**, University of Stockholm, Stockholm, 1985, p. 56.

⁶ AFSARUDDIN, Asma, "The Islamic State: Genealogy, Facts, and Myths", **Journal of Church and State**, Y. 2006, V. 48, I. 1, pp. 153-174, p. 156-157.

⁷ BAKAR, A. Ibrahim, "The Theories of Islamic State as Advocated by the Two Malay Muslim Political Parties in Malaysia", **The International Journal of Interdisciplinary Social Sciences**, Y. 2011, V. 6, I. 1, pp. 91-103, p. 94.

period. Moreover, said chapter also tries to draw out a general structure of the constitutional understanding of that period, and the evolution of it after the demise of prophet Muhammad.

On the other hand, as this paper focuses to provide a brief overview of state structure of the Early Islamic states, it assumes the reader has a general knowledge on the concepts of state, social contract, constitution, and constitutionalism, and avoids to give detailed definitions, history and the debates of said concepts in order not to digress the main subject of the study.

I. CONSTITUTION AS A FORM OF SOCIAL CONTRACT AND ITS RELATION WITH ISLAM

Social contract theory imagines political societies as depending on social contract as a fundamental agreement that gathers individuals under a political unit, namely state, and sets forth basic rules of state. Written constitutions functions beyond: *“Written constitutions, adopted at real moments in historical time, dictating governmental structures, bounding governmental powers, and entrenching individual rights, look temptingly like social contracts reified.”*⁸ Therefore, considering the written constitutions are accepted as reified forms of social contract, the written documents of the history regarding the state structures may form a basis for the subject of focus of this paper. On the other hand, considering that constitutionalism is a concept attributed to Western culture of modern times, whereas Islam indicates a different culture in almost every aspect of social, legal, historical, and political life, it seems convenient to begin with the relation between constitutionalism and Islam and to keep in mind that expecting a fully corresponding relation with the two concept is anachronic, therefore the examination has to be limited to only general similarities.

There are different views of scholars about the relation of these two concepts. Arjomand takes the concept in its merely modern meaning and states that there is a concept of Islamic constitutionalism and it emerged a century ago: *“Islamic constitutionalism emerged in the late nineteenth and early twentieth centuries with the reception of Western constitutionalism in the Muslim world.”*⁹ On the other hand, Kleidosty takes the concept in its more general meaning which is not related merely to modernity, and puts the beginning to earlier times and claims that the Constitution of Medina may *“establish a legitimate basis for an authentically*

⁸ JACOB, T. Levy, “Not so Novus an Ordo Constitutions Without Social Contract”, **Political Theory**, Y. 2009, V. 37, N. 2, pp. 191-217, p. 191.

⁹ ARJOMAND, S. Amir, “Islamic Constitutionalism”, **Annual Review of Law and Social Science**, Y. 2007, V. 3, pp. 115-140, p. 116.

Islamic constitutional paradigm.”¹⁰ Moreover, Hosen states that some scholars claim that the inner concepts of Islam prevent any necessity for constitutionalism in Islamic societies, whereas some other scholars claim that Islam has no relationship with state affairs so constitutionalism is an applicable concept to Islamic states.¹¹ Considering the above-mentioned opinions of scholars’, it can be stated that, this study’s theoretical base depends on the second group of scholars’ views. Thus, this study takes the concept of constitutionalism in its broader and general meaning as only a written form of social contract and places the beginning of Islamic constitutionalism to the Constitution of Medina.

II. A BRIEF HISTORY OF ISLAM

Islam is the name of the faith of a community of believers in Arabia which emerged in the seventh century. *“The core of this faith is the belief that Muhammad (c. 570-632), a respected businessman in Mecca, a commercial and religious center in western Arabia, received revelations from God that have been preserved in the Qur’an. The heart of this revealed message is the affirmation that “there is no god but Allah (The God), and Muhammad is the messenger of God.”*¹²

“Islam” means “submission” or “unconditional surrender” (to the Will of God)¹³ and *“a Muslim is one who makes that submission. This submission or act of Islam means living a life of faith and practice as defined in the Qur’an and participating in the life of the community of believers. The core of this Islamic life is usually said to be the Five Pillars of Islam: publicly bearing witness to the basic affirmation of faith; saying prescribed prayers five times a day; fasting during the month of Ramadan; giving a tithe or alms for support of the poor; and making a pilgrimage to Mecca at least once during the believer’s lifetime, if this is possible.”*¹⁴

In Islam it is believed that God sent revelations first to Moses (as found in the Hebrew Scriptures, the Torah), then to Jesus (the Gospels), and finally to

¹⁰ KLEIDOSTY, Jeremy, “From Medina to Runnymede: Comparing the Foundational Legacies of the Constitution of Medina and the Magna Carta”, **New Middle Eastern Studies**, Y. 2011, V. 1, pp. 1-15, p. 3.

¹¹ HOSEN, Nadirsyah, “In Search of Islamic Constitutionalism”, **The American Journal of Islamic Social Sciences**, Y. 2004, V. 21, I. 2, pp. 1-24, p. 3.

¹² WUTHNOW, Robert, **Encyclopedia of Politics and Religion (Vol. 1)**, CQ Press, Washington, D.C., 2007, p. 383.

¹³ FARUKI, A. Kemal, **The Evolution of Islamic Constitutional Theory and Practice from 610 to 1926**, National Publishing House Ltd., Karachi, 1971, p. 1.

