Editor's Preface

Social Contract Theory in Islamic Sources?

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This issue of *Comparative Islamic Studies* contains four articles that perfectly illustrate the journal's aims: to show how theoretically grounded analysis of Islam contributes to the general study of religions; and how 'comparative' may mean comparison both between Islam and other religions, and between disciplines. Three of the articles focus on the topic of "Islam and Social Contract", which touches also on political philosophy, while the fourth article, described further below, focuses on the discipline of Religious studies and the concept of religion. In CIS the topic of "Islam and Social Contract" was introduced already in the previous issue (10.1) by Joost Jongerden's and Michael Knapp's study of the social contract in the Kurdish district Rojava, Syria.

The idea of exploring the topic in some depth, however, derives from a panel I convened at the European Association for the Study of Religions (EASR) Annual Conference 2014. Here we worked with *Encyclopaedia Britannica*'s online definition of social contract as "an actual or hypothetical compact, or agreement, between the ruled and their rulers, defining the rights and duties of each" (EB). The entry tells us that while social contract theories trace back to the ancient Sophists, they gained currency with the Enlightenment and thinkers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. Islam is not mentioned. Yet both the standard Biography (*sīra*) of the Prophet Muḥammad in Ibn Hishām's (d. c. 215/830) edition and al-Ṭabari's universal history (d. 310/923) *Ta'riḫ al-rusul wa'l-mulūk* employ Qur'anic concepts in contexts showing they refer to forms of contract and contractual ethics, including contracts between the ruled and their rulers (*bay'a*) (Mårtensson 2009, 2011, 2016; cf. Marsham 2009 on *bay'a*). An obvious Qur'anic case is the terms *mīthāq* (app. Covenant of trust) and *'ahd* (contract), which are explicitly contractual. They sometimes appear together with the term *kitāb* (scripture, writing), suggesting a referential connection between contract and written terms, as in Q. 7:168–172 (*al-A'rāf*):

(168) We divided the nations into fiefs in the land, some of who worked for the

common good and others who did not; We tested them with good things and bad things, hoping that they would return.

(169) Then a group of their descendants succeeded them, who inherited the writing (*al-kitāb*) but chose the ephemeral pleasures of this nearest [existence], saying: "We will be forgiven!" And should similar ephemeral pleasures come their way again, they would seize them. But has not the Covenant of trust in the writing (*mīthāq al-kitāb*) been taken from them, that they should only say what is right (*al-ḥaqq*) when referring to God? They studied what is in [the writing], and [know that] the abode of the endpoint is better for those who meet their duties; why will you not use your reason?

(170) As for those who hold fast to the writing and stand to the prayer: We will certainly not restrain the reward of those who promote the common good!

(171) When We hoisted the mountain over them, as if it was a canopy, and they thought it was about to fall down on them [We said]: "Take a firm hold of what We have brought you and remember what is in it, so that you may meet your duties!"

(172) And when your Lord took out from the loins of Adam's sons their offspring and made them bear witness about themselves: "Am I not your Lord?" They said: "Yes, we testify to that!" So that you cannot say on the Day of the Address (*yawm al-qiyāma*): "We were in fact unaware of this".

This is the Qur'anic Covenant of trust between God and man, that man shall have no other lord but God, and God will duly reward and sustain man. The legal and contractual nature of the Covenant is summarized in the last verse 172. The image of the final judgement affirms that since the contractual terms are recorded in writing, every individual knows about them and will on judgement day answer to whether he met his duties.

It is possible to read the Qur'anic verses on Covenant as being about man's unconditional obedience to God (Kadi 2003). In my reading, however, the point of the Covenant is not obedience as such but to provide a contractual blueprint that obliges man to keep the terms of *any* contract. In Q. 3:75–77 (*Āl 'Imrān*) the general and particular duty is described in connection with the term *ahl al-kitāb*, "those who possess writing," again suggesting that writing is what makes the terms of a contract especially clear, binding and known to all parties:

(75) Among those who possess writing (*ahl al-kitāb*) there is the one who, if you entrust him with thousands of gold dinars, will repay it to you; and the one who, if you entrust him with one dinar will not repay it to you unless you keep coming after him. That is because they say: "We have no obligations (*sabīl*) towards those without writing (*al-'ummiyyīna*)," and thus they knowingly make false statements about God.

