

**A COMPARATIVE STUDY BETWEEN THE  
MADĪNA CHARTER AND MODERN  
CONSTITUTIONS, SPECIAL FOCUS ON THE  
MAGNA CARTA AND CONSTITUTION OF  
USA**

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USA**

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*“Those when given **authority** in land, establish (system of) ṣalah, give zakah and enjoin what is good (ma ‘rūf) and forbid what is wrong (munkar)” (Qur’ān, al-Ḥajj, 22:41)*

## **ABSTRACT**

This research explores into the comparative analysis of the Madīna Charter and modern constitutions with a particular focus on the Magna Carta and the United States Constitution. This study aims to compare the principles and articles of the Madina Charter with those of the Magna Carta and the U.S. Constitution, exploring both similarities and differences. By focusing on the Madīna Charter, Magna Carta, and the U.S. Constitution, this study aims to develop the discourse on constitutionalism and pluralist insights into the foundations of modern governance structures.

## خلاصة البحث

هذا البحث يستكشف التحليل المقارن لميثاق المدينة مع الدساتير الحديثة بالتركيز الخاص على ميثاق الماغنا كارتا ودستور الولايات المتحدة. يهدف هذا البحث إلى مقارنة المبادئ والمواد في ميثاق المدينة مع تلك في ميثاق الماغنا كارتا ودستور الولايات المتحدة، يبحث الشبه والاختلافات على حد سواء. وبالتركيز على ميثاق المدينة، ميثاق الماغنا كارتا، ودستور الولايات المتحدة، يهدف هذا البحث إلى تطوير الحوار حول الدستورية والرؤى التعددية في مؤسسات الحكومة الحديثة.

*To my beloved parents, sister, and family  
who always picked me up on time  
and encouraged me to go on every endeavor  
&  
To our honorable teacher  
Marhoom Sayyid Hashim al Ba 'alawi.*

## **APPROVAL PAGE**

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Bachelor in Islamic and Human Sciences  
(Department of Hadith and Related Sciences)

Muhammed Zahir Hudawi

Research Guide

I certify that this dissertation was submitted to the office of academic affairs and is accepted as a fulfilment of the requirements for the award of degree of Bachelor in Islamic and Human Sciences.

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Research in charge

## DECLARATION

I do hereby declare that this dissertation is the result of my own research, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at DHIU or other institution

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*In the name of Allah.*

*All praises be to Allah the Lord of the Universe. Let His regards and salutations be upon the Holy Prophet Muḥammad and his family and companions.*

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I wish to express the deepest gratitude, appreciation and acknowledgments to all my teachers and well-wishers in Darul Hasanath Islamic College.

May the peace, blessings and happiness of Allah, the exalted, be on all of them.

I hereby do not hesitate to state that I am the sole responsible for any kind of mistakes in this work.

May Allah accept this humble attempt and make it a cause for his rewards in the life hereafter

*Āmīn.*

## TRANSLITERATION TABLE FOR ARABIC

ا	A	a	ط	Ṭ	ṭ
ب	B	b	ظ	Ẓ	ẓ
ت	T	t	ع	‘	-
ث	TH	th	غ	GH	-
ج	J	j	ف	F	-
ح	Ḥ	ḥ	ق	Q	-
خ	KH	kh	ك	K	-
د	D	d	ل	L	-
ذ	DH	dh	م	M	-
ر	R	r	ن	N	-
ز	Z	z	و	W	-
س	S	-	ه	H	-
ش	SH	Sh	ي	Y	-
ص	Ṣ	ṣ	ء	’	-
ض	Ḍ	ḍ			

### Vowels

أ	a	A	آ	Ā	ā
إ	i	I	إي	Ī	ī
أ	u	U	أو	Ū	ū

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# CHAPTER ONE

## INTRODUCTION TO THE STUDY

### 1.1 BACK GROUND OF THE STUDY

The Madīna Charter (*Sahīfatul Madīna*) is one of the key documents in the Islamic history and life of Prophet *Muḥammad* (PBUH) Written in 622 A.D. or the first year of *Hijrah*. It is written right after the two dominant tribes of *Madīna*, the *ʿAws* and the *Khazraj* invited and declared Prophet *Muḥammad* (PBUH) as the legitimate leader of the city-state.

The preparations that the Prophet made concerning the basic rights of protection, security, justice, peace, rights and duties of all citizens of *Madīna* and the relationship between the Muslim community, *Muhājirīn* and the *Anṣār* in addition to Jews and the pagans are exemplified in a document which was later come to known as “The Charter of *Madīna*”.

According to the Islamic scholar Muhammad Hamid Allah, the new constitution which called *Sahīfatul Madīna* was from an angle a social Contract between combined groups under a social structure considered at that time difference and uniqueness in the Arabs lives and traditions; because tribal Arabic traditions were stand on blood ties and kinship however; people from different religions and geographical locations, met to form a different social sector.

Today, most countries have adopted modern constitutions that reflect their unique historical, cultural, and political contexts. These constitutions often include

provisions for protecting human rights, establishing representative government, and ensuring the rule of law. This research proposal seeks to compare and contrast the Madīna Charter with modern constitutions to identify similarities and differences in their approaches to the different aspects of governance.

## **1.2 STATEMENT OF THE PROBLEM**

The Constitution of *Madīna* is a remarkable political-constitutional document that established the rights and responsibilities of the citizens of the state of *Madīna*. It was meant for the ten thousand-strong multi-religious citizens of the state of *Madīna*. The Constitution of *Madīna* is similar to modern constitutions in that it established the rights and responsibilities of citizens.

There are many works about the Madīna Charter and modern constitutions. But there is not “a comparative study between The Madīna Charter and modern constitutions, special focus on Magna Carta and Constitution of USA”. In other hand it is very important to study about the Madīna Charter and its significant similarities with the modern constitution and approach of those constitutions on different aspects of governance.

## **1.3 RESEARCH QUESTIONS**

1. Is The Madīna Charter the first constitution in the world?
2. What is Magna Carta and Constitution of USA and their significance in modern constitutions?
3. What are the similarities and differences between the Madīna Charter , Magna carta and Constitution of USA in terms of their approach to different aspects governance?