¹⁴ WUTHNOW, p. 383.

Muhammad (through the Islamic scripture, the Quran). Thus, Muhammad was not the founder of a new religion, but like previous monotheist prophets, namely Abraham, Moses, and Jesus, he was a religious reformer. His teaching depends on calling people back to the one true God and to a way of life they had forgotten or deviated from the one that had been brought by previous monotheist prophets. Thus, “*Muslims saw the Torah and the Gospels as a combination of original revelation and later human additions, such as the elevation of Jesus from a prophet to the Son of God.*”¹⁵

However, the teaching of Muhammad was not accepted in his birthplace Mecca, and he was forced to leave there, he found a great support at the neighbor city of Yathrib which later he changed its name to Medina, and the first Islamic state was established in that city with an agreement between his followers, pagans, and Jews, in the Gregorian year of 622.¹⁶

The first Islamic state was territorially limited to only Medina, however, in 20 years, at the death of Muhammad in 632, its borders were lying all over the Arabian Peninsula, and in the following thousand years Islamic territory reached to its larger limits at the west to Spain and Northern Africa, at the east to India, at the north to the Balkans and Caucasia, and at the south to the Sub-Saharan Africa.¹⁷

III. THE EMERGENCE OF THE ISLAMIC STATE

Although, the concept of constitutionalism in its general meaning yields to the claim that the Constitution of Medina may “*establish a legitimate basis for an authentically Islamic constitutional paradigm.*”¹⁸, the first Islamic state was not purely Islamic due to the social structure of the Medina in that time. However, the Constitution of Medina is clearly the first social contract that created not a secular but a religious pluralistic state that Muslims were an important part of it, and it turned into a purely Islamic state in a very short period.

On the other hand, as Muhammad was both the head of the state and the prophet, naturally the formation of the state under his governance differed from after his

¹⁵ ESPOSITO, John L., “What Everyone Needs to Know About Islam”, Oxford Islamic Studies Online, 2013, <http://www.oxfordislamicstudies.com/article/book/acprof-9780199794133/acprof-9780199794133-div1-6>, (accessed 28.03.2022)

¹⁶ BAKAR, p. 93.

¹⁷ FREGOSI, Paul, **Jihad in the West Muslim Conquests from the 7th to the 21st Centuries**, Prometheus, New York, 1998, p. 71.

¹⁸ KLEIDOSTY, p. 3.

demise. So, this chapter tries to explore the issue by dividing it into two parts as the first Islamic State in the time of prophet, and the Islamic state after the prophet.

A. THE FIRST ISLAMIC STATE: MEDINA

As mentioned above, although Islam itself was a very original movement in religious aspect of society, Islamic governmental culture had kept using some pre-Islamic social, legal, and political institutions. Therefore, in order to accurately illustrate the substance and form of the first Islamic state, namely Medina, it seems necessary to explore the Arabic state structure and the constitutional tradition until that time.

1. Pre-Islamic State Structure and State Tradition in Arabia

It is clear that the political structure of the Arab society was not reflecting a united hierarchical form of a government, rather it was a cascade of tribes and there was no concept like kingship which was a common concept for the western world. *“Never before in her history had Arabia known allegiance to a king. Every clan, every tribe had been independent, and none had ever been under the sway of a rival clan or tribe. In the first place, the Arabs were temperamentally averse to owing allegiance to one king or overlord. Love of unfettered freedom had by birth and breeding become part and parcel of their nature, and every tribe prized its undisputed sovereignty above all else.”*¹⁹ So, it seems that the traditional political structure of Arabs was different from the western world not only after but also before Islam. And an Islamic political theorization, namely asabiyyah, by the Muslim philosopher Ibn Khaldun, depends on this structure. Asabiyyah is a concept of *“social solidarity with an emphasis on group consciousness, cohesiveness, and unity. Familiar in the pre-Islamic era, the term became popularized in Ibn Khaldun’s (d. 1406) Muqaddimah. Asabiyyah is neither necessarily nomadic nor based on blood relations. In the modern period, the term is analogous to solidarity.”*²⁰

Additionally, this high degree of solidarity was the main tool for maintaining the tribal security. This tribe-based structure was also functioning as the justice implementation mechanism. *“The most familiar aspect of this is the lex talionis of “an eye for an eye, a tooth for a tooth, and a life for a life. ... readers ... tend to think of the lex talionis as something primitive and barbaric, almost immoral. While it is primitive, however, it is neither barbaric nor immoral, for it is a*

¹⁹ ALI, Maulana M., “The Early Caliphate”, **Ahmadiyya Anjuman Isha'at Islam**, Lahore, 1985, p. 2.

