



# The “Constitution” of Medina: Translation, Commentary, and Meaning Today

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The great twentieth-century Indian scholar of *Sīrah*, Dr. Muhammad Hamidullah, declared it to be the first-ever written constitution in human history, and the label has stuck.<sup>1</sup> In the public sphere, it has become widespread as a rhetorical tool. Yet it is rarely studied and often poorly understood. The ‘Constitution of Medina,’ as it has been transmitted to us, refers to itself as a *kitāb* (writ, script) and a *ṣaḥīfa* (document, scroll). Since naming prejudices our understanding, the debate on what modern label this document should be given—constitution (*dustūr*), treaty (*‘ahd*),

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<sup>1</sup> Muhammad Hamidullah, *The First Written Constitution in the World*, 3rd ed. (Lahore: Sh. Muhammad Ashraf Publishers, 1975).

charter (*wathīqah*), truce (*muwāda‘ah*), safe conduct (*amān*) or something else—can be resolved only after we have explored its substance and context.

In modern Muslim imagination the *Kitāb* has assumed an oversized significance as a singular, self-standing document, often for entirely different and oddly contradictory reasons. Of course, as an instance of the speech, action, and aspiration of the Blessed Final Messenger of God, upon him be peace and blessing, and one that came at a turning point in his mission, it has been and should always be important to every student of Islam. Examining it now, however, is particularly relevant because of how frequently ‘The Constitution of Medina’ is invoked to serve modern nationalist, secular, or even autocratic politics. A careful reading of the *Kitāb* by no means contradicts the Prophet’s commitment to peace, inter-religious coexistence, honoring treaties, and a preference for diplomacy over war. But a careful reading also makes it clear that these values were not the Prophet’s singular concern. That was his mission of preaching the truth and establishing the community that carries that truth on. Reducing the ‘Constitution of Medina’ to a single objective (typically pertaining to inter-religious co-existence or justifying a secular political community), reading parts of it out of context within the document, which is further deprived of any context within the *Sīrah* and the relevant Qur’anic verses, is to misuse it. This approach not only frees exponents of such a decontextualized reading from having to deal with the scripture and scholarly tradition coherently, but also serves to neutralize, if not abrogate, central norms of the Qur’an and the Prophetic model.

The common misrepresentations of the document rely on crucial omissions, favoring what is most convenient today over a commitment to an authentic grasp of the Sunnah. In this sense, even though the *Kitāb* itself is most likely historically authentic, it has been not unlike the biblical story in which Jesus, upon him be peace, declares to a mob about to stone an adulterous woman, “Let him who is without sin cast the first stone” (John 8:7). Even Renaissance scholars knew this story was a later insertion not found in the earliest biblical manuscripts. But it was one that had gone on to become one of the most important teachings of Jesus known to the world. Despite the best intentions of its original popularizers like the

erudite Muhammad Hamidullah, the popular representations of ‘the Constitution of Medina’ turn it into a myth that not only obscures but militates against its original significance. When undertaken with rigor and integrity—knowing that whatever Allah guided His messenger to accomplish is the most worthy and blessed example—the study of this document and its history is edifying beyond doubt. We ought to learn history not to fit it into some prefabricated agenda but to let it transform us and our understanding in unexpected ways. Our precommitments certainly influence our reading, but they need not determine it. I invite the reader to plunge into the blessed knowledge that is the *Sīrah* of the Final Messenger of Allah ﷺ, trusting that the *Truth*—one of the beautiful names of the Almighty—is worth seeking.

In this article, I offer an introduction to and an annotated translation of this remarkable, informative, and complex document. Because of the significance of the Prophet’s ﷺ interactions with the three major Jewish tribes of Medina, interactions that ended in hostility, it has attracted sustained attention from Orientalists and has been translated into European languages, including English, numerous times. The three scholarly traditions explored here, classical Muslim scholarship and recent Muslim and non-Muslim academic scholarship, do not differ too much in their general conclusions, despite differences in their aims and methods. Modern Muslim and non-Muslim scholarship draw on classical Muslim scholarship and hover around similar disagreements concerning preservation, interpretation, and implication. Scholars are puzzled over such fundamental questions as exactly when this document was composed; whether it is one or two documents or many different treaties only later brought together by the compilers of *Sīrah* works; which Jewish groups exactly were parties to the treaty and which, if any, were excluded; and so on. In classical scholarship, the *Kitāb* was read and debated with great erudition within the context of early Medinan life, the Qur’anic revelation, and analysis of the preserved reports, as an early version of the *dhimmah* (protected legal status) that became the standard Islamic norm. It formed part of a large, complex picture. Deferring the discussion about its modern uses and abuses to the end, we proceed to the text of the *Kitāb*.

## Introduction to the *Ṣaḥīfah* or *Kitāb* of Medina

Soon after arriving in Yathrib, the Messenger of Allah, Muḥammad ibn ‘Abdallāh, upon him be peace and blessing and upon all the prophets, contracted one or more agreements with its inhabitants, including the Jews. No scholar, classical or modern, has disputed this much. At some point, he also inscribed it in a document. The text has been reported in two main versions, that of famous historian of the *Sīrah* and hadith transmitter Ibn Ishāq (d. 150/767)<sup>2</sup> (which we shall refer to below as II) and that of the famous scholar of language and scripture Abū ‘Ubayd al-Qāsim ibn Sallām (d. 224/838) (hereafter AU).<sup>3</sup>

Numerous sound hadith reports corroborate *parts* of this document. Its authenticity in its reported form *as a single document*, however, has been called into question, for we do not possess a single sound chain of authorities (*isnād*) for it. The modern Syrian historian Yūsuf al-‘Ishsh argued, for instance, that “It has not been recorded in any book of *fiqh* or sound hadith despite its legislative significance, and it is reported by Ibn Ishāq without any *isnād*.”<sup>4</sup> This opinion, however, is an outlier, since most Muslim and non-Muslim scholars agree on its authenticity in some form. The contemporary historian and hadith scholar, Akram Ḍiyā’ al-‘Umarī, argues that this pact as narrated in Ibn Ishāq without *isnād* has some corroboration: a weak *isnād* from Ibn Abī Khaythamah (d. c. 279/892) and one truncated *isnād* stopping at al-Zuhrī (d. 124/742) that is found in the work of Abū ‘Ubayd. Altogether, this does not raise it to the level of *ṣaḥīḥ* hadiths and hence, al-‘Umarī concludes, it may not be fit for grounding Shariah norms without further

<sup>2</sup> Early Islamic dates are given in Hijra years, AH, without the corresponding years in the common era except occasionally for reference.

<sup>3</sup> Muḥammad b. Ishāq b. Yasār (d. AH 150) was the author of the most detailed early biographical work on the Prophet ﷺ. Among the most learned scholars on the subject, he is generally considered trustworthy and his reports are accepted by hadith scholars when he names his sources, but he often does not, and in those cases, his accounts need corroboration. Only the first third of his account of the *sīrah* has survived in its original form, discovered as a manuscript in Europe and published by none other than Muhammad Hamidullah. His book was abridged by his disciple Ibn Hishām (d. 218), and in this form it has remained the single most widely used source on *sīrah* in Islamic history. The other version comes from Abū ‘Ubayd al-Qāsim b. Sallām of Herat (d. 224), a leading Sunni scholar and trusted hadith expert, author of the monumental *Kitāb al-Amwāl*, which is perhaps the greatest single early compendium of legal and administrative reports.

<sup>4</sup> Akram Ḍiyā’ al-‘Umarī, *al-Sīrah al-Nabawīyah al-ṣaḥīḥah* (Riyadh: Maktabat al-‘Ubaykān, 1996), 273. It seems al-‘Ishsh did not know about Abū ‘Ubayd’s version.

corroboration. It is nevertheless acceptable on the standard of the historical method employed for *Sīrah* reports, which is less stringent than, or arguably simply different from, the requirements of evidence in matters of law or creed. In sum, the fact that numerous sound reports corroborate sections within the document even if the document in its entirety lacks a sound *isnād*, and the fact that strong evidence exists for one or more such treaties in that era, together make a good case for the *Kitāb*'s general reliability.

The Pact of the Believers, the first half of the *Kitāb*, is far better attested than the latter half about the truce with the Jews. Al-Bukhari (no. 7300) records that ‘Alī b. Abī Ṭālib once said from the pulpit that “By Allah, we [that is, the family of the Messenger of Allah] have no book (exclusive to us); we have Allah’s Book and whatever is in this document,” referring to a rolled-up document that hung from his sword. Then he unrolled it and in it were rulings about what sort of camels were to be given as blood money, that Medina is a sanctuary, that the pledge of protection (*dhimmah*) granted by any Muslim is one and the same, and the least of them in power or status can grant it, the prohibition of violating it and of entering a client relationship with an ally of another Believer. This hadith effectively reiterates the terms in § 12, 13, 15. In another tradition in *Ṣaḥīḥ Muslim*, ‘Alī is asked if the Messenger of God singled his household out for any special teaching to which he responded in the negative, saying that the only distinction he had in this respect was his scroll which states that Allah has cursed anyone who slaughters in the name of anyone other than Allah, steals a signpost,<sup>5</sup> curses his own father, or protects a murderer. In yet another report, ‘Alī says that the scroll included the rulings of alms (*farā’id al-ṣadaqah*). This suggests that the scroll had numerous rulings pertaining to mundane, jurisprudential matters, including some that are not given in the *Kitāb* as reported by II and AU. Other traditions have it that a similar document was handed down by the family of ‘Umar b. al-Khaṭṭāb, and it is not unlikely that more than one copy existed.<sup>6</sup> It should be noted that all these reports

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<sup>5</sup> Signposts: *manār al-arḍ*, used to mark property boundaries, and could be moved or removed to usurp someone’s property.

<sup>6</sup> Al-Bayhaqī, *Sunan al-kubrā* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1424/2003), 8:184, through Ibn Ishāq; Michael Lecker, *The “Constitution of Medina”: Muḥammad’s First Legal Document* (Princeton, NJ: The Darwin Press, 2004), 194.

that mention documents in possession of ‘Alī or ‘Umar mention only the first part of the *Kitāb*, the pact among the Believers, and make no mention of the Jews.

The version of the document given by Abū ‘Ubayd (AU) is shorter and missing some sections or phrases found in Ibn Ishāq’s (II).<sup>7</sup> In the translation below, the sections found only in II will be enclosed in curly brackets {}. Any part found only in AU and not in II will be enclosed in angular brackets < >. Any explanatory note will be enclosed, as it is conventionally, in square brackets []. Arabic transliterations and English translations of key terms or phrases are given in parentheses (). A close reading and historical explanation of every clause follows it immediately, and an historical analysis and contemporary implications are given at the end.

Most scholars divide the document into two distinct parts: the first a *pact* of understanding among the followers of the Prophet ﷺ and the second a *truce* between the Muslims and the Jews. All early sources including Ibn Ishāq (II) and al-Wāqidī refer to it as a *muwāda‘ah*, which means cessation of hostilities. Following the German orientalist Julius Wellhausen, Hamidullah divides the first part into 23 sections or clauses and the second part into another 24, and this division is maintained here.<sup>8</sup>

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<sup>7</sup> It goes without saying that Ibn Ishāq’s *Sīrah* refers to the abridged version preserved by his disciple Ibn Hishām; only a part of Ibn Ishāq’s original was recently rediscovered, but that part stops before the Hijra.

<sup>8</sup> Muhammad Hamidullah, *The First Written Constitution* (Lahore: Ashraf Printing House, 1994).

## The Text<sup>9</sup>

### [The Pact of the Believers]

§1. This is a *kitāb* (writ, prescript) from Muḥammad <the Messenger of Allah> between the *mu'minūn* (Believers) and *muslimūn* (Muslims) of the Quraysh and Yathrib and those who join them, <settle with them,> and make *jihād* (armed struggle) alongside them.

§2. They are one people to the exclusion of all other people (*innahum ummah wāḥidah min dūn al-nās*).

*Ummah*. The opening clauses of the Pact of the Believers establish the *ummah* as a religious and political community. Hamidullah translates *ummah* here as a political community, but it is evident that not only political order but also active struggle for faith is a constituent of the community.