#### **1.4 OBJECTIVES**

1. To find out The Madīna Charter is the first constitution in the world.
2. To find out about Magna Carta and Constitution of USA and their significance in modern constitutions
3. To find out similarities and differences between the Madīna Charter and modern constitutions in terms of their approach to different aspects of governance.

#### **1.5 SCOPE OF THE STUDY**

This research will be included the main and important points of the topic by Comprehending the constitutionalism in The Madīna Charter and selected modern constitutions. This study will cover the significant similarities and connection between the Madīna Charter and which are believed as the first written or the shortest, respectively the Magna Carta and the constitution of USA and their approaches to the governmental policies.

#### **1.6 REVIEW OF LITERATURE**

I will carry out my research by taking into account comprehensive books like The First Written Constitution in the World: An Important Document of the Time of the Holy Prophet written by Muhammad Hamidullah and Constitutional Analysis of the Constitution of *Madīna* written by Dr. Muhammad Tahir-ul-Qadri. Apart from these two sources I will also go through the articles written in this topic by Kassim Ahmed and Jeremy Kleidosty and articles and books written about Magna Carta, constitution of USA and modern constitution. I will also consult online sources as well. All of these works will help me in reaching the conclusion.

## **1.7 METHODOLOGY**

This study will employ a comparative analysis of the Madīna Charter and selected modern constitutions. The research will begin with a close reading and analysis of the Madīna Charter to identify its key principles and provisions. The study will then select a sample of modern constitutions for comparison and analyse their provisions related to variety aspects and views of governance. The selected constitutions will be chosen based on their historical, cultural, and political significance. The study will then use a comparative approach to identify similarities and differences between the Madīna Charter and modern constitutions.

## **1.8 ORGANIZATION OF THE STUDY**

This work on “a comparative analysis of the Madīna Charter and modern constitutions special focus on Magna Carta and Constitution of USA” includes four chapters as following.

In the chapter one, the discussion led to the introduction of this research and chapter two discusses about the formation of The Madīna Charter and its acceptance as a constitution. In the third chapter, the discussion is about Magna Carta and Constitution of USA and their significance in modern constitutions. And the fourth chapter discusses about Similarities and differences between the Madīna Charter and Magna Carta and Constitution of USA focusing on their approach to different aspects of governance.

## CHAPTER TWO

### THE MADĪNA CHARTER

#### 2.1 INTRODUCTION

The Madīna Charter is a historical document written and enunciated by holy Prophet (PBUH) for the peace and prosperity between citizens of *Madīna* as a covenant document after his migration from Macca to *Madīna* in 622 A.C<sup>1</sup>. The citizens of *Madīna* were in that period- right after Hijrah- Muslims including *Muhājirīn*<sup>2</sup> and *Anṣār*<sup>3</sup>, different tribes of Jews like '*Banū Qurayḍa*' and 'and *Banū Qainuqa*' and pagans who lived outside and inside of the city-state of *Madīna*.

Prophet (PBUH) drafted this constitutional like document after conducting two meetings. The first one took place in the house of famous companion Anas b. Mālik (r) who served prophet *Muḥammad* (PBUH) for ten years. In that meeting there were *Muhājirīn* and *Anṣār*. The second meeting occurred in the house of Bint al- Ḥārith with the representatives of different tribes lived in *Madīna*.

As a historical document the constitution of *Madīna* was issued many centuries before the all-modern constitutions. The constitution of *Madīna* preceded the British constitution Magna Carta by six centuries<sup>4</sup>, American<sup>5</sup> and French constitutions by twelve centuries and it was issued thirteen centuries before the Universal Declaration of Human Rights (UDHR). It is irony that some Arabian countries' constitutions derived from French constitution and American constitution.

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<sup>1</sup> Ibn Hisham, v.2, p.111

<sup>2</sup> Those who migrated from Macca to *Madīna*

<sup>3</sup> Those who helped Muhajireen to settle in *Madīna*

<sup>4</sup> Published in 1215

<sup>5</sup> Published in 1787

The constitution of *Madīna* is a document that forms the nine tribes of *Madīna* which known as *Anṣār*, and *Muhājirīn* who migrated from Makka to *Madīna*, as the First Muslim Community known as '*Ummah*'.

## 2.2 STRUCTURE OF THE MADĪNA CHARTER

The Madīna Charter was considered as a document of treaty between citizens of *Madīna*. And it has the format of one of the agreements between Prophet (PBUH) and other communities. It was written in the Arabic language and it holds a common format; which is proclaiming a right to a tribe and equate other tribes to them. This constitution provided citizens of *Madīna* with the concept of devolution of powers between them which later those became the practical foundation of democracy.

The charter contains 47 articles in the document translated by Dr. Muhammed Hamidullah<sup>6</sup>, but due to different numbering Dr Muhammad Tahir-ul-Qadri counts it to be 63<sup>7</sup>. The most accurate one from these dividends from both scholars is the one which is translated and divided by Dr. Muhammed Hamidullah.<sup>8</sup> Articles 1,2 and 39 proclaim that the *Madīna* shall be a sanctuary for the people of this document. This was the proclamation of a modern like state in the early seventh century is the first in the history of nations and states. And this charter stood as a constitution in the era of Prophetic rule in *Madīna* and *Khulafā' al-Rashidun*<sup>9</sup> in *Madīna* and later in *Kūfa*<sup>10</sup> until the beginning of Umayyad dynasty in H.41. In the modern language these 2 charters provide centralized power dividing in the city-state of *Madīna*.

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<sup>6</sup> Muhammad Hamidullah, Article Published in 1975.

<sup>7</sup> Dr. Muhammad Tahir-ul-Qadri, Constitutional Analysis of the Constitution of *Madīna*

<sup>8</sup> Kassim Ahmad, p.4

<sup>9</sup> The first four ruling successors of prophet (PBUH)

<sup>10</sup> In the era of Ali b. Talib (r)

Article 25 guarantees every community the freedom to follow their own religion, which is a fundamental human right. This sentence implies that, in accordance with the unambiguous teachings of the *Qur'ān*, every person was also free to select their own religion.