²⁰ESPOSITO, John L., “Asabiyyah”, Oxford Islamic Studies Online, 2013, <http://www.oxfordislamicstudies.com/article/opr/t125/e202> (accessed 28.03.2022)

primitive way of maintaining public security. In pre-Islamic Arabia there was no sense of a general duty to another man based on the fact that he was a fellow human being. In the abstract there was no fault or sin in killing a man you happened to meet in the desert. You might be restrained from killing him, however, by considerations linked with the system of security and the lex talionis; e.g. by the fact that he belonged to an allied tribe towards which your tribe had obligations, or by the fact that he belonged to a strong tribe which you would be sure to exact full vengeance. In such ways the lex talionis succeeded in restraining wanton killing and injury among the nomads of Arabia.”²¹

On the other hand, the period before Islam in the Arabia is also important for an inner view point of Islam. This period is named as Jahiliyya in Islamic culture, and as historically used in Islamic literature it refers to the "Age of Ignorance" that prevailed in Arabia before the rise of Islam, “*which signifies everything that is not Islamic, ... and therefore worthless in their evaluation.*”²² However, in the course of history, although the term alienated and put in a meaning that refers to everything exactly opposite to the values of Islam in Islamic literature, there are many implementations of Jahiliyya adopted to the Islamic government in the early stage of Islamic states. For example, “*Arab tribes before Islam had a loosely-formed-council of elders known as the shura (also known as majlis or mala) which adjudicated intra- and inter-tribal matters by consultation. Like a number of other Jahili virtues and customs, the Qur'an endorsed shura as an acceptable and normative practice within Islam and Umar instituted an Islamicized form of the Jahili tribal majlis to implement this injunction.*”²³

2. First Political Movements

Muhammad was born at Mecca in 570 and he began to declare his mission in 610²⁴ depending on the direction of God to begin to the explicit invitation to Islam. When he began to declare his teaching to public, he was able to declare his teaching also to the people who were not residents of Mecca²⁵ because Mecca was a commercial center.²⁶ Mecca, as a commercial center, provided him this opportunity that was going to help him find a territory to establish the first Islamic state, namely Yathrib. “*... Mecca was a prosperous commercial center. The great merchants there controlled all the trade passing up and down the Arabian west*

²¹ WATT, p. 6.

²² AFSARUDDIN, p. 167.

²³ AFSARUDDIN, p. 168.

²⁴ Ahmed, p. 53.

²⁵ ÖZDEMİR, Ahmet, **Establishing Order by War in the Islamic Public International Law**, Doctoral Thesis, Ankara University, Ankara, 2008, p. 69.

²⁶ WATT, p. 3.

*coast route, which at this time was perhaps the chief artery between the Indian Ocean (including its African Shores) and the Mediterranean. They also traded with Iraq, then part of the Persian Empire, and controlled mining and other enterprises along or near the various routes. When one of the citizens of Mecca in the middle ranks of merchants began to communicate to other citizens' messages from what he claimed to be a supernatural source, it seemed unlikely that this would affect the commercial and political life of Mecca.”*²⁷ This perception of threat eventually turned into a coercive power that forced him to leave Mecca. At that point he began to think about immigrating to another city and after a few unsuccessful attempts, a few people, from Yathrib²⁸, who came to Mecca and accepted to be involved in Islam stimulated the establishment of the first Islamic state. In 620 and 622 The Pledges of al-Aqabah, which were a consensus between Muhammad and some people from Yathrib who be involved in Islam about acceptance of his teaching, are accepted as the first political moves toward an establishment of state.²⁹ Some scholars argue that since at that time Yathrib was in a political disturbance due to struggles, anarchy, and wars were forgoing more than one hundred years, Muhammad did not directly immigrate to Yathrib, instead, he first waited in al-Aqabah and enacted The Pledges of al-Aqabah, therefore they are consequences of Muhammad's first political achievement.³⁰ And he emigrated from Mecca to Yathrib with other Muslims of Mecca, only after firming his relations with the people of Yathrib in 622.³¹

3. Constitution of Medina as a Concrete Social Contract

This migration is named hijrah and accepted as one of the biggest events of the Islamic history by Muslims, so it is accepted as the first year that starts the Islamic calendar. Moreover, it has also political importance as it is the year “*when the Medina Constitution was agreed upon and written into law.*”³²

Medina Constitution is a concrete social contract which was enacted by the main social and religious groups of Medina in 622. “*Most scholars accept the authenticity of the Medina Constitution, though the original document has not been found. Scholars fail to agree, however, whether the Medina Constitution is a single contract or a compilation of multiple agreements reached at different*

²⁷ WATT, p. 4.

²⁸ The name of Medina before the migration of the Prophet.

²⁹ ÖZDEMİR, p. 58.

³⁰ GÜNEŞ, Ahmet, “Resource Value of Medina Constitution According to Islamic Law”, **Ekev Akademi Dergisi**, Y. 2008, V. 12, I. 34, pp. 211-222, p. 212.

³¹ ÖZDEMİR, p. 70.

³² KHAN, Ali, “Commentary on the Constitution of Medina”, Ed. H. M. Ramadan, **Understanding Islamic Law**, pp. 201-208, AltaMira, Oxford, 2006, p. 1.

times.”³³ It is generally accepted that, the Constitution was consisted of 47 articles and 2 parts. The first part is from article 1 to 23 and it addresses mutual relations among Muslims; whereas the second part is from article 24 to 47 and it “contains rules to regulate inter-communal affairs between Muslims and Jews.”³⁴

As a general comment on the Constitution of Medina, it can be mentioned that some articles deal with minor matters, whereas others are repetitive. The first important provision is about “umma” as indicating the single community which consists of the believers and their dependents. Articles between 2 and 11 regulates that each clan or subdivision of the community is responsible for blood-money and ransoms on behalf of its members. Articles 13 and 21 regulates that the members of the community are to show complete solidarity against crime and not to support a criminal even when he is a near kinsman, where the crime is against another member of the community. Articles 14, 17, 19, and 44 regulates that the members of the community are to show complete solidarity against the unbelievers in peace and war, whereas article 15 sets forth that the community are to show solidarity in the granting of “neighbourly protection” too. Moreover, articles between 24 and 35, and articles 37, 38, 46 regulate that the Jews of various groups belong to the community, and are to retain their own religion; they and the Muslims are to render “help” (including military aid) to one another when it is needed.³⁵