Generally, *ummah* could mean, as it does in places in the Qur'an, (i) the community of the followers of all prophets since the beginning of time. On other occasions, (ii) it means the community that a prophet preaches to in any given era, and hence inclusive of his opponents (the more common term for which was *qawm*). For instance, in a hadith in *Ṣaḥīḥ Muslim*, the Messenger ﷺ said, “By Him who holds Muḥammad’s soul in His hand, anyone who

<sup>9</sup> Lecker’s study is the latest and most comprehensive of all, as it compares and juxtaposes various versions of the texts by Ibn Ishāq and Abū ‘Ubayd, and is therefore the basis of my translation and study. See Lecker, *Constitution of Medina*, Ibn Ishāq: 10–18 and Abū ‘Ubayd: 19–26. For the translation choices and explanatory notes, I rely on numerous studies that are among the more recent and comprehensive works on the document in the Arabic and English languages. These include Akram Ḍiyā’ al-‘Umarī, *al-Sīrah*; Muḥammad b. Fāris al-Jamīl, *al-Nabī wa-Yahūd al-Madīnah* (Riyadh: Markaz al-Malik Fayṣal lil-Buḥūth, 1422/2002); Hamidullah, *First Written Constitution*. The most comprehensive Orientalist study that presents and evaluates many earliest translations is by Lecker. Lecker’s study, nevertheless, is deficient in consulting the hadith works and invested in proving a narrow thesis. In addition, I have consulted the earliest comprehensive *sīrah* works, including Ibn Hishām, *Mukhtaṣar Sīrat Ibn Hishām* (Cairo: Wizārat al-Awqāf, 1997) and Ibn Sayyid al-Nās’s (d. AH 734) excellent compilation of the early sources in *Uyūn al-Athar* (Beirut: Dār Ibn Kathīr, 1992). The translation given is mostly that of Hamidullah or Lecker; on occasion, I have preferred Watt, Wensinck, or Serjeant’s translations, or my own where I found the others unclear.

hears of me from this *ummah*, a Jew or a Christian, then dies without believing in what I have brought will be among the people of Fire” (Muslim no. 153), which means that in one meaning the term *ummah* encompasses all human beings after his commission until the end of time. This is glossed by scholars as *ummat al-da‘wah*. However, (iii) in this document, the Prophet ﷺ defines the *ummah* in the way that becomes the primary meaning of the term for all time, in accordance with the Qur’anic verses that were revealed about this time: “O you who believe... You are the best *ummah*...” (3:102-110) and “Thus we have made you the middlemost/best *ummah*...” (2:143). In this context, *ummah* could only mean a community defined by belief in and support of the Prophet Muḥammad’s ﷺ mission. The law revealed in the ensuing years was addressed to this community and its posterity, and through it to all humankind until the end of time. This community is addressed in the Qur’an as *al-mu‘minūn*, the Believers, or *yā ayyuhā alladhīna āmanū*: O ye who believe.

*Muslim/mu‘min*. The Qur’an rarely employs the term *muslim*, which is why the distinction between *mu‘minūn* and *muslimūn* in the first clause of this document is notable. Although their referents may overlap (*‘atf al-‘āmm ‘alá al-khāṣṣ*), it is more likely that the two words have slightly different connotations, and the best way to understand them is in concentric circles: all *mu‘mins* are *muslims* but not the other way around. When used in an unqualified form, the term *mu‘minūn* is reserved in the Qur’an, as in this document, for the true believers and followers of a prophet—be it Muhammad, or Moses, upon them be peace—in their time. Contrary to misconceptions in some Orientalist theories, it is never employed to mean generic believers or monotheists, but only the true followers of God’s prophets. Revealed about this time, Sūrat al-Nisā’ declared those who disbelieve in some prophets while believing in God and selected prophets to be “the truly unbelieving” (4:150-1).

In this sense, it is a term at times of identity (as it names a group) and at other times of description, approval, and praise, and at times both (as in 4:136). For instance, in 2:62 and numerous other places, the Qur’an refers to the Prophet Muhammad’s followers as ‘those who believed (*āmanū*)’ while contrasting them to the Jews and the Christians. Elsewhere, the righteous followers of Moses and other prophets who aided them in their prophetic mission are referred to as ‘believers’ or ‘those who believed’ (2:213; 2:249; 7:88). After they acquire their historical identity that takes them away from adherence to their prophet, rather than the ‘believers’ the Christians are always called *Naṣārā* (Nazarenes), and the Jews *Yahūd* (or *alladhīna hādū*) or, in historical references, *Banū Isrā’īl*, and both more generally ‘the People of the Book.’ In one place, when reprimanding the Jews and the Christians for failing to follow Abraham’s true monotheism and thus joining the Prophet Muhammad’s صلى الله عليه وسلم mission, the Qur’an declares that “The closest associates of Abraham are those who followed him, and *this* prophet and *those who have believed*” (3:57), which could only make sense if *those who have believed* are an identifiable group distinct from the Jews and the Christians.

Only twice in the document (and once more in AU’s version) is the group *muslimūn* mentioned to refer to some followers of the Prophet صلى الله عليه وسلم. This accords with the Qur’anic distinction as in 49:14 (“The bedouins say, We have become *mu’min*. Say [to them], You have not yet become *mu’min*, but you have become *muslim*, for *īmān* has not yet entered your hearts”). Since 49:14 refers to a later incident (concerning the nomadic tribe of Banū Asad b. Khuzaymah whose deputation came to declare their faith in 9 AH) and the *Kitāb* was probably concluded during the third year of the Hijra or earlier, this would mean either that the Prophet صلى الله عليه وسلم had already made this distinction between *mu’min* and *muslim* from the

outset, or else that the *Kitāb* was updated later to reflect this distinction.

Yathrib. This was the name of the settlement to which the Prophet ﷺ migrated. The name *al-Madīnah* (Medina) is generally understood to have been coined after the Prophet’s migration, when it began to be called *Madīnat al-Nabī* (the city of the Prophet) and then shortened to *al-Madīnah*. Some historians suggest, however, that the name *al-Madīnah* is Aramaic in origin and had been one of this town’s ancient names.<sup>10</sup>

§3. The Emigrants from the Quraysh keep to their tribal organization and leadership, cooperating with each other regarding blood money (*yata āqalūn*) and related matters and ransoming their captives (*yafdhūn āniyahum*) according to what is customary and equitable among the Believers.

Here, the document reaffirms the tribal organization (II: *raba’atihim* AU: *rabā’atihim*), but in a modified form. Ibn Sayyid al-Nās explains *raba’ah* or *rabā’ah/ribā’ah* as “the state in which they were when Islam came to them,” namely, their tribal organization.<sup>11</sup> In contrast to the first two clauses that are concerned with faith, this one addresses what we may label political and administrative grouping, *āqilah*. More precisely, the *āqilah* is the blood-money group—the solidarity group that must pay compensation for a crime committed by one of their number. All the Emigrants together formed one such group, thus operating as a single clan, even though they had originally come from the various clans of the Quraysh and non-Quraysh in Mecca, including even some non-Arabs. Thus, although the *membership* of this new clan was defined by faith, its *structure* was pre-Islamic, for Islamic laws

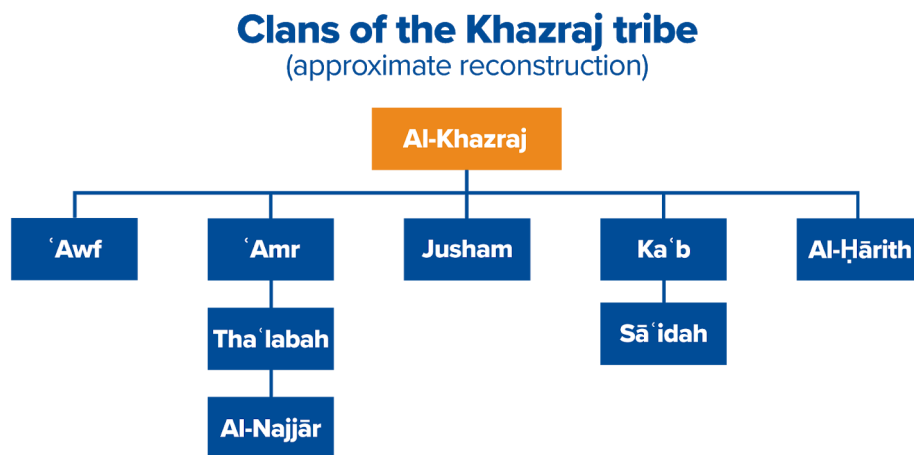
<sup>10</sup> See sources quoted in Muḥammad Fāris al-Jamīl, *al-Nabī wa-Yahūd al-Madīna* (Riyadh: Markaz al-Malik Fayṣal, 1422/2002), 57, esp. Jawwād ‘Alī, *al-Mufaṣṣal fī tārikh al-‘Arab qabl al-Islām* (Beirut: Dār al-‘Ilm lil-Malāyīn, 1970–1976).

<sup>11</sup> Ibn Sayyid al-Nās, *Uyūn*, 320.

concerning blood relations, marriage, inheritance, and filial ties had yet to be revealed.<sup>12</sup>

§4-§11. The Banū ‘Awf keep to their tribal organization and leadership, cooperating with each other regarding blood money and related matters and ransoming their captives according to what is customary and equitable among the Believers.

The stipulation in §4 is now repeated word for word for each of the various clans of the Believers and *muslims* of Yathrib. At this point, they are not called *al-Anṣār* as they would be later. These Arab clans of Yathrib include from al-Khazraj: (i) Banū ‘Awf, (ii) al-Ḥārith, (iii) Sā‘idah, (iv) Jusham, (v) al-Najjār;

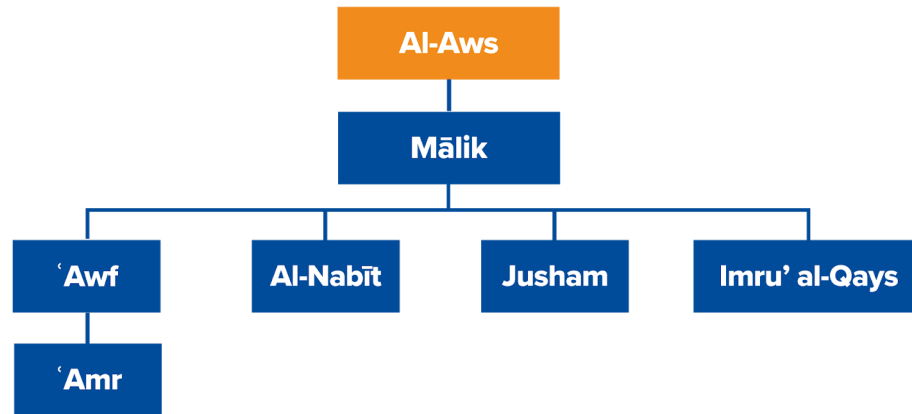


and from al-Aws: (vi) ‘Amr b. ‘Awf, (vii) al-Nabīt, and (viii) al-Aws.<sup>13</sup>

<sup>12</sup> Classical jurists agreed on this point. Ibn Rushd the elder (d. 520) writes, “That liability for unintentional homicide rests on the killer’s *‘āqilah* is based upon the *sunnah* of the Messenger of God, God’s blessing and peace be upon him, and there is no dispute among the *‘ulamā’* about this. It is a practice (*amr*) that prevailed in the Jāhiliyya, and the Prophet confirmed (*aqarra*) it under Islam, although it contradicts the general rule according to which no man could be burdened with another’s offence.” Nurit Tsafir, *Collective Liability in Islam: The ‘Aqila and Blood Money Payments* (Cambridge: Cambridge University Press, 2020), 2–3.

<sup>13</sup> For a detailed study of these tribes, see Ṣāliḥ al-‘Alī, *Dawlat al-Rasūl fī al-Madīnah* (Beirut: Sharikat al-Maṭbū‘āt, 2004), 50–51.

## Clans of the Aws tribe (approximate reconstruction)



Whereas all the Emigrants in §3 form one *ʿāqilah* group, the Believers of Yathrib continue in the old clan relationships at this time. The phrase *yata ʿāqalūn ma ʿāqilahum al-ūlā* (“they shall continue their prior clan arrangements”) is repeated in clauses 4 through 11. The same terms are affirmed for five clans of al-Khazraj and three clans of al-Aws; the Khazraj were both more numerous and slightly earlier in embracing Islam. At the time of this treaty, these clans inevitably included a few remaining *mushriks* (polytheists) in their clans; we know this because of the one mention of polytheists in their midst later in the *Kitāb*. As the *mushriks* are mentioned only once, and even that in passing, we can guess that their numbers must have been negligible. Sources mention that only one major clan of the Aws tribe<sup>14</sup> in its entirety refused to embrace Islam (none of its members became Muslim) until quite late, on the occasion of the Battle of Khandaq in 5 AH. This clan, Aws Allāh, as well as others, is not named in the treaty, which suggests that the treaty did not cover all the Arab inhabitants

<sup>14</sup> Al-ʿAlī, *Dawlat al-Rasūl*, 152.

of Yathrib. Most of the rest of the clans of Yathribite Arabs, it would seem, contributed at least some converts.