## **2.3 TERMINOLOGY OF THE MADĪNA CHARTER**

Like any other constitutions The Madīna Charter have many terms to indicate the people it addresses. Under the title of *Ummah* there comes the *Internal self* and *Internal other*. The *Internal self* is Muslims in *Madīna* and the *Internal other* is Jews and pagans who lives inside of *Madīna*. The term for addressing Muslims who didn't join the *Madīna* is *The External self*. And the term for indicating *Quraysh* is *The external other*. The *Self* means Muslims as they are one body as Prophet Mentions in his many sayings. And the *Other* means non-Muslims as they are other religion.<sup>11</sup>

## **2.4 OBJECTIVES OF THE MADĪNA CHARTER**

The Madīna Charter based on the origin and history of it, was documented and established for two main objectives.

### **2.4.1 Creating a Nation**

The first one is for the Prophet (PBUH) to create a nation with sovereign power in order to flourish the Islam and later spread all around the countries. Because in those days Prophet (PBUH) was willing to bring down the unjust rules in Arabia especially rule of *Quraysh* in *Makka*. For that Prophet (PBUH) made a clear movement by creating a constitutional document for establishing a city-state in *Madīna* under the flag of Islam.

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<sup>11</sup> Bouziane Mounira, p.131

Using the Madīna Charter as the core of governance, Prophet (PBUH) portrayed a perfect example for a great establishment and running of the first Islamic state under him. All articles and provisions of The Madīna Charter describe the beauty of Islam in the governance by portraying a tolerant religion with excellent economic and social governance under the Prophet (PBUH). Through this he established a well secured nation for spreading just to all over the world.

#### **2.4.2 The End of Internal Conflicts**

The second objective is providing a new life and new beginning for the people of a nation who was heavily suffered in the past internal conflicts. In Yathrib there were 12 tribes mainly dominated by 'Aws and *Khazraj*, who were worshipping the goddess, Manat. And 10 tribes of Jews mainly *Banū Qurayḍa* and *Banū Qainuqa'* on power. After expelled from Palestine by Emperor Hadrian<sup>12</sup>, Jews came to *Madīna* and started to making problems between the pagan tribes of *Madīna* in order to take control of *Madīna*. Because of that there were continuous battles and aggressions between tribes of *Madīna*.

Therefore, the Madīna Charter was documented by the Prophet as an attempt to solve these problems between the one who believed from *Madīna* citizens and one who didn't. And Prophet (PBUH) made them into a group, a nation who believes in one goal and one aspiration after effectively resolving a major problem.

#### **2.4.3 God Above All**

It should be mentioned that the inhabitants of *Madīna* received the Charter, the first Islamic political-constitutional instrument, in the names of God and Prophet

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<sup>12</sup> Roman Empire 117-138 A.C. He enslaved Jews and then exiled them from Palestine after The Jew-Roman War in 136 A.C.

*Muhammad* (Clause 1, 47). Why phrase the ultimate source of power in two distinct ways? It should be recalled that the Church governed supremely in the Western Middle Ages under the name of God, and that God's name was obviously frequently misapplied by opportunists and hypocrites. Naturally, the substitution of the people for God in contemporary Western culture has not made much of a difference. Oppression, violence, colonialism, and aggression have all been carried out in the name of the people.

Therefore, while living in a time of advanced science and technology, humanity is unable to ignore a force bigger than itself. Humanity possesses an inherent right to existence and a happy life, but only within a universe that was created in accordance with the law. In this view, the Charter was bestowed to *Muhammad* the Prophet, who stood for the idea of morality and reason principles that transcend the dignity of the individual. Similarly, God was mentioned first in Clause 47 because God is the ultimate Good and the ultimate rational principle. In order to lead Man to ever-higher accomplishments, this is imperative.<sup>13</sup>

## **2.5 FUNDAMENTAL FEATURES OF THE MADĪNA CHARTER**

The all 47 articles of The Madīna Charter mainly focused on maintaining peace and prosperity between tribes of *Madīna*. They were suffering with internal everlasting wars between them and they lacked a leader who is appointed by them or accepted by them. Hearing the reputation and characteristics of Prophet (PBUH) from inhabitants of Makka they heartily accepted by them even before Prophet's *Hijrah* to them.

It's a fact that the face of *Madīna* changed after documenting and establishing The Madīna Charter upon its inhabitants. After being tired of wars and conflicts

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<sup>13</sup> Badruzzaman Bin Ishak/Shamrahayu Binti Ab Aziz, p.10

between them they accepted Prophet as leader and The Madīna Charter as a constitution. Through this the eternal wars ended and they started to live a new life as united by contents of The Madīna Charter .

Many fundamental features can be seen in The Madīna Charter like political, social, economic, religious and also the position of Jews in the social order of *Madīna* state. Firstly, The Madīna Charter proclaims Prophet as the leader of the city-state of *Madīna* (Articles 1, 23, 42). By proclaiming this Prophet ended Jews' authority over tribes of *Madīna* by frightening them with the coming of a Prophet and with him they will conquer them. The Madīna Charter also articulated the customs of people. The acknowledgement of many cultures like paying blood money is the main feature of The Madīna Charter .

### **2.5.1 The Concept of 'Ummah'**

The main feature of The Madīna Charter is the concept of '**Ummah**', which allowed other religious citizens to worship various gods and perform various religious customs in the state of *Madīna*. Through this The Madīna Charter is the first constitutional document to provide rights regarding the practice of various religious performs within a state (Article 25). By the concept of *Ummah*, Prophet made a bond and unity between the citizens of *Madīna* by grouping inhabitants under the common responsibilities and conferring various powers to each tribe.

### **2.5.2 The National Security**

The other feature is national security of *Madīna* state, which can be considered in modern language as critical defence feature (Article 44). And Prophet acknowledged the position of Jews in *Madīna*. Jews who were most population of

non-Muslims in *Madīna*, Prophet guaranteed their safety as long as they stand with the conditions of The Madīna Charter . This national security was an obligation between Muslims and non-Muslims as under a solidarity of '*Ummah*'. The Jews were prominent tribe in the *Madīna* region and they were almost the controlling tribe of *Madīna* by redirecting the major tribes '*Aws* and *Khazraj* to a long-lasting war. This ended with the proclamation of The Madīna Charter and the early inhabitants of *Madīna* got their control back under the prophet's sovereignty.