(76) Nay, whoever fulfils his contract meets his duties towards God; indeed, God loves those who meet their duties!

(77) Those who trade God's contract (*'ahd Allāh*) and their own oaths for a small price will have no place to stand at the endpoint (*al-ākhirā*), when God will neither speak to them nor turn His gaze towards them. Nor will He purify them on the Day of the Address, since they have [in store] a painful punishment.

In Ibn Hishām's (d. c. 215/830) *sīra* these Qur'anic terms are historicized in the report about the Prophet's written contract (*kitāb*) which he entered into with his followers from Mecca (*al-muhājirūna*) and helpers to victory in Medina (*al-anṣār*), referred to as "those who promote trust" (*al-mu'minūna*)¹ and with some of the Jewish tribes of Medina. It is stated that the Jews and "those who promote trust" together form one "political community" (*umma*) apart from the rest of the people, while the Jews maintained their own "religion" (*dīn*). Some of the rights that *shari'a* granted to Jews and Christians as *ahl al-dhimma* are mentioned in this passage, notably their right to their property and religion (Guillaume 1995, 231 *passim*). The obligation to pay *jizya* tax is not mentioned, however, possibly because in this horizontal, egalitarian contract the parties are at the same level. In fact the document gave the Jewish tribes right to participate in *jihād*, against the obligation to share both the costs of war and the booty (Guillaume 1995, 232–233).

Understood against the background of these Qur'anic and *sīra* passages, the term *ahl al-kitāb* appears to refer to Jews and Christians as partners able to enter a *written* contract. This shifts the meaning from the usual rendering of the terms as "the people of the Book" or "the people of the Scripture." If one interprets the Qur'anic passages quoted above with reference to the *sīra*, the Qur'an provides the vertical God-man Covenant that legitimizes the horizontal man-to-man social contract as well as all other legal contracts (Mårtensson 2016). Viewed in

1. Saïd Amir Arjomand translates the term *al-mu'minūna* in this document as "the faithful covenanters"; Arjomand 2009, 561–565. This is a much more accurate translation than "believers"; cf. Donner 2010, who because he translates *al-mu'minūna* as "believers" concludes that the Prophet's *'umma* as defined in this document was not *religiously* distinct from the Jewish parties. Given that *mu'min* is the active participle of *'āmana*, which is the fourth verb declination, I have preferred the translation "those who promote (or induce) trust," to emphasize the transitive-active sense of the fourth declination, and to pick up the trust-aspect that is inherent in the term for Covenant itself (*mīthāq*); cf. Berger 1970, 6, ref. to Abdul Rauf 1967. While Arjomand perceives the concept of *'umma* to be the main link between the Medina Constitution and the Qur'an, I suggest *kitāb* in the contractual sense is an equally important conceptual link. Moreover, where Arjomand argues, similarly to Donner (2010), that the concept of *'umma* changed after the Prophet's death to become coterminous with a religious community (the Muslim *'umma*, the Christian *'umma*, etc.), I would hold that its meaning never changed within Islamic law and administration, because the Islamic *'umma* remained a political community which included *ahl al-dhimma* in its social contract.

this way, the Qur'an constitutes the social contract *theory* that underpins Islamic law. This interpretation might also explain why Islamic administration in e.g. India included South Asian religions into a social contract as it did with Jews and Christians elsewhere: the rights of non-Muslims were not dependent on identification with the Biblical scriptures, but with the principle of contract.