§12. The Believers shall not neglect to give aid to a debtor (*mufrāḥ*) amongst them according to what is customary in matters of ransom (*fidā'*) or blood money (*'aql*). {And no Believer shall make an alliance with an ally (*mawlá*) of another Believer to the exclusion of the latter.}

Hamidullah (p. 45) gives the following corroborating hadith from *Musnad Ahmad* on the authority of Jābir b. 'Abd Allāh, “The Messenger of Allah prescribed for each clan its blood money, and then wrote, ‘Verily it is not permitted that a contract of clientage of a Muslim individual should be entered into without the permission of his patron (*walī*).’”

§13. The God-fearing Believers are against whosoever of them acts wrongfully (*baghā*) or seeks an act (*dasī'ah*) of injustice, or promotes sin, transgression, or evil among the Believers. They shall all unite against him even if he is the son of one of them.

Obligations and expectations of aiding in debt, ransom, and other financial obligations that would previously fall to the clan are extended to all Believers here, thus moving the young community toward a conception of solidarity beyond tribe, one in which the *ummah* becomes a supertribe. As the size of the community swelled beyond a face-to-face community, these obligations took the form of Islamic law that we are familiar with: familial obligations, free and fair commercial exchange, prohibition of usury, obligation of *zakāh*, and encouragement of charity and debt forgiveness, etc.

§14. A Believer will not kill a Believer [in retaliation] for a non-Believer and will not aid a non-Believer against a Believer.

This stipulation of the *Kitāb* is reported in numerous hadith traditions. This clause (viz., §14) has a general meaning, but also addresses an immediate problem. It is aimed at strengthening the ties among the Believers at the expense of their non-believing family members, but also at “stopping the vicious cycle of killings in Medinan society by assuring the participating parties that the old accounts were sealed: every new slaying would be the killing of a fellow Mu’min for a *kāfir*, since those killed before Islam were of course *kuffār*.”<sup>15</sup> In its general sense, the dictum that a Believer cannot be killed in retaliation for a *kāfir* is understood in two ways. Whereas most jurists upheld its literal meaning that a Muslim cannot be given a capital punishment in retaliation for a non-believer, the Ḥanafī school, which in fact governed the conduct of the majority of historical Muslim regimes, effectively held that the dictum has a political connotation. This meaning is supported by one narration of the famous hadith in which ‘Alī says that the scroll declares that neither a Believer nor someone with a treaty (*‘ahd*) shall be killed [in retaliation] for an infidel (*al-Nasā’ī* no. 4760). This addition of “someone with a treaty” is a remarkable addition in al-Nasā’ī’s report, because in most versions it is absent, as in al-Bukhārī, when ‘Alī is asked about the scroll, he says that it has rulings about blood-money, ransom, and that a Muslim shall not be killed for an infidel (*kāfir*) (*al-Bukhārī* no. 3047). Al-Nasā’ī’s version may lend support to the Ḥanafī view that a Believer and a protected non-believer may not be killed in retaliation for a *ḥarbī*, an infidel with whom the community was at war. This disagreement in interpretation is significant in determining the rights of the protected non-Muslims and worthy of a dedicated treatment not attempted here.<sup>16</sup>

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<sup>15</sup> Lecker, *Constitution of Medina*, 113–14.

<sup>16</sup> For a discussion of contemporary debates on the rights of non-Muslim citizens, see Ovamir Anjum, “Dhimmi Citizens: Non-Muslims in the New Islamist Discourse,” *ReOrient* 2, no. 1 (2016).

§15. The protection (*dhimmah*) of Allah is one, the least of them [i.e., the Believers] is entitled to grant protection (*yujīr*) that is binding for all of them. The Believers are each other’s allies (*mawālī*) to the exclusion of other people.

This clause reiterates what the rest of the document makes clear: affirming the solidarity of the Believers. This is the primary purpose and axis of the first part of the *Kitāb* that we have labeled the ‘Pact of the Believers.’ This clause adds a crucial dimension, the political equality of all Believers, regardless of their status, expressed as equality in granting protection.

### [First mention of the Jews]

§16. The Jews who join us as clients (*man tabi ‘anā min yahūd*) will receive aid and parity [or favor]; they will not be wronged, nor will their enemies be aided against them.

This clause opens the door for the Jews to join the Believers as clients. Note that not only the Jews but also the *mushriks* (the polytheists), as noted below, are party to this treaty. This suggests that at least parts of the document were later abrogated, for the polytheists were explicitly excluded with the declaration recorded in *Sūrat al-Tawbah* (9:1). This clause seems to be an initial accommodation of the Jews who lived among the Arabs of Yathrib; more detailed stipulations are added in the second part of the treaty. The term *tabi ‘anā* invokes an established tribal practice whereby outsiders settled and joined up with a tribe.<sup>17</sup>

§17. The peace of the Believers is one; no Believer will make peace to the exclusion of another Believer in fighting in the path of Allah. However, [peace must be concluded] on the basis of equality and equity between them.

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<sup>17</sup> See Ibn ‘Abbās’s explanation in al-Ṭabarī’s exegesis of 4:33; Lecker, *Constitution of Medina*, 45–46.

This clause re-emphasizes that the Believers are a political unity; their war and peace are one. This is clearly a step toward what sociologist Max Weber would call monopoly over violence as the defining feature of a state; Yathrib is being transformed through treaties like this from a spattering of disparate and warring neighborhoods and clans into a city-state—‘the City of the Prophet,’ *madīnat al-nabī*. The trailing exception seems to allow the possibility of peace concluded by some Believers without the explicit approval of the whole, provided it is not at the expense of any other Believers and does not violate equality and equity among the Believers. Notably, no mention is made here of the Believers in Mecca who have failed to emigrate; the Qur’an explains (e.g., 8:72) that they do not share the political and material advantages afforded by this new alliance, but they shall have the right to receive aid except against a party with whom the Believers of Yathrib have concluded a treaty.

§18. In every expedition made with us the parties take turns with one another.

Clause 18 continues to emphasize equality and fairness among the Believers. Each clan will bear the burden of battle fairly.

§19. {The Believers exact full vengeance for the blood of one another that is shed in the way of Allah.}

Concerning this clause, Serjeant explains, “The whole *ummah* confederation is responsible for avenging any of its members killed by parties outside it.” The particular need to emphasize this point is explained by Lecker: “The retaliation for one’s death was usually the duty of his *‘āqilah*. The *Kitāb* does not abolish the *‘āqilah* and the *Mu’minūn* do not form one *‘āqilah*. But some *Mu’minūn* whose *‘āqilah* still included many polytheists needed to be assured that should their blood be shed in the cause of Allāh, full retaliation

would be exacted by their fellow *Mu'minūn*.”<sup>18</sup> In other words, even though the pre-Islamic organization is maintained for the time being, *ummatic* solidarity is the overriding principle, and the life of a Believer is too important to be left even temporarily to the clan.

§20. The God-fearing Believers guarantee the best and most upright fulfillment of this [treaty] (‘*alá aḥsan hādhā wa-aqwamihi*). A *mushrik* (polytheist) will not grant protection to any property or to any person of the Quraysh, nor will he intervene between them (viz. their property or person) and a Believer.

Another vocalization of the opening clause is: ‘*alá aḥsan hudá wa-aqwamihi*, which would mean “The God-fearing Believers are upon the best guidance and most upright guidance,” but this would seem out of place here.<sup>19</sup>

This is the only mention of *mushriks*, the remaining polytheists within the Medinan tribes, most of whose members had become Believers. This clause indicates a strict and disciplined policy against the Quraysh, and shows that, whereas the Believers are one *religious and political* party (*ummah*), the polytheists could not have the same relation to their co-religionists, the Meccan polytheists. This same principle is repeated with respect to the Jews (see below), who are required to support the Prophet ﷺ and his *ummah* against their own co-religionists, should any of them break this treaty.

§21. When evidence has been established that someone has wrongfully killed a Believer, then he is liable to be killed in retaliation unless the kin (*walī*) of the murdered is satisfied [with blood money]. All the Believers are united against him and it is not permissible for them not to act against him.

§22. It is not permissible for a Believer who acknowledges what is in this document (*ṣaḥīfah*) and believes in Allah and the Last Day to support a murderer

<sup>18</sup> Lecker, *Constitution of Medina*, 124.

<sup>19</sup> For the variations, see Lecker, *Constitution of Medina*, 13.

(*muḥdith*) or give him shelter. Upon whosoever supports him or gives him shelter is the curse of Allah and His wrath on the Day of Resurrection, and neither repentance nor ransom will be accepted from him.

Some scholars have translated *muḥdith* in a general sense as “wrongdoer” or in a literal sense as religious “innovator,” but both are incorrect. Following Ibn Hishām, al-Balādhurī, and other early authorities, Hamidullah and Lecker render it in its proper context as “murderer.”<sup>20</sup> This clause is, therefore, a continuation of the last one.

§23. Whatever you differ about shall be brought to Allah and Muḥammad.

This clause and the last one closely resemble the verse 4:59: “O Believers, obey Allah and obey the Messenger and those in authority among you, and if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is best and most fitting,” which confirms the reports that *Sūrat al-Nisā’* was being revealed about this time, and that this *sūrah* provides the proper context for this document as well as commentary on the contemporary events and ethos.<sup>21</sup> The next verse gives further context, “Have you not seen those who claim to have believed in what was revealed to you, [O Muhammad], and what was revealed before you? They wish to go for judgment to *Tāghūt* (lit., a false god), while they were commanded to reject it; and Satan wishes to lead them far astray (4:60).” Exegetes agree that this was revealed when some Yathribite converts, hereby revealed as hypocrites, sought a Jewish leader for a prejudiced judgment, fearing the Prophet’s fair judgment, in a dispute with his Jewish neighbor. Some reports mention that this challenger to the Prophet’s authority was Ka’b b. al-Ashraf, whom we shall meet again presently.

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<sup>20</sup> Hamidullah, 47. According to Abū ‘Ubayd, *muḥdith* is anyone who violates one of the prohibitions of God. Since the prohibitions concerning theft, slander, etc., had not yet been revealed, this could only mean murder.

<sup>21</sup> I thank Bassam Zawadi for pointing this out.

## [The Truce with the Jews]

§24. The Jews bear expenses along with the Believers so long as they continue at war.

We shall discuss below the question of when this truce with the Jews was concluded, and how it relates to the Pact of the Believers above. At a later stage in Medinan life, the non-Muslims will be incorporated into a centralized political entity through a treaty of peace and protection (*dhimmah*) and poll tax (*jizyah*), one built on the Believers’ role as the providers of security and hence their military domination. This treaty, however, does not assume a central government yet, and allows the Jews to enter a deal whereby they did not pay a poll tax but rather spent on a joint defense. It may be noteworthy that when addressing the Jews, the armed conflict is referred to as war (*ḥarb*) whereas in the first part of the document (i.e., the treaty among the Believers), it is called *jihād* in God’s path.

§25. The Jews of Banū ‘Awf are {a community alongside}/<a community from>/[secure from] the Believers; the Jews have their religion (*dīn*) and the Muslims have theirs. This applies to their clients (*mawālīhim*) and themselves. But whoever does wrong or commits treachery brings evil only on himself and his household.

This is a much-debated clause. Due perhaps to scribal error or the underdeterminacy of the Arabic script at the time, four variants of this clause are preserved. The standard version is Ibn Ishāq’s: *ummaḥ ma‘ā al-mu‘minīn*: one community with the Believers. Abū ‘Ubayd’s version: *ummaḥ min al-mu‘minīn*: one community from among the Believers. At least two other variants exist. One is: *amanah min al-mu‘minīn*: secure from the believers, and finally, a different reading of Ibn Ishāq: *lil-yahūd banī ‘awf dhimmah min al-mu‘minīn*: the Jews have the *dhimmah* protection from/by the

Believers.<sup>22</sup> The next clause goes on to specify that the Jews and the Muslims will have their separate religions.