The Article 47 of the Madīna Charter , guaranteeing the safety of non-Muslims including Jews and other rural tribes who lived inside the boundary of *Madīna*. And the article certainly indicates that all this guarantee of safety of their lives and livelihood if only they stay obliged to this charter.<sup>14</sup>

## **2.6 SIGNIFICANCE OF THE MADĪNA CHARTER**

The Madīna Charter , after the documentation of a historical constitution is served as conflict resolution in Muslim History. By the prominence of this charter, it ended conflict between the inhabitants of city-state of *Madīna*.

Through the Article 2 of charter illuminated the idea of one community in the name of *Ummah*. And that was a great leap on solving all the problems and conflict that *Madīna* had. The act of creating a new tribe out of persons who lived through years-lasting wars and conflict was indeed a revolutionary move taken by the Prophet. This is the first document that proclaims the idea of nationality including the different kind of races, tribes and religions.

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<sup>14</sup> Ibid., p.16

In order to prevent more strife within the Muslim community, Prophet *Muhammad* (PBUH) thereafter forbade the formation of any separate agreement with the opponent of Islam. (Article 17). The act of taking a life without cause was also forbidden under the Madīna Charter . As mentioned in Article 21, the killer will face severe punishment, known as *qisas*<sup>15</sup>, in revenge. With the support of these clauses in the Madīna Charter , the long-running tribal strife that had preceded Islam's arrival in *Madīna* was put to an end, paving the way for the city-state to move on from its troubled history and prosper.<sup>16</sup>

Briefly said, the Prophet *Muhammad* (PBUH) constructed the Charter with tremendous insight and offered a persistent fix for resolving the problems. 50 Years, the Charter served as a great example of how to create discourse in a varied community by outlining strategies for establishing and fostering political and social interaction. The Madīna Charter resolves disputes among the citizens of *Madīna* during the time of Prophet *Muhammad* (PBUH). As a result, The Madīna Charter may be a significant case study to consider as a guide for resolving the current global war.

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<sup>15</sup> Term in Islam for Execution as a punishment for act of taking life without any cause

<sup>16</sup> Badruzzaman Bin Ishak/Shamrahayu Binti Ab Aziz, p.20

## **CHAPTER THREE**

### **SIGNIFICANCE OF THE MAGNA CARTA AND THE CONSTITUTION OF USA IN MODERN CONSTITUTIONS**

#### **3.1 DEFINITION OF CONSTITUTION**

According to Encyclopaedia Britannica a **constitution** is the body of doctrines and practices that form the fundamental organizing principle of a political state. In some cases, similar as the United States, the constitution is a specific written document. In others, similar as the United Kingdom, it's a collection of documents, bills, and traditional practices that are generally accepted as governing political matters.<sup>17</sup>

#### **3.2 THE MAGNA CARTA**

English Great Charter, charter of English liberties Usually known as Magna Carta was proclaimed by King John on June 15, 1215, and later under the threat of civil war reissued with alterations in 1216, 1217, and 1225. By declaring the sovereign to be subject to the rule of law and documenting the liberties the Magna Carta provided the foundation for individual rights in Anglo-American laws.<sup>18</sup>

##### **3.2.1 Origin of The Magna Carta**

In 1066, William I invaded England, gaining unprecedented authority and dominating the barons and clergy who supported the English church. He forced Pope Alexander II to recognize the church's indirect sovereignty over a nation previously thought to be bound to Rome. Henry I, son of William I, appeased the church and aristocracy in the

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<sup>17</sup> Article 'Constitution', Encyclopaedia Britannica Inc

<sup>18</sup> Article 'Magna Carta', Encyclopaedia Britannica Inc, p.1, 2022

Charter of Liberties. Stephen published a solemn charter in 1135, ensuring excellent governance in both church and state. Henry II issued a charter in 1154, promising to uphold and restore the freedoms and unrestricted practices given to King Henry. The custom of strengthening the king's coronation oath with written vows sealed with the king's seal began to take root around the 12th century.

During the reign of Henry II, the baronage faced numerous challenges, including tax hikes, war with France, ransom, and the Crusade. John I, who ascended to the throne in 1199, faced these challenges and was further weakened by rival claims from his nephew Arthur of Brittany and Philip II's determination to end the English hold on Normandy.

King John did not give a general charter to his barons at the start of his rule. However, Archbishop of Canterbury Hubert Walter, royal adviser William Marshal, and justiciar Geoffrey Fitz Peter summoned the nobility and promised to render their rights to each if they kept faith and peace with him. As early as 1201, earls refused to cross the English Channel in the king's service unless he promised them "their rights." In 1205, the king was compelled to swear to preserve the kingdom's rights unharmed.

After the loss of Normandy in 1204, John was forced to rely on English resources alone, leading to increased royal demands for scutage. The quarrel with Pope Innocent III over Stephen Langton's election to the see of Canterbury resulted in a papal interdict, leaving the English church defenceless in the face of John's financial demands. The excommunication of the king in 1209 made him lose some of his brightest administrators.

Langton, who became archbishop of Canterbury, became a central figure in the baronial unrest, suggesting that the demand for liberties from the king be founded on the coronation charter of Henry I.<sup>19</sup>

### **3.2.2 Great Charter of 1215**

The Magna Carta, a charter issued in 1215, was a compromise between King John and his barons. The document, known as the Articles of the Barons, was agreed upon on June 15, 1215, and the king's great seal was set. The final version of the charter was accepted by the king and the barons on June 19, and it contained important clauses designed to bring about reforms in judicial and local administration.

The Magna Carta was sealed by King John in the meadow called Runnymede<sup>20</sup> between Windsor and Staines on the fifteenth day of June in the seventeenth year of his reign. The king had never been brought to agree to the sealing of such a document at all, demonstrating that he genuinely wished to avoid civil war, was prepared to accede to reasonable demands for a statement of feudal law, and had a basic desire to give good government to his subjects.<sup>21</sup>

### **3.2.3 Reissues of 1216, 1217, And 1225**

In 1216, King John's death led to the council of Henry III reissue the Magna Carta to recall men's allegiance to the rightful king. The charter was shorter than its predecessor, with 42 clauses compared to 63 in the 1215 document. The church lost its guarantee of free election to office, but the council continued to provide a definitive statement of feudal law.