4. Social Structure of Medina and Reflections to Social Contract

Unfortunately, the social structure of Medina at that time was clear neither about composition nor about the population. Bakar states that Medina was composed of Muslims, pagans and Jews³⁶, while Aljunied adds Christians among them.³⁷ Also, the population is said in different numbers. According to one view it was around 200: “At the time the Medina Constitution was written, ... the Muslim community, though gradually increasing in numbers, was still no more than a total of 200 men, women and children.”³⁸ Another view argues that about the first years of the hijrah, Muhammad carried out census and the data was approximately as following, 1500 Muslims, 4000 pagan, and 4000 Jews.³⁹ Although there is no consensus either about the composition or about the numbers, it is clear that

³³ KHAN, p. 2.

³⁴ KHAN , p. 2.

³⁵ WATT, p. 5.

³⁶ BAKAR, p. 93.

³⁷ ALJUNIED, Syed M., “Religious Freedom in Malaysia’s “Islamic State”: Comparisons with the Islamic State of Medina”, *Journal of Muslim Minority Affairs*, Y. 2011, V. 31, I. 1, pp. 113-123, p. 114.

³⁸ KHAN, p. 1.

³⁹ GÜNEŞ, p. 213.

Muslims were a rising power among the other fractions of Medina and none of the other parties was dominant among the society. So, it was not possible to establish the first Islamic state solely on one religious fraction, namely Islam. Thus, it appeared not as a secular but a religious pluralistic state. *“An equally impressive and timeless contribution of the Medina Constitution is the normative establishment of a pluralistic community. The Constitution’s opening articles state that Muslims of Quraysh and Yathrib, and those who followed them and joined them and labored with them, are one community to the exclusion of all men. These provisions assert that the immigrant Muslims of Mecca and native Muslims of Medina constitute one community. Conceptually, the Constitution establishes the concept of the community of believers (ummat–al mumunin). The community of believers treats all Muslims with equal respect and dignity. It 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. The Islamic Free State is therefore not exclusively identified with any one tribe or culture but is expanded to include immigrants with diverse dialects, cultures, and social habits.”*⁴⁰

Consequently, *“the first Islamic state established in Medina was based on a social contract, was constitutional in character and the ruler ruled with the explicit written consent of all the citizens of the state.”*⁴¹ also it formed not a secular but a religious pluralistic state.

5. A New State and Muhammad as the Ruler

By acting the social contract, namely accepting of the Constitution of Medina among the social fractions of Medina, Muhammad became the ruler and law-maker of a new society in the latter part of his life. However, although Medina was led by Muslims, it was jointly managed with Jews and Christians. In public life, any breaches of social order were referred to respective religious doctrines of the infringer. Therefore, the social justice of the “Islamic State” of Medina was agreed upon by the varying communities, and this agreement was manifested at the Constitution of Medina as a social contract.⁴²

6. The Basis of the State and Social Contract

⁴⁰ KHAN, p. 3.

⁴¹ BAKAR, p. 93.

⁴² ALJUNIED, p. 115.

Although the Constitution was a concrete social contract enacted by the social and religious groups living in Medina, the primary purpose of the government was not to defend or protect the state. The constitution's primary focus was on defending and protecting of the faith. Thus, the basis of the State was not political, territorial, or ethnical, instead it was ideological.⁴³ However, it was a pluralistic state in nature as it was not an accord among only Muslims. It was also a treaty between Muslims and Jews. Moreover, it is claimed that the State was open to not only monotheistic religions but also beyond, "*for after all Medina was both monotheistic and pagan.*"⁴⁴

The secondary focus of the Constitution was on maintaining domestic social order and it seems possible to consider this issue in three groups as first, the inner order of each party, second, the relation of the individuals and parties with each other, and third, the relations of the individuals and parties with government. The inner order of each party was let on its religion or custom.⁴⁵ The relation of the individuals and parties with each other was subject to *lex talionis*, adopted from pre-Islamic Arabic tradition.⁴⁶ The relation of individuals and the parties with government was based on the understanding of absolute obedience to the government. In fact, this obedience can be considered as depending on different reasons for Muslims and the other parties. For Muslims, Muhammad as a ruler prophet was representing the divine authority, so obedience to him had to be absolute because of its divine source. The obedience of other parties of Constitution can be deemed as deriving from the social contract, namely Constitution they promised to obey. After the demise of Muhammad, the link between the God and the ruler had broken and it is generally accepted that Muhammad declared that absolute obedience is compulsory to the ruler unless he commands abjuration of religion.⁴⁷

Considering the above-mentioned aspects of the Medina Constitution, Aljunied deems it as depending on participation rather than domination. "*The Medina Constitution paved the way for the retention of identity, customs, internal relations and freedom of religion. The development of a religious state then however is in tandem with the true sense of statehood. Political treachery and betrayal to the state are deemed as attempts to destabilize government and society. To take punitive measures against treacherous individuals or groups are crucial for socio-political stability. However, when it comes to the issue of personal and*

⁴³ LAMBTON, Ann. K, **State and Government In Medieval Islam**, Oxford University Press, New York, 1981, p. 13.

⁴⁴ KHAN, p. 5.

⁴⁵ ALJUNIED, p. 115.