Of all these variants, AU’s is the least likely, and its meaning is misleading, as it contradicts nearly every other clause of the document, including the very next one.<sup>23</sup> Since the very first two clauses of the document define the *ummah* as consisting of the Believers (and *muslims*) to the exclusion of all others, joined by faith and struggle (*jihād*) for it, and then the rest of the document goes on to detail the relationship of two distinct groups, the Believers and the Jews, accepting this reading renders the document illogical. We read, for instance, that “The Jews will bear the expenses with the Believers so long as they are at war” (§24, 38), and that the Jews, if called to some agreement by the Believers, should accept, and vice versa (§45). In all these cases, the Jews are a group distinct from the Believers not only in religion but also in political identity and status, some crucial reciprocal rights stated here notwithstanding. Lecker makes a strong case that the best reading is the last one, *amanah min al-mu’minīn* (Lecker, 141-147).

§26-30. [The clause in §28 for the Jews of Banū ‘Awf is extended to the Jews of Banū al-Najjār, Banū al-Ḥārith, Banū Sā‘idah, Banū Jusham, and Banū al-Aws.]

§31. {The Jews of Banū Tha‘labah have the same terms as the Jews of Banū ‘Awf.} But whoever does wrong or commits treachery brings evil only on himself and his household.

<sup>22</sup> Ibn Ishāq as recorded in Ibn Taymiyyah, *al-Ṣārim al-maslūl*.

<sup>23</sup> Hamidullah explained this as “one political community along with the believers.” Western scholars disagree on this; Rubin gives the same reading as Hamidullah, whereas others, including Serjeant, support the more likely reading, namely that “the Jews are a separate *ummah* alongside the Believers.” After a thorough study, Lecker endorses an even stronger version of this second interpretation, going beyond the others to endorse what may be called a third reading (“the Jews are secure from the Believers”) which further underscores the distinction between the Jews and the Believers. According to his view, the word *amanah* has been misread as *ummah*. Among Muslim scholars, Ibn Taymiyyah seems to have possessed a version of Ibn Ishāq which reads “*wa-lil-yahūd dhimmah min al-mu’minīn*”—that the Jews are given protection by the Believers (Lecker, *Constitution of Medina*, 137–8). This is also the reading of Imam al-Shāfi‘ī, who called this document a *dhimmah* without *jizyah*, which is the most accurate description of its contents.

§32. {The Jafnah are a clan (*batn*)<sup>24</sup> of Tha‘labah and are on a par with them.

§33. The Banū al-Shuṭaybah have the same rights as the Jews of Banū ‘Awf. Righteousness is easier than sin.<sup>25</sup>

§34. The allies of the Tha‘labah are on a par with them.

§35. The nomadic allies (*biṭānah*) of the Jews are on a par with them.}

Clauses §31 (first part) and §32-35 are, as indicated, found only in Ibn Ishāq’s version, but Abū ‘Ubayd’s version adds at a later point in the document that the Banū al-Shaṭbah are a *batn* from Jafnah. Read together, and assuming that *batn* means a subgroup in a tribe, it means that the Banū al-Shaṭbah are a subtribe of Jafnah, and Jafnah a subtribe of Banū Tha‘labah. Since the Tha‘laba were situated on the eastern outskirts of Medina, they were added later to the treaty. The term *biṭānah*, which generally means outsiders that are intimate with a group (e.g., 3:118), here refers to the Jews’ nomadic allies (Lecker, 150, 153; Hamidullah also agrees with this).

§36. None of them [viz. the Jews] may *leave* without Muḥammad’s consent. {There is no refraining from retaliation for a wound. He who sheds blood (*fataka*) brings it upon himself and his household, except he who has been wronged, and Allah demands the most righteous fulfillment of this [treaty].}

<sup>24</sup> The term *batn* (lit. abdomen) is part of an anthropomorphic scheme of tribal genealogy that the Arabs employed. Typically, *qabila* (usually translated as tribe) refers to a large unit made up of subunits, each of which is known as *batn*, which in turn is made of smaller units known as *fakhidh* (thigh, upper leg). Some scholars hold that *sha‘b* (pl. *shu‘ub*) denotes a higher level than tribes, a confederation of tribes. There is no single scheme and different people would have used these terms differently to try to schematize an extremely complex system of genealogy. See *Lisān al-‘Arab* under b-ṭ-n and sh-‘-b.

<sup>25</sup> The translation of the quaint phrase, *inn al-birr dūn al-ithm* (righteousness is easier than sin), repeated a few times, is supported by al-Zamakhsharī’s explanation. Abū al-Qāsim al-Zamakhsharī (d. AH 538), *al-Fā‘iq fī gharīb al-ḥadīth*, ed. al-Bajāwī-Ibrāhīm, 4 vols. (Beirut: Dār al-Ma‘rifah, n.d.), 2:26. I am thankful to Nabeel N. Sheikh for this reference.

*Yakhruj* literally means *leave* or *exit*. Hamidullah takes this to mean leave on a military expedition, whereas Lecker argues that it means to leave, as in move out and relocate; the latter is more likely.

§37. {The Jews have their expenditure, and the Muslims theirs.} The [parties to this treaty] will aid each other against whosoever is at war with the people of this document. Between them is good will and sincerity. And righteousness is easier than sin.<sup>26</sup> A man will not act unjustly toward his client (*ḥalīf*), and anyone wronged will be helped.

§38. The Jews bear expenses along with the Believers so long as they continue at war. [Repetition of §24.]

§39. The valley of Yathrib <Medina> is a *ḥarām* (sanctuary) <ḥaram> for the parties to this document.

§40. {The protected neighbor (*jār*) is like one’s self so long as he does not harm or act treacherously.

§41. No protection may be granted without the permission of the parties to this [document].}

§42. Whenever there is a murder {or dispute} between the people of this document from which evil is feared, the matter is to be referred to Allah and Muḥammad {the Messenger of God, may the peace and blessings be upon him}. Allah demands the most pious and righteous fulfillment of this document.

Contrast this clause (only those great crimes that could lead to civil war are to be referred to the Prophet) to §23 in the Believers’ Pact (all differences shall be referred to the Prophet).

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<sup>26</sup> *Al-birr dūn al-ithm*: This pithy idiom appears a few times in the document. Al-Zamakhsharī suggests the meaning given here; it could also mean “the righteous shall uphold the treaty and prevent its violation.” Muslims, as explained earlier, are a larger group inclusive of the Believers and are contrasted with the Jews.

§43. {No protection will be granted to the Quraysh nor to whoever supports them.

§44. They [viz. the parties to this treaty] undertake to aid each other against whosoever attacks Yathrib.}

This prohibition of any deal with the Quraysh highlights an important feature of this document. The Jews or *mushriks* who sought to make a deal with the Meccans instead of the Prophet could not do so. In other words, their freedom was limited, as they were barred from making a deal with their own co-religionists or the religion of their choice.

§45. {If they [the Jews] are called to an agreement, they will accept it, and if they call for the same, it is incumbent upon the Believers to accept it,} <If they ask the Jews to make peace with any ally of theirs, they shall make peace with him, and if they ask us for a similar thing, the same shall be incumbent upon the Believers,> except if someone makes war on account of religion [*hārabah fī al-dīn*]. Every group is responsible for the part that faces them.

The Jews could not aid the Meccans against the Believers, but nor could the Believers aid anyone seeking to wage war against the Jews. This principle becomes enshrined in Islamic law in the form of the *dhimmah* contract later.

§46. The Jews of al-Aws, their allies and their persons, have the same standing as the parties to this document, with the truest fulfillment with regard to the parties to this document. Verily, righteousness is easier than sin, and he who violates it does so only against himself. Allah demands the truest and most righteous fulfillment of what is in this document.

This is the second time the Jews of al-Aws are mentioned (assuming that the reference to the Jews of Banū al-Aws in §30 refers to the same group). If by “the Jews of al-Aws” is meant Banū Qurayza, which is a strong likelihood (see analysis below), we may

conclude from this repetition that they were added to the treaty twice. One possibility is that they were initially added along with the rest of the Jews living among the Arab neighborhoods, and after they violated or intended to violate it by siding with the Quraysh during or after Badr, they were forgiven and once again added. Note that both of the Jewish tribes of Banū Qaynuqāʿ and Banū al-Naḍīr had already been expelled at this point.

§47. This *Kitāb* will not intervene to protect an unjust man or a violator of pledge. He who goes out is secure and who stays {in Medina} is safe, except he who acts unjustly or in violation of the pledge. {Allah is the Protector of him who is righteous and God-fearing, and so is Muḥammad, the Messenger of God.} <The most fitting to be the parties to this document are those who are righteous and benevolent.>

## Analysis

### Dedication

Before I further analyze this text, a note of appreciation is in order. Dr. Muhammad Hamudillah (d. 2002), God have mercy on him, declared this *Kitāb* “the first written constitution in the world.” Even though, as I show below, this particular framing is not convincing, I want to take this opportunity to introduce this icon of true Islamic scholarship, adorned with the kind of piety and asceticism that reminds us of early Muslims and the masters of the classical age. An advocate of Islamic law and tradition in the late colonial and post-colonial period when, having lost the unifying symbol of the caliphate and political independence, Muslims worldwide felt overwhelmed by Western ideals, knowledge, and institutions, he set out to demonstrate through his pioneering historical research that Islam was fit to govern the new reality in which Muslims found themselves. In a world where the West’s naive self-confidence in its superiority and its fundamentalist belief in

progress—the now-laughable view that whatever is new is by necessity superior—Muslim intellectuals felt the need to recast Islam’s knowledge in modern terms.

Born in 1908 in Hyderabad (under British rule), he was educated at Hyderabad’s Osmania University and then at the University of Bonn in Germany, where he wrote on Islamic international law, and at the University of Paris (the Sorbonne), where he studied the Prophet’s ﷺ embassies. After teaching for a decade at Osmania University, he moved to France for research at Le Centre National de la Recherche Scientifique and did so with marvelous concentration and productivity, residing, I am told, in a small apartment brimming with books—he never married—for a quarter of a century. He finally moved to the United States in 1996 to be cared for by his grandniece, meeting his Lord at the ripe age of 95 in 2002, and is buried in Jacksonville, Florida.

His long life was singularly devoted to scholarship. His services were occasionally sought by Muslim rulers wrestling with colonialism or its aftermath. He was appointed by the Nizam of Hyderabad as part of the delegation sent to London and the United Nations in New York to seek support against the invasion of the Nizam’s territories by Indian forces. He was also sought to guide in the Islamization of the political life of the newly born Muslim nation-state of Pakistan, and was awarded Pakistan’s Hilal-e-Imtiyaz in 1985; the sum associated with the award he promptly donated to the Islamic University in Islamabad.

His wide-ranging study of the *Sīrah* in many respects was unparalleled in modern times. He authored hundreds of works in English, Arabic, and Urdu. His scholarship and profound understanding of the issues involved in this *Kitāb* are evident in his careful translation and commentary. Not only did he explore the knowledge that was in circulation among Muslim and Western scholars at the time, he also scoured the world’s libraries, especially Europe where tens of thousands of unexplored manuscripts of Islamic texts had been taken a century earlier during the colonial period. Furthermore, in order to fully appreciate and evaluate the events described in the *Sīrah*, he visited the prominent sites mentioned in the Prophet’s

life, and even traveled from Mecca to Medina on a camel, just as the Emigrants would have, following the footsteps of his spiritual forebear and one of the pioneers of the field, Muḥammad b. ‘Umar al-Wāqidī (d. 207 AH), who had undertaken similar adventures to study the Prophet’s life twelve centuries earlier.

I dedicate this essay to Dr. Hamidullah’s memory, for his works inspired me at a very early age to a serious study of the *Sīrah*. Telling the story of the Prophet ﷺ is not new, but reading his writings may have been the first time I came across serious, dedicated scholarship about the blessed man who Allah chose as “mercy to all the worlds.” There was something about his “lust of knowing” that set his approach apart from the well-meaning but predetermined and even culturally self-centered mold in which the *Sīrah* is typically cast. I draw attention to him in hope that it inspires future Muslim scholars (and especially prospective doctoral students) to undertake an exploration of his life and writings (which are abundant and spread over English, Arabic, and Urdu writings) to advance his project, both in spirit and substance.

One final thing. The great Imam Ibn Qayyim al-Jawziyya in his monumental *Madārij al-Sālikīn* prefaced his critique of the great Ḥanbalī Sufī master Abū Ismā‘īl al-Harawī with the following apology, “Shaykh al-Islām is beloved to us, but truth to us is more beloved.” I have the same trepidation, indebtedness, and sense of duty when expressing my disagreement, however minor, with Dr. Muhammad Hamidullah and other ‘*ulamā*’ of status in knowledge and piety far above mine.