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<sup>19</sup> Ibid. p.2

<sup>20</sup> Now in Surrey, England

<sup>21</sup> Article 'Magna Carta', Encyclopaedia Britannica Inc. p.3

The council addressed points in doubt, such as inheritance law and the precise year an heir should attain their majority. They postponed these omissions for future consideration and never replaced them. When the charter was reissued again in 1217, the council made further verbal changes for clarity and accuracy. They modified the promise of assize justices visiting every shire four times a year to an annual visit, and more difficult cases would be heard by bench judges.

In 1217, the council included three new clauses dealing with current issues: the possibility of a land owner giving away too much of their holdings, the conduct of the shire court and view of frankpledge, a mutual responsibility to keep the peace, and a first attempt at mortmain legislation. Section VII of the 1215 document was set aside in favour of a separate forest charter that dealt with the use and scope of royal land holdings.<sup>22</sup>

In 1223, Pope Honorius III acknowledged that Henry III was of age to make effective allowances, and the young king reissued the Magna Carta after two years. This version reflected only minor changes from the 1217 document, suggesting that the council concluded that maintaining the charter as an evolving code of law was impracticable.<sup>23</sup>

### **3.2.4 Historical Significance of The Magna Carta**

The Magna Carta, a document that became a symbol in the battle against oppression, was reissued in 1225. Its influence in England and its colonies was not due to the detailed expression of feudal relationships between lord and subject but rather from the more general clauses that protected every generation. The Petition of Right in

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<sup>22</sup> Ibid. p.4

<sup>23</sup> Jeremy Kleidosty, p.11

1628 and the Habeas Corpus Act of 1679 in England referred to clause 39 of the 1215 charter. This passage served as the foundational expression of due process in Anglo-American jurisprudence.

In the 17th century, the words of the Magna Carta were incorporated into the Constitution of the United States of America (1789), the Bill of Rights (1791), and the Fourteenth Amendment (1868). The Magna Carta's essential virtue lies in the solemn circumstances of its first granting and the comprehensive nature of that grant. The Magna Carta of King John, commemorated as its granting in 1215, is the most commonly remembered document. Although many clauses were omitted or new ones were inserted, the collective memory of the charter remains unchanged. The actual phrases studied by those fighting oppression in 17th-century England or 18th-century America came immediately from the 1217 charter.<sup>24</sup>

### **3.2.5 Surviving Copies of The Magna Carta**

Four original copies of the charter of 1215 still survive; two are in the collections of the cathedral churches in Lincoln and Salisbury, while the other two are housed in the British Library. Reproduced in the Statutes of the Realm in 1810, the Lincoln charter was regarded as the most nearly ideal. Lincoln also owns the 1225 forest charter. The Magna Carta manuscripts dated 1216, 1217, and 1225 are housed at Durham Cathedral, along with the 1217 and 1225 forest charters. The 1225 charter's Wiltshire copy was preserved and left at Lacock Abbey. For the first time, the four surviving "originals" of the 1215 Magna Carta were brought together in one location in

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<sup>24</sup> Article 'Magna Carta', Encyclopaedia Britannica Inc., p.5

February 2015 as part of the British Library's celebration of the charter's 800th anniversary of issuance.<sup>25</sup>

### **3.3 HISTORICAL BACKGROUND OF CONSTITUTION OF USA**

#### **3.3.1 Common Sense**

Thomas Paine authored a treatise titled *Common Sense* (1737-1809). Due to its bold message, when it was finished in January 1776, American patriots were electrified. Paine, in contrast to most colonial writers, advocates complete independence from England. "A government of our own is our natural right," he stated. More significantly, he demonstrated in his document how the consent of the governed was necessary for good governance, highlighting the impact of earlier thinkers, particularly John Locke, on him.

To maintain order, the booklet advised the Americans to consider the community across the thirteen colonies: 1. It urged them to band together and elect representatives to act on their behalf. 2. It contained a critique of the oppressive and non-free character of the British political system. 3. It appealed to the colonies to band together in order to achieve independence. 4. It was an appeal for military action.<sup>26</sup>

#### **3.3.2 The Declaration of Independence**

It was founded in July of 1776. Five prominent revolutionaries—Thomas Jefferson, John Adams, Roger Sherman, Robert Livingston, and Benjamin Franklin—wrote the 1,3000-word text. Dr. Ferhat says it can be broken down into the following four parts for analysis: 1. It includes an explanation of the motivations behind its writing. 2. It illustrates the revolution's intellectual orientation. 3. It lays forth the plan of action,

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<sup>25</sup> Ibid. p.6

<sup>26</sup> Bouziane Mounira, p.53

which is to use armed force to achieve national independence. 4. It functions as a summons to engage in combat.

The Declaration of Independence contains two fundamental concepts: 1. All men are created equal. 2. "Life, liberty, and the pursuit of happiness" are rights they are entitled to. The fundamental tenet of American democracy is the belief in equality for everyone. Generations of Americans have been motivated to fight for their rights and practice tolerance toward others by the Declaration of Independence's principle of equality, even though not everyone in the country has historically enjoyed equal rights.<sup>27</sup>

### **3.3.3 The Articles of Confederations**

The Second Continental Congress was tasked with establishing a government as soon as the country declared its independence from Great Britain in 1776. The Congress presented the Articles of Confederation, the country's first constitution, to the states in 1777, and they ratified it a few years later. The thirteen states did not approve the Articles of Confederation until March 1781, despite the fact that they had been drafted by mid-July 1776 and had not been adopted until November 1777. The United States of America is a confederacy that was established by the Articles. It served as the primary legislative source and governed the Second Continental Congress's authority.