⁴⁶ WATT, p. 9.

⁴⁷ ÖZDEMİR, p. 58.

community obligations as well as rights which do not transgress the stability of the state, models of negotiation, accommodation and forbearance were present. The Constitution of Medina therefore is a model of inter-communal relations based on a principle of participation rather than domination.”(citations omitted)⁴⁸

On the other hand, the Medina Constitution put forth a new concept, namely umma. The word etymologically comes from Hebrew for sure, and from Sumerians probably. *“The word is almost certainly borrowed from the Hebrew umma meaning “tribe” or “people”, and that in turn may be borrowed from a Sumerian word. The word umma is found in an old Arabic inscription, but otherwise does not seem to have been widely used;...”⁴⁹*

The word umma was used to refer the people who came together for the same purpose in the Constitution of Medina: *“The people who declare this record constitute a separate umma distinguished from other people.”⁵⁰* Although at the beginning it was referring not only to the Muslims, in the later phrases of Islam the concept of umma became only referring to Islam, and a key element of Islamic political doctrine. *“At the heart of Islamic political doctrine, as Professor H. Siegman states, lay the umma, the Islamic community, tied by bonds of faith alone.”⁵¹*

7. Separation of Powers

Muhammad was the head of the state and all governmental affairs including, treasury and judiciary was executed under supervision of him.⁵² Yıldırım states that there was no separation of powers at Medina.⁵³ However, considering that according to Constitution of Medina, every separate religion was subject to its own religious rule, it seems necessary to explore the legislative and jurisdicative functions in detail.

As mentioned above *“In the “Islamic State” of Medina, Jews were governed according to the precepts set by the Torah whereas Christians referred to the Bible as their governing rules. Muslims henceforth were governed under the shari’ah whose rules and principles were derived from the Qur’an and the*

⁴⁸ ALJUNIED, pp. 114-115.

⁴⁹ WATT, p. 10.

⁵⁰ ÖZDEMİR, p. 51.

⁵¹ LAMBTON, p. 13.

⁵² ÖZDEMİR, p. 58.

⁵³ YILDIRIMER, Şaban, **Judicial Review of Administration in Islamic Law**, Doctoral Thesis, Ankara University, Ankara, 2007, p. 12.

Sunnah. Thus each community governs itself according to its religious precepts that cover civil, penal, family, inheritance, customary and educational matters."⁵⁴ So, the general authority of the Muhammad as the head of state has to be limited only to the relation of individuals and parties with each other and with state, and as head of state, he had no authority over the inner relations of parties. Then it can be stated that his authority over Muslims was not depending on his position as the head of state that consists of different religious groups, but it was derived from his divine position as prophet. This distinction between temporal and divine powers of Muhammad was also reflected by two terms that used after him to indicate different roles of his successors: "*As temporal head of the community the title of the successor of the prophet was amir al muminin, commander of the faithful. As the religious head of the community his title was imam, which is commonly regarded as deriving from his function of leading the prayers of the community.*"⁵⁵ However, this does not mean that there was a clear distinction between temporal and divine sovereignty in Islam. This distinction became subject to many debates in context to civil wars at the later phases of Islam. "*Belief in the divine origin of the community and the lack of any separation between "church" and state had important consequences so far as civil war and internal disturbances were concerned. These were called fitna (pl. fitan) and were considered to be, fundamentally, rebellion against the divine law.*"⁵⁶ "*The Arabic word fitna is generally, and particularly in the political realm, understood to connote "disorder" and "chaos." Disorder is to be prevented at all costs for it militates against the peaceful, just, and law-abiding society which the Qur'an envisions for humankind.*"⁵⁷

On the other hand, the legislative and judiciary functions within other parties of the Constitution were being performed according to their own religions. "*The social contract established governance and social regulation according to religious beliefs. However, if non-Muslims chose not to accept punishment meted by their religion or there is no specification stated in their religion's canon, they can choose to be tried according to the shari'ah or pre-Islamic tribal laws.*"⁵⁸

The legislative and jurisdictional functions of Muslims bring the concepts of shariah and sunnah in context of Islamic legal rules. Naturally, it was accepted that law is directly being created by God and declared by Muhammad. And also, the interpretations and implementations of verses of the Qur'an were being performed by Prophet Muhammad in person. "*Muslims ... were governed under the shari'ah*

⁵⁴ ALJUNIED, p. 115.

⁵⁵ LAMBTON, P. 14.

⁵⁶ LAMBTON, P. 15.

⁵⁷ AFSARUDDIN, P. 169.

⁵⁸ ALJUNIED, p. 115.

whose rules and principles were derived from the Qur'an and the Sunnah."⁵⁹ However, these concepts were not so strong at the time of Muhammad, but became dominant in the political and legal structure of Islam after him.⁶⁰

On the other hand, the Constitution of Medina allowed Muhammad to involve in foreign affairs with other communities in a more state-like manner, and to declare his teaching and Islam to them. Many representatives of other communities came to Medina to contact with this new state and particularly with Muslims, and many messengers were sent to different centers like today's Ethiopia, Beni Amer, and Yamama.⁶¹

Of course, Muhammad's position as the head of state was weak at the beginning, and he gained power gradually. However, in a short time he was accepted as the leader of the whole community without any dispute, and also became the chief commander of the army.⁶²

Under Muhammad's governance, the state of Medina extended rapidly and when he passed away in 632, the territory of the State was covering almost all the Arabian Peninsula⁶³ with a great majority of Muslim population. So, although the state established in 622 with the consensus of Muslims and non-Muslims of Medina was not purely Islamic, in 10 years it turned into a purely Islamic state with a huge territory in comparison with Medina.