## Medina at the time of the Blessed Hijra

Our story begins in Yathrib, an oasis in a valley in the Hijāz mountains that was less a town than a patchwork of neighborhoods inhabited by two warring Arab tribes and their Jewish allies.<sup>27</sup> These were the Arab tribes of al-Aws—smaller but in possession of better land in eastern Yathrib—and al-Khazraj, in possession of

<sup>27</sup> Sources mention nearly a dozen other Jewish tribes. See al-‘Umarī, 1:228, who names them and cites al-Samhūdī and Ibn Hishām as his sources.

less desirable lands in central and westerly Yathrib. Having been defeated in the devastating battle of Bu‘āth against the Aws that had ended an era of long, bloody war some five years before the Hijra, the Khazraj appeared more eager to join the new prophet and his message. Two of the Jewish tribes, the Banū al-Naḍīr and Banū Qurayzah, dwelled alongside their fertile date-palm groves on the southeastern outskirts of town near their allies the Aws, whereas the Banū Qaynuqā‘, the allies of the Khazraj, were goldsmiths and money-changers with dwellings near the center of Yathrib, in the neighborhood of Banū Najjār, where the Prophet would establish his mosque. The Arabs were more numerous. Each of the three main Jewish tribes comprised about 700 fighting men (the total population per tribe would have been some four or five times that), and the Arab fighting men from the two tribes were about twice that number, thus totalling four to five thousand.<sup>28</sup> The distinctive features of Jewish settlements included their fortresses (*uṭum*, pl. *āṭām*) the most prized of which sat on hills—there were some seventy such fortresses when the Prophet ﷺ arrived in Yathrib. Praising them as “the adornment of Medina,” he reportedly encouraged the building of new ones, and Medina boasted twice as many in the Islamic period.<sup>29</sup> A few of them survive as ruins until today.



*Medinan fortresses would have looked like this fortress in Khaybar today*

<sup>28</sup> Al-‘Umarī, *al-Sīrah*, 227.

<sup>29</sup> The hadith (*lā tahdimū al-āṭām*) is graded as weak, reported in al-Bazzār.

There were deep fractures but also interconnections among the Jewish tribes and between them and the Arabs. The Jews had been deeply involved in the war that had torn the town apart and were mutually divided along those lines. The two allies of the Aws, Banū al-Naḍīr and Banū Qurayzah, for instance, were allies but also rivals, as the wealthier Banū al-Naḍīr dominated and discriminated against the Banū Qurayzah. For instance, Banū al-Naḍīr would kill a murderer from Banū Qurayzah in retaliation but only offer blood money if one of theirs murdered a man from Banū Qurayzah; under the Prophet’s rule, the Banū Qurayzah demanded and received equal justice.<sup>30</sup> Many Arabs had become Jews, for they were impressed by the Jewish learning; some even sent their young to the Jewish schools. Childless mothers would pledge their desired firstborns to Judaism if their wish were granted. Such Judaized Arabs could continue to live with their Arab tribe while maintaining strong ties to their Jewish allies.<sup>31</sup> The Jews had been settled for centuries (there is no decisive evidence about exactly when and whence they had come; some reports point to Syria, others to Yemen) and had adopted Arabic as their second, and possibly first language, along with the Aramaic that Levantine Jews spoke. Knowledge of their scriptural language (Hebrew) was limited to the rabbis. The close resemblance between these Semitic languages, one could speculate, would have made them easy to translate between. Although the Arabs could not understand their language, they could learn it quickly, as one of the Companions did in only a few weeks at the Prophet’s behest.<sup>32</sup> Some of the Jews too, perhaps the poorer ones, would have moved into the neighborhoods of their Arab allies. The exact strength and influence of the Jews vis-à-vis the Arabs is a point of dispute, and the stronger opinion seems to be that the Arabs already had

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<sup>30</sup> See exegesis of verse 4:60 by al-Suddī reported in al-Ṭabarī and elsewhere.

<sup>31</sup> Al-ʿUmarī, *al-Sīrah*, 290; see also al-Ṭabarī’s exegesis of 2:256, the verse “there is no compulsion in religion,” which was revealed about the Arabs from Medina who had become Jews and established ties with one of the Jewish tribes, and when their tribe was exiled, they too had to leave, but their Arab families wished for them to convert to Islam and stay.

<sup>32</sup> *Sunan Abī Dāwūd*, no. 3645; *al-Tirmidhī*, no. 2715, according to which Zayd b. Thābit learned Syriac in two weeks at the Prophet’s behest. Other traditions, such as one in *al-Bukhārī* (no. 7542) mention Hebrew (*al-ʿIbrānīyah*) as the language of the Jews. It is likely that by Hebrew here, Aramaic is meant, a closely related Semitic language. The latter had displaced Hebrew as the language of the Jews in the Levant. See Ángel Sáenz-Badillos, *A History of the Hebrew Language* (Cambridge: Cambridge University Press, 1996), 170–71. I thank Samuel Ross for this reference.

the upper hand before Islam militarily, and the newfound unity in faith—so long as the faith was held strongly—would have further tilted the balance in the Arabs’ favor.

Yathrib, as the Mother of the Believers ‘Ā’isha, Allah be pleased with her, remarked with characteristic insight, was conquered by the Qur’an.<sup>33</sup> Before the Hijra, the Yathribite Arabs had concluded two pledges with the Prophet ﷺ in two consecutive years leading to the Hijra. The First Pledge (known as *bay‘ah al-‘aqabah al-ūlā*) was contracted with twelve men from Khazraj in the secrecy of a narrow Meccan mountain pass (*al-‘aqabah*) on the occasion of the Annual Pilgrimage. It became known as ‘the Pledge of Women’ as it involved no fighting and resembled the pledge of women mentioned in Qur’an 60:12, which included the declaration of faith and prohibition of well-known depravities such as stealing, fornication, killing of infants, and slander of chaste women, and a pledge of obedience to the Prophet ﷺ in all good things. Muṣ‘ab b. ‘Umayr, a fine-mannered, handsome young man of the Quraysh now persecuted for his faith by his own family, who embodied the Qur’an he preached, was sent to the Yathribites and proved spectacularly successful.<sup>34</sup> The Second Pledge (*bay‘ah al-‘aqabah al-thānīyah*), therefore, involved a total of seventy leading men, this time drawn from both tribes. The second pledge included full support of the Prophet’s mission, commanding of right and forbidding of wrong, and armed defense. The Prophet also appointed twelve leaders, nine drawn from Khazraj and three from Aws, as his deputies (*naqīb/nuqabā’*) over their respective clans, and one chief *naqīb*, As‘ad b. Zurārah, over them all.<sup>35</sup> Already in Mecca, the Prophet ﷺ had begun organizing a governance structure.

<sup>33</sup> This report, recorded in Ibn al-Muqri’, *al-Mu‘jam* (Beirut: Dār al-Kutub al-‘Ilmīyah, 2003) is regarded by the hadith critics as weak. Imām Aḥmad b. Ḥanbal regards this as a statement of Imām Mālik b. Anas.

<sup>34</sup> Al-‘Umarī, *al-Sīrah*, 198, quoting Ibn Hishām.

<sup>35</sup> For a detailed discussion of the two pledges, see al-‘Umarī, *al-Sīrah*, 194–201; Ibn Sayyid al-Nās, ‘*Uyūn*, 1:262–285. For the names of the deputies, al-‘Alī, *Dawlat al-Rasūl*, 50.



As soon as he arrived in Yathrib, the Prophet ﷺ established a mosque that doubled as his headquarters. He also established a marketplace and a system of brotherhood (*mu'ākhāh*) in which some forty-five Emigrants were coupled with a

Yathribite Believer each.<sup>36</sup> Finally, as soon as the Qur’an commanded to do so, he started sending out expeditions (that comprised only the Emigrants at this point) to intercept Meccan caravans, securing alliances or pledges of neutrality with tribes in key locations between Medina and Mecca. The justification of this policy was given in the Qur’an: “Permission [to fight] has been given to those who are being fought, because they were wronged... evicted from their homes without right—only because they say, ‘Our Lord is Allah’” (22:39-40). The Quraysh, furthermore, were guilty of “averting [people] from the way of Allah and disbelief in Him and [preventing access to] *al-Masjid al-Harām* and the expulsion of its people therefrom” (2:217). The strategy of intercepting caravans may also have emerged organically as a way to counter the Quraysh’s prevention of Muslims from visiting the Sacred Mosque, as suggested in a report in which the chief of al-Aws Sa’d b. Mu’ādh, a friend of the Meccan Umayyah b. Khalaf, went to perform *‘Umrah* and stayed with Umayyah. While performing the circling of the Ka’ba, trying not to be noticed, Sa’d was accosted by Abū Jahl. Perhaps not knowing that Sa’d too had embraced Islam, Abū Jahl challenged him, “I see you wandering about safely in Mecca while sheltering men who have changed their religion and have claimed that you will help and support them. By Allah, if you were not in the company of Abū Ṣafwān, you would not be able to return to your folk safely.” Sa’d retorted stoutly, “By Allah, if you should stop me from doing this, I will prevent you from something which is more valuable for you, that is, your passage through Medina.”<sup>37</sup>

Given his exceptionally motivated and active leadership, it is little wonder that the Prophet ﷺ sought to immediately address the major challenge facing his authority in Yathrib, the Jewish allies of his Yathribite followers. Yathrib, it must be remembered, had been riven by a bloody war between al-Aws and al-Khazraj. For those not yet transformed by the new faith, blood, revenge, and suspicion were just below the surface and both the Arabs and the Jews could be easily consumed by infighting. The combined strength of combatants in the Arab tribes

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<sup>36</sup> For a discussion of the reports about this new fraternity, see al-‘Umarī, *al-Sīrah*, 240–52; for a list of the members of this new fraternity, see al-‘Alī, *Dawlat al-Rasūl*, 90–96.

<sup>37</sup> *Al-Bukhārī*, no. 3950.

outnumbered their Jewish counterparts two to one, and with the newfound religion and unity, they had the definite upper hand. The Jews at first saw the Prophet’s coming to Yathrib with distant, even helpless, skepticism, but since the leading men of both tribes had converted to the new religion, could do little to intercept it. The only tool the Jews possessed to sway their old Arab allies was the knowledge of their great and ancient scriptural tradition, and in that they were outdone by the Qur’an. However, whereas the Emigrants had been well-prepared for this by the Qur’anic *sūrah*s that presented Israelite history at length already in Mecca such as al-A‘rāf, al-Anbiyā’, and numerous others, the new Yathribite converts would have had little knowledge of it, and were vulnerable to the doubts sown by their old Jewish allies. Allah also reminded the Arabs and Jews of Yathrib of their long-standing debates in which the latter weaponized their tradition against the gentile Arabs, speaking frequently of a coming prophet, thus sensitizing the Arabs to the idea and unwittingly preparing them to embrace the new prophet, all the more since he happened to be a gentile Arab. This psychological cultivation, along with the fact that the war had claimed the elders of both tribes who would have dug in to preserve the ways of their forebears as the Meccans had done, rendered the Arabs of Yathrib unusually receptive to the rejuvenated monotheism of Abraham.<sup>38</sup>

## When was the *Kitāb* concluded, why, and with whom?

Imām al-Shāfi‘ī declared that he knew of no disagreement among the scholars of *Sīrah* that, when the Messenger of Allah ﷺ arrived in Medina, he made a truce (*dhimmah*) with the Jews without imposing *jizyah* (poll tax) on them.<sup>39</sup> For a master jurist like him who was looking back after the Shariah had been completed, this was the most apt description of the *Kitāb*: it was no different from the *dhimmah* that became the Qur’anic law except that, rather than a fixed poll tax, the Jews were to contribute troops and expenses to the common defense. Some scholars think that al-Shāfi‘ī’s reference is to the *Kitāb* of Medina, and hold that

<sup>38</sup> Ibn Sayyid al-Nās, ‘*Uyūn*, 1:339–40, collects numerous references in the Qur’an and reports found in Ibn Ishāq, al-Wāqidī, and others about the Jews’ and hypocrites’ dealings with the Prophet ﷺ. These reports refer to how the Jews would prophesy the coming of a prophet who would bring victory to them and taunt the Arab polytheists. Such reports appear in the exegetical materials in the context of verse 2:89.