Thus, it was implemented somewhat late as the war was coming to a conclusion and was only marginally functional until the United States Constitution, a stronger instrument, was ratified in 1787. Due to wartime inflation, the majority of state currencies had lost all of their value, making Congress incapable of overseeing the nation's economic affairs under the Articles of Confederation. To keep the

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<sup>27</sup> Ibid. p.54

economy afloat, Congress created its own continental dollars, but these too failed. Because the federal government lacked the authority to compel the states to levy taxes, Congress was unable to obtain sufficient funding from them. Congress attempted to settle a number of interstate problems, but most states disregarded it.<sup>28</sup>

### **3.3.4 The Constitution of The United States**

A convention of states convened in Philadelphia on May 14, 1787, following several abortive attempts, with the goal of revising the Articles of Confederation. Rhode Island was not present at the conference, which was attended by fifty-five delegates from twelve states. Among the delegates were members of the nobility and upper class, including national leaders like Alexander Hamilton, James Madison (dubbed the father of the constitution), and General George Washington. On September 17, 1787, the final draft which would later become the Federal Constitution of the United States of America was signed. Throughout the process, the Convention was forced to decide between two key proposals that represented the country's desire to uphold the idea of states' rights and its goal to establish a powerful central authority.

## **3.4 IMPACT OF MAGNA CARTA AND CONSTITUTION OF USA IN THE MODERN PERIOD**

Both the US Constitution and the Magna Carta are major historical records that have enormous relevance in the contemporary world. Here is a summary of each and how important they are.

### **3.4.1 Significance of Magna Carta**

In the **Historical Context**, King John of England signed the Magna Carta, sometimes referred to as the Great Charter, in 1215. It was a reaction against the monarchy's

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<sup>28</sup> Dr. Farhat Naz Rahman, p.6

tyrannical and capricious control at the time. The Magna Carta holds great significance as a fundamental document in the establishment of individual rights and constitutional law. It developed a number of important ideas, such as the notions that certain individual rights and liberties should be maintained and that the king or government is not above the law.

On Current Significance the ideas of the Magna Carta had an impact on the evolution of contemporary legal and democratic institutions. It established the foundation for ideas like **due process, the rule of law, and the defence of individual rights**. Around the world, a large number of democratic societies and legal systems still bear its legacy. And in The Monarch's Power Limitation Many people believe that the Magna Carta was the first important step toward restricting the absolute power of rulers. It created the core idea of modern constitutional and democratic governance, even monarchs and rulers had to follow the law.

Regarding the area of **Individual Rights Protection**, the rights of free men, including the right to a fair trial, immunity from arbitrary detention, and the indisputable rule that no one may be dispossessed of their property without following the correct legal procedures, were safeguarded by the Magna Carta. These concepts are essential to contemporary legal and human rights frameworks. As well as in Global Impact, the Magna Carta, although originally a charter with particular consequences for England, has had an impact on the entire world. The notion that individual rights and liberties should be upheld and that the scope of government should be constrained has been reinforced by the adoption and adaptation of its tenets in the creation of constitutions and legal systems around the globe.

### 3.4.2 Significance of the Constitution Of USA

Within the historical framework, the United States Constitution was enacted in 1787 and formally sanctioned in 1788. The foundation for the federal government of the United States was established by it, superseding the previous Articles of Confederation.

One of the most significant and enduring texts in world history is the United States Constitution. **The Bill of Rights, a system of checks and balances, and a federal system of government** were all established by it. It brought about a government that was heavily focused on individual liberties and had few powers.

The American Constitution has served as a global model for democratic governance. It has impacted on the creation of many other national legal systems and constitutions. The establishment and upkeep of democratic institutions are guided by its tenets of the rule of law, individual rights protection, and power separation, all of which are still very important in today's society. Essential individual liberties and protections, including **freedom of speech, freedom of religion, and the right to a fair trial**, are guaranteed by the first ten amendments to the United States Constitution, collectively referred to as the Bill of Rights. Similar guarantees found in other national constitutions and international human rights declarations draw inspiration from these rights.

In conclusion, The U.S. Constitution and Magna Carta both continue to influence how governments operate and how people's rights are upheld in the contemporary era. They are honoured for their historical significance and the timeless values they represent. They serve as symbols of the continuous fight for liberty, justice, and responsible government.

## CHAPTER FOUR

### COMPARISON BETWEEN THE MADĪNA CHARTER , THE MAGNA CARTA AND THE CONSTITUTION OF USA

#### 4.1 THE MADĪNA CHARTER AND MAGNA CARTA

There are many mutual connections, similarities and some differences which should not be avoided in either of the constitutions.

##### 4.1.1 General Comparison

Magna Carta and the Charter of *Madīna* do bear this similarity that both were treaties and were formed and designed to put an end to paganism that existed in the region and to resolve the conflicts and bring controlled governance in the constitutional region. The differences between the two are however much greater. There is a separation in the contexts of both documents; like the society of *Madīna* was more multicultural than that of England. Because of that The Magna Carta doesn't encourage a pluralistic approach whereas it was done by The *Madīna* Charter .

The Magna Carta, compared to the Charter of *Madīna*, is a dynamic document that has evolved over time, but it failed to maintain peace and harmony. The Constitution of *Madīna*, on the other hand, is more comprehensive and has survived longer than the Magna Carta. However, the characteristics of the Charter of *Madīna*, such as the principle of mutual consultation, self-sufficiency of individuals, and the

spirit of *Ummah*, have been adapted and applied in various situations even after the Holy Prophet's departure.<sup>29</sup>

The Charter of *Madīna* focused on the preservation and dispensation of justice in accordance with Islamic teachings and was not a universal central establishment of justice. Instead, it aimed to ensure peace and tranquillity in *Madīna*. The Holy Prophet settled clashes and disputes, and the system of justice was delegated to tribes to dispense justice according to their traditions and norms.