B. STATE AFTER THE PROPHET

Muhammad died in 632 and "*he left a political organization that was entirely centered around him.*" (citations omitted).⁶⁴ He did not address any one after him, but he commissioned Abu Bekr to conduct the service in his place when he was ill. And after Muhammad's demise Abu Bekr was elected as the head of state as the successor of the ruler prophet Muhammad.⁶⁵

⁵⁹ ALJUNIED, P. 115.

⁶⁰ BAKAR, P. 95.

⁶¹ ÖZDEMİR, P. 70.

⁶² WATT, P. 22.

⁶³ UNIVERSITY OF NOTRE DAME, **Arabic and Middle East Studies Medieval Period of Expansion**, 2013

<http://wljxpt.cjxy.edu.cn/moocresource/data/20091107/U/NotreDame20090001/arabic-and-middle-east-studies/islamic-societies-of-the-middle-east-and-north/lectures/lecture-3.htm> (accessed 28.03.2022)

⁶⁴ ALJUNIED, p. 114.

⁶⁵ MUIR, p. 1.

Election of Abu Bekr is the beginning of a new era in the political history of Islam on the concept of Caliphate. There are a number of concepts that have key functions for the constitutionalism understanding of Islam through its historical course. Caliphate is one of these concepts, and may be the most important one, in regard with its effects to the Islam in every aspect of social, political, and legal life. *"The caliphs are the Muslims who succeeded Prophet Muhammad not as the receivers of the divine revelation but as the leaders of Muslim communities from epoch to epoch."*⁶⁶ Although many fractions occurred in Islamic political thought, caliph was the supreme leader of the Islamic world with rises and falls at its power in the course of history. And caliphate had existed in a position similar to Pope in the Christian world until 1924. *"The title caliph had been used by the Muslim leaders from the time of Abu Bakar until the time of the Abbasids in 13th century A.D. Tore Kjeilen writes that the Sunnite Muslims accepted that the caliph is the Muslim leader or ruler acted in Muhammad's place after his death. "The institution of the Caliph is called the Caliphate." For Kjeilen, there are "four periods of the Caliphate of Islam". They are Rashiduns (632-661), Umayyads (661-750), Abbasids (750-1258), the Muslim caliphs after 1258 in Cairo and other areas or territories. The Ottoman Empire was ruled by Sultans or Caliphs."*⁶⁷ With the fall of the Ottoman Empire and rise of Turkey as a modern republic, caliphate was abolished in 1924.⁶⁸

Although the term caliph is used for all Islamic leaders after the prophet Muhammad, the difference between the Rashiduns Caliphs and followings derives from assignment procedure, namely election. The first four caliphs were assigned by election⁶⁹ and their elections did not depend on succession.⁷⁰ However, after the fourth caliph, the last one who was elected, the caliphate became subject to succession. *"Although the Umayyad and the Abbasid leaders used the title caliphs, they were different from the first four caliphs because the caliphs during the Umayyad caliphate were from the family members of the Umayyad and the caliphs during the Abbasid caliphate were from the family members of the Abbasid;..."*⁷¹

In fact, succession has roots in pre-Islamic governmental tradition of Arabia. The understanding behind this practice was the general acceptance that the virtue and

⁶⁶ BAKAR, p. 95.

⁶⁷ BAKAR, p. 94.

⁶⁸ FARUKI, pp. 203-212.

⁶⁹ This election is said to be among the citizens of Medina, however, there was a dispute among the powerful tribes about the qualifications of the leader. For more information please see: *The Caliphate Its Rise, Decline, and Fall*, Muir, W., Oxford, 1891, pp. 1-8.

⁷⁰ MUIR, William, *The Caliphate Its Rise, Decline, and Fall*, Oxford, 1891, p. 4.

⁷¹ BAKAR, p. 9.

noble qualities of leadership were inherit in certain stocks and genetically transmitted. When a chief of a tribe died, normally he was succeeded by the best qualified person. However, this person had to be from a certain family⁷² and after the Rashidun Caliphate period the succession became the rule for caliphate like pre-Islamic era, instead of election.

Thus, in pursue of Islamic constitutionalism, the first four caliphs consist a separate period that had important effects on the following centuries of Islamic political and legal life. *“The first four caliphs are known as khulafa` al-rashidun in Arabic (the truly guided caliphs) and they were Abu Bakar al-Siddiq (632-634), `Umar al-Khattab (634-644), `Uthman bin `Affan (644-656), and `Ali bin Abu Talib (656-661). “`Ali had become the fourth Caliph of Islam and the last of the Patriarchal caliphs.”*⁷³

1. Rashidun Caliphate

Probably the most important contribution or effect of this period to the political and legal theory and praxis of Islam is about the institutionalism of interpretation of the religious law.⁷⁴ After Prophet Muhammad, at the time of caliphs, shariah and sunnah became very important for the state and society. Because at the time of the prophet, naturally, no one was allowed to question the rules for they were directly set by God, and declared by the Prophet.⁷⁵ However, considering the Islamic dogma that prophethood was ended by the demise of Muhammad⁷⁶, an important question raised: Without the guidance of the Prophet, how the true will of God would be determined for a proper Islamic life both in temporal and divine aspects?