<sup>39</sup> Muḥammad b. Idrīs al-Shāfi‘ī, *al-Umm*, 8 vols. (Beirut: Dār al-Ma‘rifah, 1990), 4:222.

the *Kitāb* was concluded soon after the Hijra and before the Battle of Badr. The other possibility is that the Prophet ﷺ had concluded a general, unwritten truce before Badr, and the actual *Kitāb* that has reached us was written after Badr. This second possibility is suggested by a set of sound hadith reports, which we shall reproduce below as they also help us understand the context of the treaty.

Before the Prophet arrived, the Yathribites had already contemplated healing a war-torn region by appointing one of the last standing Khazrajite elders, the notorious ‘Abd Allāh b. Ubayy, as their king. The less numerous Aws may have reluctantly embraced this idea as the war had ended relatively in their favor and they perhaps wanted to appease the poor, wounded Khazrajites. Be that as it may, as the new faith transformed the views of important leaders in the ranks of both, even the reluctant had some reason to accept the Prophet ﷺ as a new leader. The Khazrajites had enthusiastically embraced the new faith, and the Aws had been only slightly slower to catch up. The main center of resistance consolidated, predictably, around the outstripped ‘Abd Allāh b. Ubayy and his Jewish allies. Finally, if it is accepted that the treaty took its final form shortly after Badr, it is easy to understand why the Pact of the Believers (the first part of the *Kitāb*) had to include so little about the pagans in the ranks of the Yathribites. The Muslims’ victory at Badr had been such a surprising upset, one that put the Believers on the map of Arabia overnight, that any reluctant pagans would have embraced the new religion at least outwardly. This had led to a different problem. The hypocrites, former pagans and Jews who superficially professed Islam, now become a major concern as reflected in the Qur’an (e.g., Sūrah 4, al-Nisa, and Sūrah 63, al-Munāfiqūn).<sup>40</sup> The document does not even allude to this problem of hypocrisy, however, perhaps because it was composed either before or, more likely, very soon after Badr, before hypocrites had found their bearings (see below on the debate about the date of the document).

Why, however, would the Jews accept the Prophet’s authority as expressed in the *Kitāb*? Before the Prophet’s arrival, they may have felt protected by their greater financial power, fortresses (this the Qur’an mentions, 59:2), but most of all, by

<sup>40</sup> Ibn Sayyid al-Nās, ‘*Uyūn*, 1:335–50.

their alliances with the Arabs. The last of these quickly changed with the advent of Islam.<sup>41</sup>

The remarkable achievement of the Prophet ﷺ as a leader frustrates any secular explanation. His message so deeply gripped the leading members of Yathrib’s Arabs that the myriad mutual grievances and antipathies cultivated over generations were set aside—within, of course, the limits of human capacity. Shortly after his arrival, not only did the Prophet unite the Arabs of Yathrib, establish their brotherhood with the Emigrants, and engage in highly daring and successful political and military action intercepting the Meccan caravans, culminating in the military triumph at Badr in 2 AH, but also neutralized the Jewish opposition intellectually through the Qur’an. To top it all off, he wished to seal the peace diplomatically through a written treaty.

The obstacles that still threatened peace and preaching should not be underestimated. The Blessed Prophet’s psychological and charismatic authority doubtless played a major role in holding the mission and the peace together, but he did not have the military or administrative means to govern and discipline the Yathribites should they become unruly. It should be remembered that the Prophet’s control over the city was based primarily on the strength of the faith he instilled, not military dominance or established structures, traditions, and institutions. The staggering poverty, a war-torn past, external threats, and internal intrigues all made this situation extremely precarious. The Prophet’s party at Badr had been little over 300 men, whereas the combined strength of the Jewish tribes was over 2000 and, as explained earlier, the number of fighting men among the Medinan Arabs was twice that. Even though most Arabs had joined the Prophet, some were fence-sitters, or gullible even if sincere in faith, vulnerable to the influence of powerful anti-Islamic propaganda of which Allah speaks at length in the Qur’an, as well as the threat of attack by the Meccans and other Arabs. We can speculate that, were they to unite and rebel, the combined number of the hostiles and the non-committed would have been greater than the few hundred dedicated Believers around the Prophet ﷺ. Put differently, as of yet, the Prophet had no monopoly

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<sup>41</sup> Al-‘Umarī, *al-Sīrah*, 289.

over violence. Allah Almighty speaks frequently of the insults, veiled threats, and hostility directed at the Prophet at this time, and enjoins him to patience and forgiveness. All of this becomes evident in the unfolding of the events that led to the writing of the *Kitāb*.

How and why, then, was the *Kitāb* of Medina concluded? Based on numerous sound hadith reports, a number of recent Muslim scholars and historians have converged on a plausible timeline of events which I further develop here. This sequence of events is also suggested by the method I adopt: rather than trying to reconcile varying accounts in the early and late Islamic sources, which may be impossible, I start with the agreed-upon skeleton of dates and events and mutually reinforcing hadith reports with authentic *isnād*, and then explain the possible reasons for the varying opinions. The only authentic report that gives details of the writing of a *Kitāb* is one that is preserved on the authority of the son or grandson of the Companion Ka‘b b. Mālīk, with several chains going through al-Zuhrī, preserved by Abū Dawūd, al-Ṭabarānī, al-Bayhaqī, and al-Wāqidī. This seems to be the likeliest version.

All Sīrah authors (discounting outlying, shāhdh reports) agree that the Prophet ﷺ arrived in Medina in the beginning of 1 AH in Rabi‘ al-Awwal (3rd month), the Battle of Badr occurred in Ramadan (9th month) of 2 AH, the execution of Ka‘b b. al-Ashraf took place six months after Badr in the beginning of 3 AH, and the Battle of Uḥud in Shawwāl (10th month) of 3 AH. (‘Umarī, 302) There is less agreement on other dates, but following al-Zuhrī and al-Wāqidī, the earliest scholars to concern themselves with dating, we conclude that the exile of Banū Qaynuqā‘ took place a month after Badr in Shawwāl of 2 AH, (al-‘Umarī, 300, 304). Scholars are divided about the expedition leading to the exile of Banū al-Naḍīr; those who side with authenticity of reports (on the authority of ‘Urwah-‘Ā‘ishah and al-Zuhrī-Ibn Ka‘b), argue that it took place after Badr (in early 3 AH), whereas the conventional authors of Sīrah such as Ibn Ishāq, his disciple Ibn Hishām, al-Wāqidī, Ibn Sa‘d and others, who are concerned with reconciling weak but widespread reports about the reasons for this exile, argue that it took place after Uḥud (in early 4 AH) (al-‘Umarī, 304-6). The expedition of Banū Qurayzah took place after the Battle of the Trench which, most Sīrah authors agree, took place in Shawwāl of 5AH (al-‘Umarī, 311-12).

Year/Month AH	Event
1 AH Rabi‘ al-Awwal (Month 10)	The Prophet’s arrival in Medina
2 AH Ramaḍān (Month 9)	Battle of Badr
2 AH Shawwāl (Month 10)	Exile of Banū Qaynuqā‘
3 AH Rabi‘ al-Awwal (Month 3)	Execution of Ka‘b
3 or 4 AH	Exile of Banū al-Naḍīr
3 AH Shawwāl (Month 10)	Battle of Uḥud
5 AH Shawwāl (Month 10)	Battle of the Trench

The story begins with one powerful leader of Yathrib, the charismatic Arab-Jewish poet Ka‘b b. al-Ashraf, whose father was Arab and mother Jewish from Banī al-Naḍīr. He had opposed the Prophet tooth and nail from the outset. Al-Wāqidī’s version reports that some Jewish leaders even became inclined to make peace with and join the Prophet after Badr, even contemplating joining his religion thinking that he was guaranteed victory from Allah. Ibn al-Ashraf violently rejected this option.<sup>42</sup> The fragile, unwritten truce between the Jews and the Believers was shattered when he went to the defeated Meccans to lament their dead and rouse them to attack the Prophet ﷺ, this time with the help of the Jewish tribes. As an accomplished poet, Ibn al-Ashraf composed poetry insulting the Prophet and the Muslims, especially their women, the surest way to denigrate any Arab and spread

<sup>42</sup> Muḥammad b. ‘Umar al-Wāqidī, *K. al-Maghāzī* (Beirut: Dār al-‘Ilamī, 1989), 1:121; for other versions, see Ibn Sayyid al-Nās, *‘Uyūn*, 1:448–51, quoting Ibn Ishāq.

the propaganda far and wide through Arabia. Ibn al-Ashraf’s conduct after Badr not only violated the peace, it posed an existential threat to the new community. We can speculate that the unique combination of his dual lineage and personal gifts afforded him the ability to unite the Jewish tribes as well as the hypocrites and fence-sitters against the Believers. This struggle is clearly depicted in the following authentic report from al-Zuhrī on the authority of ‘Abd al-Raḥmān b. ‘Abd Allāh, the grandson of the Companion Ka‘b b. Mālik:

Ka‘b b. al-Ashraf the Jew was a poet who wrote poetry against the Messenger of Allah ﷺ and incited the infidels of the Quraysh against him. When the Messenger of Allah came to Medina, he had found its people mixed, among them there were Muslims who were united by the mission of the Messenger of Allah ﷺ, *mushriks* who worshipped idols, Jews who possessed weapons and fortresses, and who were allies of both neighborhoods, al-Aws and al-Khazraj. [The Prophet] wished to make peace with them (*istiṣlāḥahum wa-muwāda‘atahum*). A man would be Muslim and his father or brother would be *mushrik*. The Jews and the *mushriks* of Medina would mistreat and molest the Messenger of Allah and His Companions. Allah bade him to patiently endure this and overlook it, and revealed about them, “You shall be tested in your wealth and lives, and will hear from the People of the Book and the *mushriks* much abuse, but if you are patient and pious, that will be the best course of affairs.” (3:186), and, “Many of the People of the Book would love to bring you back to unbelief after you have attained faith out of envy in their hearts even after the truth has become clear to them. Ignore and let them be until Allah issues His command, for Allah is Omnipotent” (2:109).<sup>43</sup>

The victory of Muslims at Badr as well as the expectation that the Quraysh would soon return—as they had promised to do the following year—with much greater strength made the matter urgent. According to a weak but well-known report, the Prophet ﷺ gathered the Jews in the marketplace of Banū Qaynuqā‘ and asked

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<sup>43</sup> The report from al-Zuhrī is graded *ṣaḥīḥ*, and recorded in al-Bayhaqī, *al-Sunan al-kubrā*, also given by Abū Dāwūd in his *Sunan* (no. 3000) and al-Ṭabarānī in *al-Mu‘jam*. Ibn Ishāq relates the same incident with more details, as does al-Wāqidī in his *Maghāzī* on the authority of Ma‘mar b. al-Rāshid. Both Ma‘mar and Ibn Ishāq were al-Zuhrī’s students. Al-Bukhārī and Muslim in their *Ṣaḥīḥs* give details of the execution of Ka‘b b. al-Ashraf but omit the part about the document.

them to submit in faith before they faced what the Quraysh had just seen, upon which they snubbed him saying, “O Muhammad, do not be deceived by your killing of a few men from the Quraysh who did not know how to fight, for if you fight us you will know that we are men.”<sup>44</sup> Whatever the intervening circumstances, we know from authentic reports that the Believers’ victory whipped Ibn al-Ashraf into action. Ibn ‘Abbās reports that when he approached the Meccans, they asked him, conscious that the Jews and the Believers shared faith in one God and the scriptures, whether they—the custodians of the Ka‘ba and hosts of the Pilgrims—were better or “this weak childless man.” To this he replied that they were better, and Allah revealed the following verse: “Have you not seen those who have been given a portion of the Book and yet they believe in idols (*jibt*) and evil powers (*tāghūt*) saying of the disbelievers, ‘They are better guided than the Believers’” (4:51).<sup>45</sup> This exchange was not merely religious pettiness; it meant that the assumption of solidarity between the Believers and the People of the Book that would have deterred the Meccans no longer held. It emboldened the Meccans and the enemies of the new faith around Arabia. It is at this point that the Prophet ﷺ commanded Ibn al-Ashraf’s execution, which was carried out. To continue al-Zuhrī’s account,

When he was killed, the Jews and the Arabs who had been relying on him panicked and came the next morning to the Messenger of Allah ﷺ complaining that one of their leaders had been killed at night. The Prophet reminded them of what he had been up to and what he would say in poetry. Then he called them to write between him, them, and the Muslims a writing to which they can turn [in case of dispute]. The Prophet then wrote such a document under the shade of the house of the daughter of al-Ḥārith. That document after the Messenger of Allah passed to ‘Alī b. Abī Ṭālib, God be pleased with him.<sup>46</sup>

This leads us to another debate, which is whether all the Jews of Yathrib and its surroundings were party to this *Kitāb* or only those who had settled among the

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<sup>44</sup> *Abū Dāwūd*, no. 3001.