This thesis, that it is “contract” rather than the Bible *per se* that is the most significant motif in Qur'anic narrations about Biblical prophets, might explain why the early historians Ibn Hishām and al-Ṭabarī (d. 310/923) established the Prophet's genealogy and prophecy as a continuation of the Abrahamic line. By doing so, they intentionally emphasized that the Qur'anic social contract theory was not new to the region but the restoration of an original and just social contract, which had fallen into oblivion because of corruption. It is explicit in al-Ṭabarī's history that this divinely sanctioned social contract was first established in human political history by the Persian kings, and it was related to vassalage, i.e. the feudal economy, where the ruler granted rights to land to vassals (HT I: 341–342; HT II: 23–26; HTIII: 22–28; cf. Vali 1993). Around the time of the Prophet's mission, those members of his tribe Quraysh who were hostile to him supported the Sassanid Persian dynasty in their wars against Byzantium and its Christian allies in the Arabian Peninsula (HT V: 324–327). In the same context, the Sassanid Shah violated his vassal contract with the Arab kingdom of Lakhm in al-Ḥīra, Mesopotamia, who were in a contract with Quraysh about mutual protection against aggressors who threaten the property and rights of one party (Guillaume 1995, 57–58; HT V: 21–22). The Sassanid Shah's contract violation was the start of Arab successful battles against Persia, and according to al-Ṭabarī's own opinion, their victories were possible through the Prophet's mission (HT V: 338). Thus, in a manner of speaking, al-Ṭabarī contextualized the Prophet's mission in terms of violation and restoration of the social contract.

One important aspect of the social contract is its clarity and intelligibility. The verse Q. 14:4 (Ibrāhīm) declares that God in His communication with a people always addresses them in their own language—presumably to achieve the desired understanding:

We always send a messenger in the language of his congregation so that he can render it clear and indisputable to them.

Accordingly, al-Ṭabarī defined the Qur'an as God's *bayān*, i.e. His clarification of the terms of His contract (Mårtensson 2016, for full references). Amira Ben-nison's contribution on the Maghribī social contracts contains some notes on Berber Qur'ans that are suggestive of such linguistic-contractual references. From another angle, al-Ṭabarī's reports on Ḥamdān Qarmaṭ, the founder of the Qarmaṭian movement in the late 800s, relate that Qarmaṭ created a new tax-based contract with those he recruited away from allegiance with the Abbasid

dynasty, and that a new version of *al-Fātiḥa* (Q. 1) was part of the mission (Mårtensson 2011: 232; HT IIIVII: 171–174). Whether or not this was the case, the reports suggest that al-Ṭabarī saw the Qurʾan as the divine communication of the terms of social contract, and if someone established a new contract, it required reinterpretation of the Qurʾan.

To sum up: Ibn Hishām contextualized the Qurʾanic social contract theory as the Prophet’s Medina contract and political community, in which Jewish and Arab tribes were equal parties, albeit each with their own religion. Al-Ṭabarī contextualized the Qurʾanic social contract theory with reference to the Persian vassalage system and political alliances, which included Arabs in both Mesopotamia and Hijaz. Even though the contracts differ considerably in terms of the identities of the contracting parties, the *theory* common to both versions is that the ruler was bound by the terms of the contract as much as the ruled party, i.e. it is an implicit theory of “rule of law.” Presumably, this is why the terms of the contract should be stated as clearly as possible.

Three case studies of Islamic social contract

Exploring “Islam and Social Contract” in the context of *CIS* could in the long term generate data for more detailed and systematic comparative political theory, as well as for different Islamic social contract theories. The contributions to this journal issue offer three geographically, temporally and theoretically different cases.

The earliest case is Amira Bennison’s study “Relations between rulers and ruled in the medieval Maghrib: the ‘social contract’ in the Almoravid and Almohad centuries, 1050–1250.” Bennison discloses three kinds of social contracts in early medieval Maghrib. The local-scale egalitarian and fluctuating contract among the Berber tribes of various religious identities, including Jews and Christians, before the Arab-Muslim invasions. This contract submerged in the urban and more hierarchical Islamic imperial contracts centred on Umayyad Córdoba and the Mālikī school of law. During Almoravid rule, the Islamic social contract mirrored philosophical developments in the ‘Abbasid eastern part of the Islamic world. The ruler (*amīr al-ḥaqq*) gained legitimacy by upholding justice and civic felicity through the schools and courts of law (“ruling by law”). In the Almoravid case, it was the Mālikī legal institution, including now the *dhimma* statute for Jews and Christians. The tribes entered this social contract through large confederations. The third contract model is the Almohad utopian one, which vested legislative power in the charismatic ruler (*al-mahdī*) himself, whose legitimacy depended on his personal capacity for justice. This contract, reflective of a defensive mood, came with strict requirements of conformity of religious creed and morality, also for Jews and Christians, because the theory claimed that the political power of the polity depended on both the rulers’ and

the ruled aligning with the right creed and virtue.