This question brings up the concepts shariah and sunnah. Shariah in its broad meaning refers to the divine law that cannot be changed by human beings and stated in the Quran as a primary source *“they can only know or not know it, obey or disobey it.”*⁷⁷ Moreover, it is superior and has absolute authority, because it is *“the divinely revealed law of God”*⁷⁸ Moreover it regulates every aspect of life: *“(The Shari`a) It regulates, in theory, all aspects of public and private life and commercial and business affairs and forms the basis of political theory. A*

⁷² WATT, p. 35.

⁷³ BAKAR, p. 94.

⁷⁴ UND, 2013.

⁷⁵ BEARMAN, Peri, **Contextualizing the Islamic Shari'a**, I.B. Tauris, London, 2008, p. 397.

⁷⁶ BAKAR, p. 93.

⁷⁷ LAMBTON, p. 1.

⁷⁸ AHMAD, Irfan, “Genalogy of the Islamic State”, **Journal of the Royal Anthropological Institute**, Y. 2009, V. 15, I. 1, pp. 145-162, p. 145.

consideration of Islamic jurisprudence (fiqh), the science of law, is, therefore, fundamental to the study of Islamic political ideas.”⁷⁹

The main characteristic of the sharia is that its rules and principles are derived from the Qur'an and the Sunnah.⁸⁰ Quran was inscribed, and the primary source of the sharia. Sunnah was the implementation of the verses of Quran by the prophet, and coming next to Quran. *“Another source of Islamic jurisprudence, secondary only to the Qur'an, consists of the examples and words of Prophet Muhammad (the Sunnah). The Qur'an and the Sunnah quite often use words that have speculative, interpretable, and debatable meanings. This leads to the third source, ijihad, which can be defined simply as “interpretation.” The main difference between ijihad and both the Qur'an and the Sunnah is that ijihad is a continuous process of development, whereas the Qur'an and the Sunnah are fixed sources of authority and were not altered or added to after the Prophet's death.”*⁸¹

One may properly ask about the function of the Constitution of Medina that seems to have played a very important role on the establishment of the first Islamic state, as a source of law and jurisprudence. However, considering the broad definition of sunnah as the implementations of the prophet, it becomes clear that the Constitution of Medina took its place among other implementations of him. *“Among the Islamic sources of law, the Medina Constitution should not be treated as a distinct source of law and jurisprudence. It is part of the Prophet's Sunna. The Quran remains the supreme source of law, and nothing in the Medina Constitution can be invoked to trump the Quran's text. Since the Sunna is fully compatible with, and always subservient to, the Quran, the Medina Constitution is remarkable in its compatibility with the Quran's principles of inter-human behavior.”⁸²*

With regard to above mentioned concepts like shariah, sunnah, and ijihad, it seems proper to state that in the Rashidun Caliphate period Islam began to be institutionalized especially in its legal aspects. Another important issue in this context is about institutionalism of consultation in administrative affairs. As mentioned above *“Arab tribes before Islam had a loosely-formed-council of elders known as the shura (also known as majlis or mala') which adjudicated intra- and inter-tribal matters by consultation. Like a number of other Jahili virtues and customs, the Qur'an endorsed shura as an acceptable and normative practice*

⁷⁹ LAMBTON, p. 2.

⁸⁰ ALJUNIED, p. 115.

⁸¹ HOSEN, p. 10.

⁸² KHAN, p. 6.

within Islam and 'Umar instituted an Islamicized form of the Jahili tribal majlis to implement this injunction."⁸³ Moreover, some scholars state that the institutionalism of consultation under the name of shura was due to an intention of separation of executive and jurisdictional powers. Shuras were consisted of prominent members of the tribes and charged with making decision about executive affairs and Umar called it for every administrative issue whether important or not. However, the number of people attending to shura was depending on the importance of the issue on the agenda. If the issue was about daily matters he used to call less people, but if the issue was important he used to call more people for the assembly.⁸⁴

On the other hand, Caliphs had no divine representative power. They were accepted successors of Muhammad only in temporary power.⁸⁵ This was because of a main dogma of Islam. During Muhammad's time, the state and government in Medina were deemed as divine as he was the prophet of Allah. However, according to the Islamic belief, he was the final and last prophet sent by Allah to human beings. Therefore, there is no one among human beings to succeed him and to become the divine leader of Muslims. In other words, as Muhammad was the last prophet, no one had a right to be a divine leader after the demise of Prophet Muhammad in 632. Thus, the leaders of Islamic state after him had no divine power, but had only temporary power. *"Therefore, these Muslims continued living in the Islamic state founded in Medina and it was led by Muslim leaders who became the caliphs to Prophet Muhammad and their governments were known as the caliphates."*⁸⁶ In this aspect caliphate is derived from specific historical circumstances as a product of history, and it is a purely political office deriving from a temporary convenience, and an institution of human origin rather than divine origin.⁸⁷

2. End of Uniqueness and Beginning of Dynasties

However, although at the beginning, caliph had no representative divine power and usually was used in the meaning of "caliph of the Messenger of God", it gained more divine meaning or at least a meaning that brings in mind an appointment by the divine power as "caliph of God" after it became subject to succession in Umayyads period.⁸⁸ *"The early conceptualization of the caliphate and of legitimate leadership, as the sources tell us, was in many ways markedly different from later formulations. It is well-known that Abu Bakr would only use*

⁸³ AFSARUDDIN, p. 168.