<sup>45</sup> *Ṣaḥīḥ Ibn Ḥibbān*, no. 6572 and *Musnad Aḥmad*. Most classical exegetes give this incident as explanation for 4:50–1.

<sup>46</sup> See footnote 42.

Arabs, or some other subset. What creates this puzzle is that none of the three major Jewish tribes, Banū Qaynuqā‘, Banū al-Naḍīr, and Banū Qurayzah, are mentioned by name in the *Kitāb*. As for the three major Jewish tribes, we learn about them in a different report on the authority of a son of the same Companion Ka‘b b. Mālik, ‘Abd al-Raḥmān, the uncle of the reporter of the previous hadith, also recorded by Abū Dāwūd with a sound chain. This long report begins before Badr when the leaders of the Quraysh tried to persuade the pagan Arabs and hypocrites led by ‘Abd Allāh b. Ubayy to defect to them against the Prophet ﷺ. They were swayed and began organizing when the Prophet confronted them and skillfully dashed their hopes by pointing out that they would have to fight and kill their own kin among the true Believers. After Badr, the Quraysh, now more desperate, reached out to the Jews of Medina, inciting them to fight the Prophet ﷺ. We came across earlier that it was Ka‘b who went to Mecca, but it is quite likely that the interest was mutual, and the only suspicion the Meccans would have had toward the People of the Book was resolved when Ka‘b swore to them that they were better than the Believers, who were now the common enemy. At this point, the account is worth quoting fully:

The Prophet ﷺ got wind of this letter. The Banū al-Naḍīr, on their part, all decided to act in treason (*ghadr*) and sent a message to the Prophet ﷺ inviting him to talk to them with thirty men from his companions and thirty of their rabbis. “If they testify to you and believe in you, we shall believe in you.” The narrator then narrated the whole story. The next day, the Messenger of Allah ﷺ went out armed and surrounded them, telling them, “I swear by Allah, you will have no peace from me until you conclude a treaty with me.” But they refused. He therefore fought them the same day. Next morning, he went to Banū Qurayzah with an army, leaving Banū al-Naḍīr aside, and asked [Banū Qurayzah] to sign a treaty which they did.<sup>47</sup>

The report then describes the Prophet ﷺ returning to Banū al-Naḍīr and, given their stubborn refusal to ratify a treaty, sending them into exile. These events are further explained in the Qur’an in Sūrat al-Ḥashr, where we learn that some

<sup>47</sup> *Abū Dāwūd*, no. 3004, graded *ṣaḥīḥ* by al-Albānī, Ibn Ḥajar, and others.

hypocrites (from among the Banū ‘Awf of al-Khazraj led by Ibn Ubayy) sent a message to Banū al-Naḍīr to resist the Prophet and promised aid. The aid, as Allah had foretold in the Qur’an, never came (59:12).

Now we are in a position to shed light on questions about when this treaty was concluded and with whom. First, these reports, like every other text, speak of Banū al-Naḍīr acting in *ghadr*, which means treachery, perfidy, and disloyalty, and suggests breaking of a treaty. We learn in the classical commentaries on Sūrat al-Ḥashr in a report from Ibn ‘Abbas that “When the Prophet arrived in Medina, he made peace with them and gave them protection on terms that neither party would fight the other.”<sup>48</sup> In the Qur’an, Allah characterizes their act as hostility (*shiqāq*) to Allah and His Messenger” (59:4), just as the treachery of the other Jewish tribes, particular Banū Qurayza’s support of the Quraysh at Badr, is described as treachery, *khiyānah* (8:56), which indicates the existence of a prior deal. There can be no doubt that a treaty existed prior to Badr.

But was this early treaty written down? Even though these reports do not specify whether the treaty they had violated had been written down or merely a verbal alliance, the latter possibility is suggested by the fact that the Prophet ﷺ insisted that they ratify a treaty (*‘ahd*) or leave. If they were breaking an already written treaty, the Prophet would not have wanted them to merely write another one, and rather would have asked them to uphold the existing one. Furthermore, the authorities that suggest an earlier date of the *Kitāb*, including Ibn Ishāq, Abū ‘Ubayda, and al-Balādhurī, are either vague or without *isnād* or both. Of the three early authorities who postulate an early date, only al-Balādhurī (who is a historian and not an authority in hadith) states that there was a written agreement between the Prophet and the Jews before Badr, whereas al-Ṭabarī suggests that there was a truce but does not specify its writing. Abū ‘Ubayd only states that a truce was concluded in writing shortly after (*ḥidhān*) his arrival in Medina and before he gained strength and could impose *jizyah*, but does not specify whether it was before or after Badr. Ibn Ishāq makes no explicit statement on these points. Some

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<sup>48</sup> See *Tafsīr Ibn Kathīr*, verse 59:4.

contemporary scholars have passionately opposed an early date.<sup>49</sup> A plausible argument for an early dating is provided by al-‘Umarī, who acknowledges that the post-Badr report is much stronger in *isnād*, but suggests that the two dates can be reconciled by postulating that it was written twice, or written once and augmented later.<sup>50</sup> This would not be unusual. There is some internal evidence that supports the argument that it was written at an earlier date and augmented later, namely, the reappearance of the clause §30 about Yahūd Banī al-Aws in §46, which mentions Yahūd al-Aws. If we accept Shaykh al-Islām Ibn Taymiyyah’s statement that Yahūd (Banī) al-Aws is a reference to Banū Qurayzah, just as Yahūd Banī ‘Awf signifies Banū Qaynuqā’,<sup>51</sup> then all the pieces fall in place, and their re-entry into the treaty makes sense.<sup>52</sup>

The two traditions read alongside the Qur’an suggest the following solution to our riddle. The Prophet ﷺ had concluded a general truce with all the Jews upon his arrival, perhaps within the first few months, to which they reluctantly agreed on a wait-and-see basis. Whether it was written down at this point is a matter of dispute. His victory at Badr caused panic among them, leading to three confrontations with the Jews. First, a month after Badr, the Banū Qaynuqā’—the allies of Khazraj—overestimating their strength and support from their old Khazrajite allies, declared open hostility to the Prophet. The Prophet acted swiftly and decisively, expelling them from Medina after a short siege. Next, some four months after Badr, the Prophet intercepted communication from the Quraysh to the remaining two tribes of the Jews as well as the hypocrites in the Believers’ own ranks. Both of the two remaining Jewish tribes had violated the truce by conspiring with the Quraysh and

<sup>49</sup> See Muḥammad al-Mas‘arī, *Ṣaḥīfa al-Madīna al-dustūriyya* (unpublished, available online).

<sup>50</sup> Al-‘Umarī, *al-Sīrah*, 276–78.

<sup>51</sup> Ibn Taymiyyah, *al-Ṣārim al-maslūl*, 62; Lecker, *Constitution of Medina*, 146. Cf., Wellhausen had suggested that Banū Qurayzah are referred to as Yahūd Banī Tha‘labah and Banū al-Nadīr as Yahūd Banī al-Aws (Lecker, *Constitution of Medina*, 50, 57).

<sup>52</sup> In contrast to most classical Muslim and modern Western scholars, Lecker has contended, based on a thorough analysis of the early sources such as Ibn Ishāq, that the three main Jewish tribes were not part of the *Kitāb*. Rather, separate and more limited treaties were concluded with them, ones that have not survived. If Lecker’s thesis is accepted, we will have to admit that the *Kitāb* was a treaty between the Believers and the smaller Jewish groups that were allies of the Medinan Arab clans. This is the thrust of his entire monograph, but especially Ch. 3; for Ibn Ishāq’s telling quote where he lists the three tribes separate from the Jews of the various Medinan Arab clans, see Lecker, 55–6. His evidence, however, is largely circumstantial, such as that the Jewish tribes were too strong to be referred to merely as allies of the Arab tribes. Similarly, there is no reason why the “Jews of Banī al-Aws” cannot be inclusive of Banū Qurayzah and smaller groups of Jews among the Aws.

the hypocrites to kill him and his prominent companions. Around the same time, the Ka‘b b. al-Ashraf episode occurred and the Jews who had contemplated violating the truce were now forced to ratify or re-enter the treaty. This Banū al-Naḍīr rejected, but Banū Qurayṣa accepted. This was the *Kitāb* of Medina that has reached us, in which the Prophet sought to bring all the Believers and the Jews under one treaty with distinct but similar conditions.

## What does the *Kitāb* of Medina mean today?

Why and how has the *Kitāb* of Medina become significant today? One influential and typical modern Muslim deployment of the *Kitāb* is by the leader of Tunisia’s Ennahda party, Rachid al-Ghannouchi. He suggests that it included both a political and confessional conception of the *ummah* and uses this reading “to argue that non-Muslims had always enjoyed ‘citizenship rights’ in Islam” and that “Medina was a city of multiple religious communities in which citizenship was based on a shared possession of a territory, and not shared creed.”<sup>53</sup> Before the fateful 2011 uprisings, al-Ghannouchi had tried to reconcile Islam with instruments of secular-liberal democracy arguing on the basis of “the nature that God has created us with”—thus sidestepping the logical conflict that would arise if (or perhaps, when) the democratic process demanded contravention of even the unanimously agreed-upon Qur’anic norms (such as inheritance laws, as has indeed occurred in Tunisia).<sup>54</sup> Andrew March observes in a recent study that al-Ghannouchi’s reading of the *Kitāb* shifted further in the aftermath of the Arab Spring:

But the post-2011 writings go even further in stressing that the lesson of Medina for postrevolutionary Tunisia is that Islamic governance was founded originally in circumstances of radical pluralism, precisely where a shared will or purpose among “citizens” could not be assumed. al-Ghannouchi writes that the first written constitution in Islam (if not the

<sup>53</sup> Andrew March, *The Caliphate of Man* (Cambridge, MA: Harvard University Press, 2019), 212.

<sup>54</sup> “Tunisia: Cabinet Approves Bill Requiring Equal Inheritance Shares for Men and Women,” *Global Legal Monitor*, December 4, 2018,

<https://www.loc.gov/law/foreign-news/article/tunisia-cabinet-approves-bill-requiring-equal-inheritance-shares-for-men-and-women/>.

world), the *ṣaḥīfah*, codified an essentially pluralistic political formation, and that “we [Muslims] are lucky that our first state was a pluralist state.” In a later essay, he reiterates that the founding of Medina provides Muslims with the authoritative example of founding a pluralistic political order, with citizenship (not religion) as the fundamental principle of rights and duties.<sup>55</sup>

This secularist reading may have been driven by political expediency rather than any evidence-based reasoning, but it must be evaluated nonetheless on scholarly grounds. Not only does this reading bear no resemblance to fact, it flies in the face of the entirety of normative Islamic legal theory (*uṣūl al-fiqh*). We have provided here the text which needs little commentary to preclude the fanciful interpretation offered by al-Ghannouchi and his likes. The Prophet’s ﷺ authority was based primarily on his mission from God and not on the secular basis of “a pluralistic political order.” Those who denied his mission were offered protection and allowed to practice their religion; this tolerance is astounding for a prophet, founder, and lawgiver as absolutely committed to his mission as he ﷺ was. Yet, the Jews and the polytheists included in the *Kitāb* did not elect or want him as their leader, nor could they vote him out, change his mission, or even side with their own co-religionists against him. All the while, the divine revelation both invited them to join and threatened them with punishment in both worlds for failing to do so. Furthermore, the Medinan polity was never meant to be territorially constrained: by giving him protection as their leader and ultimate guide, the Medinan Believers had invited the inevitable ire of the Meccans, and this singular fact dictated all policy (including the writing of this *Kitāb*); concerning all this, the non-believing Medinans had no choice.