The purpose of the Charter of *Madīna* was to ensure long-lasting peace and settlement of disputes between belligerent tribes of *Madīna*. In contrast, the Magna Carta was a treaty between King John and defiant barons, which put a full stop to the war. In the case of Magna Carta, the aggrieved party produced the manuscript, unlike the *Madīna* Charter, which was formed by the main authority himself.<sup>30</sup>

#### **4.1.2 In the Terms of Rights and Duties**

The Charter of *Madīna* and the Magna Carta are documents that outline the privileges and responsibilities of the people of *Madīna* towards the state and the Holy Prophet (PBUH). The Charter focuses on internal duties and obligations, such as seeking vengeance for unlawful killings, making blood money payments, showing generosity and cordiality, and presenting disputes unresolved to the Holy Prophet. These duties also indicate the rights of those who get injured or die unlawfully to be compensated for their loss, as well as the rights of individuals to receive cordiality and generosity.

The Charter also highlights the rights of believers to access justice and the right to be recompensed for their losses. It also urges believers to avenge fellow

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<sup>29</sup> Jeremy Kleidosty, p.3

<sup>30</sup> Hamza Rafiq, p.16

believers who die in God's way. The contracting parties, including Jews, were bound to protect the state of *Madīna* against any misadventures by the enemy.

In contrast, King John of England's autocratic rule and aloofness led to the loss of trust from his people. The people were furious and sought a messiah to help them escape this misery, leading to the First Barons' War. The King had to sign the Magna Carta, which put restraint on his powers and made him listen to the people's demands. This pact made him respect the civil rights of the people and established local government with the power to deal with local issues.

In conclusion, the Charter of *Madīna* and the Magna Carta provide a comprehensive framework for understanding the rights and responsibilities of the people in *Madīna*.<sup>31</sup>

#### **4.1.3 In the Term of Scope**

The comparison of the Charter of *Madīna* and the Magna Carta reveals that both texts were created for their respective regions and contexts. The Charter of *Madīna* addresses specific problems, while the Magna Carta addresses the population of England. Both documents contributed to the Islamic and Western notions of Human Rights. The Magna Carta, still in effect, has had a more potent impact on contemporary constitutions and is often used as a legal precedent in deciding cases.

The Charter of *Madīna* highlights the cooperation between religion and politics from the beginning of Islam. According to the Islamic system of governance, religion and politics are interdependent and intertwined. The Constitution of *Madīna* has no limitations on the ruler, possibly due to the perfect image of the Holy Prophet.

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<sup>31</sup> Ibid., p.18

The Madīna Charter addresses conflicts in the Muslim world and its neighbouring areas, while the Magna Carta addresses conflicts in the Christian world. While it is unlikely to find a perfect system of government in the contemporary world, certain rules and principles have been successful in gaining legitimacy in societies they were meant to work for.

The juxtaposition of the Magna Carta and the Madīna Charter is necessary due to the fact that most Muslim states today are part of the United Nations, and they are parties to conventions such as the Universal Declaration of Human Rights (UDHR).<sup>32</sup>

#### **4.2 THE MADĪNA CHARTER AND THE CONSTITUTION OF USA**

Like Magna Carta, the constitution of USA has also many similarities and differences with The Madīna Charter .

##### **4.2.1 The Concept of Citizenship**

Muslim society transitioned from a tribal to a pluralistic state, with complete citizenship for everyone following the Yathrib people. This concept was the foundation for *Madīna's* first state. However, the concept of citizenship in the American constitution was unclear until the addition of the fourteenth Amendment in 1868. The issue of slavery, which divided the North and South states, took time to resolve due to several factors. Some nobles who signed the constitution were slave owners, and the Southern states maintained the status quo while the Northern states opposed full representation of slaves. Industrialization and geography also contributed

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<sup>32</sup> Ibid., p.19

to the widening divides that undermined the union and sparked the American Civil War.<sup>33</sup>

#### **4.2.2 The Concept of *Ummah* or The Nation**

The *Madīna* Constitution aimed to form a more perfect union among various tribes, including Muslims, Jews, and Pagans. This concept was echoed in the Preamble of the US Constitution, which emphasized the devolution of powers. The *Madīna* Constitution represented the state at various levels, combining tribes under the concept of '*Ummah*', which included Jews and their sympathizers. This level is equivalent to the federal level in the United States, where fifty states are united under a federal constitution. Social interactions within different communities play a crucial role in maintaining society's stability, while solidarity, charitable giving, and volunteerism characterize American society at all levels.

The *Madīna* Constitution eloquently illustrates this idea, with Article 3 stating that *Quraysh* emigrants must pay the blood wit within their number and redeem prisoners with kindness and justice common among believers. Article 12, Section 1, states that believers must not leave anyone destitute by failing to pay redemption money or blood wit in kindness. This idea, originating from Islam, has made the United States a superpower despite its many difficulties.

#### **4.2.3 The Question of Justice**

In Islam, justice is the ultimate ethical principle, with no distinction made between Muslims and non-Muslims in the First Islamic State of *Madīna*. Even if a criminal is the son of a believer, they will still face consequences. The Prophet (PBUH) declared,

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<sup>33</sup> Bouziane Mounira, p. 88

"I would cut *Fāṭima Bint Muḥammad's* hand if she stole"<sup>34</sup> demonstrating the equality under the law. This idea is firmly stated in the *Madīna* constitution, impacting the family and community.

In contrast to political regimes, there is no exemption pardons for criminals, regardless of the guilty party. Pardons are one of the president's powers listed in Article 2, Section 2 of the US Constitution, which states that he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.<sup>35</sup>

#### **4.2.4 The Concept of Pluralism**

The *Madīna* Charter aims to create a pluralistic society by eliminating conflicts and promoting coexistence between religious groups and within individuals. And it governs relations between believers if they are in Makka or *Madīna*, and those who follow and join them. The constitution requires citizens to work for the benefit of their nation with others who share different religious, cultural, and political beliefs. The United States Constitution lacks pluralistic elements, but the Bill of Rights ensures religious tolerance and freedom of worship.

#### **4.2.5 The Concept of Security**

Both constitutions place a high priority on maintaining security and stability because life would suffer in many ways without them. Article 39 of the *Madīna* Constitution states that *Yathrib* "shall be a sanctuary '*Haram*' for the people of this document".<sup>36</sup>

"A well-regulated Militia, being necessary to the security of a free state, the right of

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<sup>34</sup> Sunan Al-Nasaī, 4914

<sup>35</sup> Bouziane Mounira, p. 89

<sup>36</sup> Muhammad Hamidullah, Article Published in 1975.

the people to keep and bear Arms, shall not be infringed"<sup>37</sup> is one of the many sections and clauses in the US Constitution that address security.