⁸⁴ YILDIRIMER, pp. 14-15.

⁸⁵ WATT, p. 33.

⁸⁶ BAKAR, p. 93.

⁸⁷ HOSEN, p. 10.

⁸⁸ WATT, p. 33.

the title Khalifat Rasul Allah ("Successor of the Messenger of God") and recoiled from using Khalifat Allah ("God's deputy") because of the undue presumptuousness implicit in its adoption' Umar who followed him was at first simply called Khalifat Abi Bakr ("Abu Bakr's successor") or Khalifat Khalifat Rasul Allah ("Successor of the Successor of the Messenger of God") and then later more commonly Amir al-Mu'minin ("leader/commander of the faithful"). The last title was adopted by the third and fourth caliphs as well. The Umayyads, who came to power in 661, initiated dynastic rule and had no compunctions about adopting the title "God's deputy" to signal their enhanced status. The Abbasids who followed them in 750 continued this usage."⁸⁹ "They made the caliphate a hereditary political institution. Therefore, they become the two dynasties, no longer the caliphates like the caliphate during the first four caliphs."⁹⁰

Another important implementation after Rashidun Caliphate is the limitation of the interpretation of law, namely the closing of the gates of *ijtihad* that caused the Islamic sovereignty turn to a purely autocratic model depending on a frozen theocratic theory.

As mentioned above "*The Qur'an and the Sunnah quite often use words that have speculative, interpretable, and debatable meanings. This leads to the third source, ijtihad, which can be defined simply as "interpretation."* The main difference between *ijtihad* and both the *Qur'an* and the *Sunnah* is that *ijtihad* is a continuous process of development, whereas the *Qur'an* and the *Sunnah* are fixed sources of authority and were not altered or added to after the Prophet's death."⁹¹ However, after approximately 300 years from the establishment of first Islamic state, this continuous character of *ijtihad* was subject to change. "*Around the 10th century..., Islamic jurisprudence reached a stage of stagnation. The leading scholars felt that the point has been reached when all essential questions in law had been answered. Thus independent reasoning, i.e., ijtihad was replaced by taqlid, which means unquestioning acceptance of the opinions of predecessors."*⁹², and *ijtihad* as independent judgment was restricted. In fact, the date of this restriction is not certain, it may have happened as early as 900 or at least two centuries later. Nevertheless, although the date of it is not clear, it is indisputably deemed as the closing of the gate of *ijtihad*.⁹³

Another important departure from implementations of Rashidun Caliphate period is about the consultation, namely *shura*. As mentioned above, Caliph Umar

⁸⁹ AFSARUDDIN, pp. 156-157.

⁹⁰ BAKAR, p. 94.

⁹¹ HOSEN, p. 10.

⁹² AHMED, p. 52.

⁹³ WATT, p. 73.

instituted an Islamicized form of the Jahili tribal shura for consultation⁹⁴, and he called it for any administrative issue whether so important or not. After Umar, the third and fourth caliphs Uthman bin `Affan, and `Ali bin Abu Talib also used to call shura, however, after Rashidun Caliphate, it replaced with fractions that supported by the dynasties.⁹⁵

Consequently, after the Rashidun Caliphate period, the Islamic constitutionalism departed from its uniqueness and Islamic states became dynasties which had similarities to their contemporary governments.

Conclusion

Although social contract is accepted as a concept of modern world in connection with emerging of nation state, in a culture mainly within the states in Europe and America which have Christian majority in population; it is possible to find some historical examples of that existed before the modern nation-state era and at different regions of the world other than Europe and America. Early Islamic states provide a good example of said occurrence and allow to examine state structure.

Considering the historical facts of the Prophet and Rashidun Caliphate era of the Islamic history, the social contract which was enacted by the main social and religious groups of Medina in 622 provides adequate elements to understand the main structure of the state at the basic level. The first Islamic state established in Medina was based on a social contract, was constitutional in its unique character, and the ruler ruled with the explicit written consent of the governed. It was not purely Islamic nor secular but a religiously pluralistic state, due to the social structure of Medina in that time. However, the Constitution of Medina is clearly the first political structure that Muslims were an important part of it, and it turned into a purely Islamic state in a very short period.

The newly established Islamic state had adopted some elements from the traditional political structure of the Arabs before Islam. One of the most prominent of these elements is asabiyyah theorized by Muslim philosopher Ibn Khaldun. One other element is to be tribe-based structure, in contrast of modern individual base, which was also functioning as the justice implementation mechanism.

Although it has adopted some political, legal, and governmental institutions of pre-Islamic society, it is possible to state that the Constitution of Medina enacted in 622 may establish a legitimate basis for an authentically Islamic constitutional paradigm and state structure as it has created some unique concepts such as sharia,

⁹⁴ AFSARUDDIN, p. 168.

⁹⁵ YILDIRIMER, p. 15.

sunnah, umma and ijihad. However, this character began to change gradually over time, and it seems proper to state that after approximately 300 years from the establishment of the first Islamic state, there were none or so little residuals of the unique form remained. And Islamic states eventually became dynasties which had similarities to their contemporary governments.

Consequently, although it did not last so long, the early Islamic states of Prophet and Rashidun Caliphate era demonstrated a state structure depending on a social contract within the conditions of the period that can be deemed in compliance with the modern social contract concept at its basic level, and an example before nation-state era at different regions of the world other than Europe and America.

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