If the *Kitāb* is to be taken as a coherent document, the community (*ummah*) on which the Medinan order is built must mean the community of the Believers, as we have amply documented earlier. Furthermore, the divine laws pertaining to sociality, tribe, family, and commerce that added to or modified the norms in the *Kitāb* were beginning to be revealed about the same time it was written. This means that if the *Kitāb* were the “essentially pluralist” constitution in any usual

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<sup>55</sup> March, *Caliphate of Man*, 212–13.

sense and all Medinans were its participating citizens (as part of its *ummah*), then every new public law of the Qur’an that was subsequently revealed should be deemed an amendment or violation of this “constitution.” If it is argued that those laws applied to only the Believers, this would create a hypothetical situation in which some of the presumably equal “citizens” of this “constitution” were accepting or creating new norms and policies pertaining to war and peace and fundamentals of economic and social life based on an authority (the divine revelation) that the other “equal” citizens simply did not accept.

Wary of the liberal and secular undertones of such labels, some more careful readers of the *Kitāb* have argued effectively that, while not a pluralist constitution, the *Kitāb* founded a kind of confederation or commonwealth of the Medinan tribes that were separate religio-political communities (*ummahs*) in cooperation against a common enemy. Although far more plausible, this interpretation too is open to objections. The Meccans were simply not the common enemy; they were the enemies of Islam. No secular interpretation that ignores the Prophet’s divine mission can make sense of the *Kitāb* and how it was understood and subsequently applied.

The interpretation we have offered here also explains the fact that, apart from a few occasional historical references discussed in certain jurisprudential and historical debates, we find little subsequent mention of the *Kitāb* in Islamic normative tradition. Modern interpreters often imply that the classical tradition has been deficient in its approach to the Qur’an and the Sunnah, having left out such a major document—the very “constitution” of Medina—from its legal and political thinking. “Constitutions,” after all, are a big deal. How could the Prophet’s “constitution” have been so neglected that there is not a single sound *isnād* of it, nor any notable mention in the tradition of law and governance? Aren’t constitutions preserved with the greatest care and made available to all affected by them? Why was it not passed down to every ruler, and memorized by heart by every scholar? Did Muslims really neglect the political teachings of their final Prophet صلى الله عليه وسلم? Since, as we have shown, even the Companions who preserved this *Kitāb*, such as ‘Alī b. Abī Ṭālib and ‘Umar b. al-Khaṭṭāb and their families, did not

make it a cornerstone of their teachings let alone “the constitution” of their governance, nor did the classical jurists consider this Prophetic “constitution” to be the foundation of all law, we are compelled to choose between two irreconcilable options. Its proponents insinuate, perhaps unwittingly, that we set aside the rich Islamic heritage, including a holistic engagement with the Qur’an and the Prophetic Sunnah, in favor of a convenient image provided by a single, decontextualized document, open to wildly contradicting interpretations.

We have shown that this relative non-centrality of the *Kitāb* did not owe itself to neglect by the Companions and the subsequent scholarship, but because its parts became abrogated, updated, or incorporated piecemeal in the final form of the revealed law.<sup>56</sup> Even if an argument for a particular norm may be based on this *Kitāb*, any potentially contradictory norm that is better attested in the sources or is shown to have been revealed at a later stage may trump it.

Even though this misreading of the *Kitāb* as “the first written constitution of the world” seems at first blush to bolster Muslim’s tottering self-confidence in a world of nation-states and democratic constitutions, understood in the way it is currently by many influential contemporary trends, it has the potential to inflict profound long-term damage. Apologists from all wounded civilizations trying to recover after the Western onslaught—the Chinese, the Indians, even the Mongols—have tried to take credit for all kinds of modern Western inventions and progress. Like all myths, as the foundation of our edifice of faith or civilization, this one makes us not only vulnerable to scholarly objection and ridicule but also antagonizes us to fact and rigorous scholarship. It belongs to a family of apologist myths whereby the worth of God’s ultimate truth and its ultimate manifestation is judged by its utility for our immediate psychological or political needs: Islam is good and worthwhile because it gave us science, technology, democracy, constitutions, law and order, civilization, and all other things that we earnestly desire. By anchoring our sense of what is truly valuable in this or that human invention, it not only

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<sup>56</sup> An example abrogation is the verse of *jizyah* (9:29) revealed in 9 AH, and the Prophet ﷺ accordingly took *jizyah* from the communities of the People of the Book conquered after it, but before which, he had not done so, hence it was not taken from the Jews in Medina (as per the *Kitāb*) nor from the Jews of Khaybar. Ibn al-Qayyim, *Aḥkām Ahl al-Dhimmah* (Dammam: Ramādī lil-Nashr), 1:90-1.

makes us undervalue what God deemed the most valuable truths to teach humankind in His final revelation, but also shuts our minds to how God has guided humans before and outside of Islam to all kinds of valuable things and experiences that we can evaluate, accept, reject, and learn from. This mythification of fact sets us up for disappointment or obfuscation and deprives us of the opportunity to value the truth properly. Rather than confronting the challenge of drastic innovations in world history such as the rise of the nation-state, democracy, capitalism, constitutionalism, secularism, liberalism, and so on, such myths invite us to be intellectually lazy by accepting all seemingly impressive innovations as good—so good that God’s Prophet himself had taught them. This forecloses the possibility of critique: Good luck to any scholars now actually trying to evaluate whether an innovation is good and worthy.

To what extent might it be called “the first ever written constitution in the world”? Proving such universal historical claims is rarely possible, for a single counterexample can falsify it. But we may reflect here on whether the *Kitāb* can even be called a “constitution.” One hadith tradition (mentioned earlier) describes the document (*saḥīfah*) as that to which they will turn in dispute (*ma yantahū ilayh*) and that which will unite the matters of the people (*jāmi‘ amr al-nās*); both of these attributes suggest that, at least in *some respects*, the document resembled a constitution or a charter. Constitutions, however, typically restrain the sovereign’s authority. Clearly, this was not the intention of this document. Nor should we see it as a “step toward constitutionalism,” for that falls into the trap of progressivist historical fallacy or “trajectory hermeneutics,” perspectives that see contemporary norms as universal, as the “end of history,” and perfected forms of institutions to which all earlier societies and moral authorities had aspired. Instead, we must see the perfection and completion of the *Kitāb* as materializing in the law that was elaborated over the following seven years by the Prophet ﷺ, as God declared in the Qur’an on the occasion of the Final Pilgrimage, “Today I have perfected your religion, and completed My blessing...” (5:3).

Furthermore, typically, the meanings of constitutional norms that often originate in messy contexts are settled through institutionalization and commentary over time,

a phase that this document did not experience. From the perspective of Islamic ethico-legal theory (*uṣūl al-fiqh*), it is like any other hadith report that needs to be placed in the context of the entire ecology of divine imperatives that unfolded chronologically during the length of the Prophet’s mission. Although most of its general clauses became eternalized in the final rendition of the divine law, it had a short life as a document. If the three main Jewish tribes had been party to it, all of them had violated it by 5 AH. The Believers’ Pact (Part I) remained in force a little longer until inheritance and other laws qualified many of its terms. Despite its significance, therefore, this document can be accepted neither as a constitution nor a self-standing font of Islamic political norms outside of the context in which it was written.

The *Kitāb* continues to be significant, however, from conceptual, historical, and aspirational perspectives. It shows the willingness and eagerness of the Messenger of Allah ﷺ to secure peace and order by making and honoring treaties. As evident in the Treaty of al-Ḥudaybīyah (6 AH) that he concluded with the Meccans (e.g., see 8:72), the *Kitāb* shows that the Prophet ﷺ preferred diplomacy to war whenever he could, and used force only to bring the opponents to negotiate and deter them from inflicting harm upon his community, his mission, and ultimately themselves. The *Kitāb* most certainly imagines a multi-religious Islamic polity and protects numerous rights for the non-Believers including the Jews and the polytheists. It also shows respect for graduality in dealing with the existing cultural structures. Not only were the non-Muslims free to maintain their communities, the Believers too were initially allowed to maintain their internal pre-Islamic communal norms and organization. Nor is it the case that the teachings of the Qur’an and the Sunnah concerning the tolerance of the Jews, Christians, and even polytheists outside of Arabia outside the *Kitāb* are any less generous. Quite the contrary. The Qur’an and the authentic Sunnah contain far more specific commands pertaining to *dhimmah*, *jizyah*, and legal and religious protection of non-Muslim communities. They are given rights not only as individuals but—in a fashion that a modern nation-state cannot imagine—as communities with their own norms.

Nor is the *Kitāb* the only source of our knowledge about the Prophet’s ﷺ cordial relations with the Jews as neighbors throughout his life, of which the Qur’an and Sunnah provide ample instances. The Prophet ﷺ declared on several occasions the inviolability of the life, property, and honor of the protected people, declaring on one occasion that “Whoever wrongs a *mu‘āhad* (non-Muslim with *dhimmah* or other protected status), harms him, burdens him beyond his capacity, or forcefully takes his property, I will litigate against him on the Day of Resurrection.”<sup>57</sup> He exhorted about this frequently in the strongest terms, once declaring, “Whoever kills a *mu‘āhad* shall not smell the scent of Paradise and its scent spreads to a distance of forty years.”<sup>58</sup> He engaged in business with them, treated them graciously as neighbors, visited them when one of them fell ill, and honored their dead. Once he stood in deference when a Jew’s funeral passed by, saying to those who seemed surprised, “Is he not a person (*alaysat nafsan*)?”<sup>59</sup> When a rabbi Zayd b. Sa‘nah insulted the Prophet when asking for repayment of his loan, ‘Umar sought to discipline the man, upon which the Prophet stopped him saying, “We both deserved better from you. You should have advised me to repay more promptly, and him to ask more gently.”<sup>60</sup> His Companions followed in his footsteps. When a fancy meal was presented to ‘Abd Allāh b. ‘Amr, he would inquire, “Has some been sent to our Jewish neighbor?” citing the Prophet’s own teaching about kindness to neighbors.<sup>61</sup> When he ﷺ died, his shield was mortgaged to a Jew for thirty bags (*ṣā’*) of barley.<sup>62</sup> Perhaps the most important instance is found in the Qur’an itself. An Arab, Ṭa‘ma b. Ubayriq, who had at least nominally embraced Islam, stole a shield from his neighbor, and when he feared getting caught, he implicated his Jewish friend. Basing his judgment on the available evidence, the Prophet sided with the Muslim, but Allah sent several verses recorded in *Sūrat al-Nisā’* (4:105-113) declaring the innocence of the

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<sup>57</sup> *Abū Dawūd*, no. 3052, declared authentic by al-‘Irāqī, Shu‘ayb al-Arba‘ūṭ, al-Albānī, and others.

<sup>58</sup> *Al-Bukhārī*, no. 3166.

<sup>59</sup> *Al-Bukhārī*, no. 1312, 1313.

<sup>60</sup> This report is found in al-Ḥakīm, *al-Mustadrak* but there is disagreement about its authenticity.

<sup>61</sup> *Abū Dawūd*, no. 5151, 5152.

<sup>62</sup> *Al-Bukhārī*, no. 4467.

accused Jew and denouncing the Muslim, who as a result fled Medina and renounced Islam.<sup>63</sup>

The Medinan polity was a prophetic one, in some ways *sui generis*: one in which a prophet of God called all humankind to the true religion by all means necessary, but without physical coercion; prioritizing the interests of that mission over all else, yet constrained by his treaties, which were nevertheless carefully crafted to facilitate the mission. Of course, this *Kitāb* does not contain any clause for constraining the ruler’s power or holding him accountable; he spoke for God, and no Muslim ruler after him could ever make that claim. The first act of the Prophet’s rightly guided successors (caliphs) was precisely the acknowledgment that the ruler could no longer claim to be infallible. Yet the community as a whole must continue the mission of the Prophet ﷺ. In this respect, the *Kitāb* imagines an uncompromisingly *perfectionist* polity, one that exists for a collective moral purpose that is balanced by individuals’ duty to God. The potential tensions between collective and individual duties to God are resolved through the norms embodied in Islamic law. This is the model of a polity we are familiar with in the classical Islamic ideal, with the obvious exception that the classical Sunni tradition does not take any ruler after the Blessed Prophet ﷺ to be an infallible voice of God. The most central concern of the *Kitāb* is the community of the Believers, the *ummah*, its mission, and its political, religious, and social unity, and its peaceful coexistence with its non-Muslim neighbors.

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<sup>63</sup> See the tafsīr of Ibn Jarīr al-Ṭabarī under 4:105, in particular no. 10412, 10414. For a general overview of the prophetic conduct toward non-Muslims, see Nāṣir M. Jād, *al-Ta’āmul ma’a ghayr al-Muslimīn fī al-’ahd al-nabawī* (Doha: Dār al-Maymān, 2008/1429).