In conclusion, both the Constitution of *Madīna* and the United States share the same principles, supported by Quranic verses and Authentic Hadiths. The Constitution of *Madīna* is more universal in its ideology, while the United States Constitution is more technical in its design of the government and its branches.

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<sup>37</sup> Constitution of United States

## CONCLUSION

Exactly, the Madīna Charter is the earliest constitution in the world preceding many constitutions of modern and medieval periods by centuries. But many bodies of the modern Islamic community are unaware about the Madīna Charter and how it addressed different characteristics of a governance. It's an irony that many modern Islamic countries referred modern constitutions like Constitutions of USA and France, even though there were debates and discussions about these modern constitutions that they referred The Madīna Charter for many theories like Human Rights and Freedom religion in the governance.

As a result, by the initiate mercy of Allah with this task I could study more about The Madīna Charter and compare it with prominent and famous constitutions like Magna Carta and Constitution of USA and reveal their similarities and differences in many features of governance. I hope this study will be beneficial for those whom interested in study about The Madīna Charter and modern constitutions.

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## APPENDIX

### The MADĪNA CHARTER Translated by Dr. Muhammed Hamidullah

In the name of God, the Compassionate, the Merciful.

(1) This is a document from *Muhammad* the prophet (governing the relations) between the believers and Muslims of *Quraysh* and Yathrib, and those who followed them and joined them and laboured with them.

(2) They are one community (umma) to the exclusion of all men.

(3) The *Quraysh* emigrants according to their present custom shall pay the blood wit within their number and shall redeem their prisoners with the kindness and justice common among believers.

(4-8) The B. 'Auf according to their present custom shall pay the blood wit they paid in heathenism; every section shall redeem its prisoners with the kindness and justice common among believers. The B. Sa'ida, the B. 'I-Harith, and the B. Jusham, and the B. al-Najjar likewise.

(9-11) The B. 'Amr b. 'Auf, the B. al-Nabit and the B. al-'Aus likewise.

(12)(a) Believers shall not leave anyone destitute among them by not paying his redemption money or blood wit in kindness.

(12)(b) A believer shall not take as an ally the freedman of another Muslim against him.

(13) The God-fearing believers shall be against the rebellious or him who seeks to spread injustice, or sin or animosity, or corruption between believers; the hand of every man shall be against him even if he be a son of one of them.

(14) A believer shall not slay a believer for the sake of an unbeliever, nor shall he aid an unbeliever against a believer.

(15) God's protection is one, the least of them may give protection to a stranger on their behalf. Believers are friends one to the other to the exclusion of outsiders.

(16) To the Jew who follows us belong help and equality. He shall not be wronged nor shall his enemies be aided.

(17) The peace of the believers is indivisible. No separate peace shall be made when believers are fighting in the way of God. Conditions must be fair and equitable to all.

(18) In every foray a rider must take another behind him.

(19) The believers must avenge the blood of one another shed in the way of God.

(20)(a) The God-fearing believers enjoy the best and most upright guidance.

(20)(b) No polytheist shall take the property of person of *Quraysh* under his protection nor shall he intervene against a believer.

(21) Whoever is convicted of killing a believer without good reason shall be subject to retaliation unless the next of kin is satisfied (with blood-money), and the believers shall be against him as one man, and they are bound to take action against him.

(22) It shall not be lawful to a believer who holds by what is in this document and believes in God and the last day to help an evil-doer or to shelter him. The curse of God and His anger on the day of resurrection will be upon him if he does, and neither repentance nor ransom will be received from him.

(23) Whenever you differ about a matter it must be referred to God and to *Muhammad*.

(24) The Jews shall contribute to the cost of war so long as they are fighting alongside the believers.

(25) The Jews of the B. 'Auf are one community with the believers (the Jews have their religion and the Muslims have theirs), their freedmen and their persons except those who behave unjustly and sinfully, for they hurt but themselves and their families.

(26-35) The same applies to the Jews of the B. al-Najjar, B. al-Harith, B. Sa'ida, B. Jusham, B. al-Aus, B. Tha'laba, and the Jafna, a clan of the Tha'laba and the B. al-

Shutayba. Loyalty is a protection against treachery. The freedmen of Tha‘laba are as themselves. The close friends of the Jews are as themselves.

**(36)** None of them shall go out to war save the permission of *Muhammad*, but he shall not be prevented from taking revenge for a wound. He who slays a man without warning slays himself and his household, unless it be one who has wronged him, for God will accept that.

**(37)** The Jews must bear their expenses and the Muslims their expenses. Each must help the other against anyone who attacks the people of this document. They must seek mutual advice and consultation, and loyalty is a protection against treachery. A man is not liable for his ally’s misdeeds. The wronged must be helped.

**(38)** The Jews must pay with the believers so long as war lasts.

**(39)** Yathrib shall be a sanctuary for the people of this document.

**(40)** A stranger under protection shall be as his host doing no harm and committing no crime.

**(41)** A woman shall only be given protection with the consent of her family.

**(42)** If any dispute or controversy likely to cause trouble should arise it must be referred to God and to *Muhammad* the apostle of God. God accepts what is nearest to piety and goodness in this document.

**(43)** *Quraysh* and their helpers shall not be given protection.

**(44)** The contracting parties are bound to help one another against any attack on Yathrib.

**(45)(a)** If they are called to make peace and maintain it, they must do so; and if they make a similar demand on the Muslims, it must be carried out except in the case of a holy war.

**(45)(b)** Every one shall have his portion from the side to which he belongs.

(46) The Jews of al-Aus, their freedmen and themselves have the same standing with the people of this document in purely loyalty from the people of this document. Loyalty is a protection against treachery. He who acquires ought to acquire it for himself. God approves of this document.

(47) This deed will not protect the unjust and the sinner. The man who goes forth to fight and the man who stays at home in the city is safe unless he has been unjust and sinned. God is the protector of the good and God-fearing man and *Muhammad* is the apostle of God.