Bennison's study contributes a historical perspective to contemporary studies such as that by Stig Jarle Hansen (2013), reviewed in *CIS* issue 10.1. In Hansen's analysis of the Somali group al-Shabaab, its domestic attraction laid in its (failed) attempts to establish "rule of law" by forging a trans-tribal national social contract, in a context of civil war along tribal lines in the nation-state of Somalia.

The second article is Egdūnas Račius, "*Dār al-ḥarb* as the Motherland? The Muslim Tatars of (the Grand Duchy of) Lithuania and Social Contract." This is a study of a relatively little known group of European Muslims: the Turkic Tatars, who arrived in the Baltic state of Lithuania around 1350. Some proceeded to serve as mercenary troops for the Lithuanian Christian dukes. Their Islamic legal and philosophical heritage has not as far as we know, been recorded in writing. Nevertheless, Račius sets out to reconstruct, with reference to Ḥanafī law, a theory of their social contract with the Duchy of Lithuania. He traces this contract to the Tatars assimilation into the modern, post-Soviet Lithuanian nation-state and society, mediated via the memory of their pledge of allegiance (*bay'a*) with the medieval Duchy. On this basis, the state recognized Sunni Islam as an official Lithuanian religion. In a final reflection, however, Račius argues the Lithuanian state's contract with the Tatars is too specific to translate into openness towards new groups of Muslims, whether migrants from the MENA region or Lithuanian converts. A new Lithuanian social contract adapted to a now more diverse Muslim population is thus required.

In the essay "Theorizing Muhammad's Nation. For a New Concept of Muslim in a Changing Global Environment," Wardah Alkatiri constructs a philosophical frame for a new Islamic social contract theory. It is, however, a universal not a national contract, for the sake of Muslim unity to combat environmental degradation, in cooperation with the other peoples of the world. Alkatiri's local point of departure is Indonesia, which illustrates both the problems with the nation-state and the prospects of Islamic universalism. Following the logic of social constructivist epistemology and Perennial philosophy of Unity, particularly as expressed through Sufi idiom, Alkatiri argues that a new concept of Muslim Unity will produce new forms of consciousness and social action, enabling Muslims to overcome both sectarian and national borders, and justified postcolonial resentment against collaborating with western powers. Current Muslim sectarian tensions are part of the modern colonial and postcolonial mode of thinking and acting, Alkatiri claims, and instead of arguing the virtue of one school over another, all should be perceived and treated as expressions of equally good but different personalities, each with their unique trait and contribution.

Alkatiri's social contract theory illustrates the point I made in the last *CIS* issue (10.1), that Islamic social contracts are not necessarily state-centred: this one is motivated by environmental concerns and universal in character. Inter-

estingly, the Qur'anic contract passages quoted in the introduction above are preoccupied with abidance by legal contracts as a general virtue; as such, they tie in both with Alkatiri's global Islamic social contract, and Haris Durrani's definition of *sharia* universal legal ethics in his article in the last issue.

The concept of religion

Assuming, as above, that social contract theory is integral to the Islamic scripture and the narration of the Prophet's community, i.e. to the foundational texts of the Islamic religion (*dīn*), it is fitting to conclude this issue with an article treating the concept of religion and its application to Islam within the modern discipline of Religious studies.

In "Locating Religion in South Asia: Islamicate Definitions and Categories," Ilyse R. Morgenstein Fuerst analyses the concept of "religion," as applied to Islam within modern Religious studies and by medieval Muslim scholars to other religions. Because of Religious studies' initial institutional connection with colonial administrations, critics inspired by post-colonial theory have argued that the generic concept "religion" itself is a colonial construct, premised on western language and applied from the colonial side to categorize the subjects. Problematizing this critique, Morgenstein develops W. C. Smith's (1978) analysis of *dīn*, showing that Muslim scholars applied the concept both to their own religion and in the plural form to other religions under Islamic law and administration. Since many of Morgenstein's examples are taken from Muslim scholars' studies of South Asian religions, she concludes that systematic studies of Islamic South Asian sources could substantially alter insular modes of thinking about "religion" that assume western exceptionalism.

Read against the background of the articles on social contract, Morgenstein's study suggests that "social contract theory" might also contribute towards our understanding of Islamic categorization and study of religions, since the religious communities were also parties to Islamic social contract.

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