

**Mapping the Interaction between State Authority
and Divine Guidance; A Review of the Early
Historical Development of Muslim State**

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Abstract

The idea of Nation-State System under the aspiration of the Treaty of Westphalia 1648 has drawn a significant impact on the Muslim communities around the world. The impact is visible in the modern Muslim constitutional trends where countries like Pakistan, Egypt, Iraq, Afghanistan, and others are struggling to align conventional ideas of divine rule with modern trends of Western constitutionalism. The fundamental issue is the validation of state authority from divine law or otherwise. Using the documentary analysis method, this research analyses the evidences of balancing state authority with the divine guidance from the early formation of Muslim statehood.

3.1. Introduction

The question of validation of state laws from the divine or validity of divine by state authority can be sorted through the historical study of Muslims. Formation of state at the time of Prophet Muhammad will be analysed in the view of his treaties with non-Muslims and their comparison with divine sources. Later, the institution of caliphate and experience of Muslims with the Nation-State System will be evaluated with the same view to define the question of the validation.

The divine religions abstained from the establishment of state but later on, when they got power eventually states were formed.

¹ Christianity took a long time till Constantine embraced it and incepted a religious state and the same was the case with Judaism in the past.² Islam also adopted the same attitude towards a state in initial years at Makkah but later on, it was the Quraysh (staunch opposition to new religion) who forced Muslims to migrate from Makkah to Madinah and there they formed a confederation with neighboring tribes as a social institution for protection against anticipated attack from Quraysh.³ This stance can be fortified on the notion of early ideas of migration towards various other destinations other than Madinah.⁴ The same was advocated by Prophet Muhammad in his words that he is neither a king nor a master but a person among them who has a mission to spread the message of God.⁵ This notion can be corroborated by the idea that no specific *modus vivendi* of state is fixed by the prophet.

The establishment of state in Madinah was made through a treaty which was earlier named as *Wathiqah* (agreement).⁶ It can be established that believers and non-believers were not discriminated in terms of their religion and the word *Ummah* was used in a broader sense for both Muslims and Jews of Madinah. The treaty rendered the same rights to every tribe (party) to the treaty.⁷ This treaty was done on the prevalent standards of local traditions of collective self-defense. This created an early model of confederation where all tribes would

share the defense of one another and would not help any external force to invade their peace. Word *Ummah* means mother and it was initially used for the motherland and its inhabitants not for the specific group.⁸ Prophet Muhammad was chosen as the sole arbitrator of this confederation and in case of any dispute among tribes or factions; the matter would be decided by the arbitration. This notion of early state was also based upon the local traditions of Arabs.⁹ The era of prophet of Islam elaborates through many examples where the state remained aloof to the influence of religion in state affairs.

The same tradition of the dichotomy of religion from the state was observed after the prophet of Islam. The mode of choosing caliphs was not enshrined by any divine instruction. The mode of governance and appointment of other officers was also not divinely inspired.¹⁰ The idea of peace and war was also the sole discretion of the head of state. The model in the times of caliphs was based upon the obedience of the head of state on the injunctions of the Quran: “O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more seemly in the end”.¹¹ It can be observed by the working of state in the times of caliphs that in the matter of something novel to the divine was settled by *ijtihad* and the authority to interpret the divine was the head of state.¹² Muslim caliph used to take opinion from the masses especially from the people well versed in Islamic divine but the finality of decision belonged to the head of state. This clearly states that the origin of law in the times of Muslim Caliphs was state authority.¹³ It is admitted fact that Muslim Caliphs gave a great weightage to the traditions of the prophet as well as the prevalent practices of local society.¹⁴

The next transition of the Muslim State was towards the formation of an empire with all its parameters. Muslim caliph was replaced by the monarch and the sovereignty rested absolutely in head of state.¹⁵ First Muslim Empire was established by the *Ummayyad* dynasty. They grabbed the legislative, executive as well as interpretive authority to the

monarch. It was the time where the divine was out of state affairs. The *Ummayyads* were replaced with *Abbasids* and the last Muslim empire was *Ottoman* which ended at the dawn of the 20th century. These can be called Muslim empires not because of divine but because of king believing in Islam. The monarch in empires grabbed more authority over the masses as compared to caliphs and establish the system of state on the orientation of contemporary empires of their times. It became the sole authority of the monarch to codify the law and enforce it.¹⁶ In this era, the only monarch was the final authority to interpret state laws. Muslim jurists endeavoured to spread their understanding of earlier eras of Islam but this effort was not under the authority of the state. It can be observed from the decision of *Imam Abu Hanifa* by not joining the government as a judge. Later on, the tradition got wide acceptance as Muslim scholars adopted a free character instead of adopting the version of state.¹⁷ State was governed by the king and the divine was by the scholars of Islam. Muslim scholars, in this era, established various doctrines for the state such as *Shura*, *Maslaha*, *Maqasid-e-Alshari'ah*, and *Siyasah Al-Shari'ah*. These doctrines gained great acceptance and heads of state adopted them keeping in mind their mode of governing the state. Later, these doctrines were taken as guidelines in various Muslim nation-states in their constitution-making.

Nation-State System was introduced through Pact of Westphalia in 1648 to put an end to the 30-year European war based on religion, culture and racial superiority. It was the time when the Muslim empire was decaying.¹⁸ Later Muslim Empires ended up in Turkey and India. Consequently, Muslim nation-states started emerging. Muslim states encountered a new state system equipped with democratic sovereignty, legal positivism and later the idea of the universality of human rights. A faction of Muslim states adopted the monarchy on the pattern of predecessor empire system where divine was the guideline but the finality of interpretation was the authority of the state.¹⁹ The main challenge was put to the states who adopted the democratic version. Most of the states started the validation of new ideas of state from the divine. This effort led towards an interpretive tussle between the traditionalists and

liberalists.²⁰ This phenomenon led towards constitutional derailment several times in Muslim countries such as Afghanistan, Iran, Iraq, Egypt, and Pakistan.²¹

3.2. Foundations of 1st Muslim State at Madinah

After migration to Madinah, Prophet Muhammad established two institutions immediately.²² One was spiritual in the shape of Masjid-e-Nabvi and the second was the maintenance of peace among various tribes of Madinah.²³ Masjid had the specific purpose of the emancipation of the Muslim community in knowledge and spirituality and for maintenance of peace a first step was the creation of brotherhood among believers of two tribes; *Bani Aws* and *Khizraj*. The latter step was the formation of confederation through *Mithaq-e-Madinah* (Treaty of Madinah). The Treaty of Madinah was designed to establish the concept of *Ummah*.²⁴

Treaty of Madinah elaborated on the concept of Madinah in a way that it included both believers and non-believers (Jew Tribes) in the definition of *Ummah*. Article 2 of the treaty elaborates:

“Article 2 Constitutional Subjects of the State (This shall be a pact) between the Muslims of Quraysh, the people of Yathrib (the Citizens of Madina) and those who shall follow them and become attached to them (politically) and fight along with them. (All these communities shall be the constitutional subjects of the state.)”²⁵

Here it is clearly stated that the believers of Madinah among the two tribes of *Aws* and *Khazraj*, immigrants from Makkah and those who followed this treaty will form a single *Ummah* (Community). In this ideological unity, the treaty accommodated all factions of society of Madinah without any discrimination of belief or religion and this establishes that the initial formation of state bore a little impact of spirituality on

the state but it was created equality to its followers.²⁶ To add to arguments, Article 25 of the treaty further clarified the notion by stating that: “*the Jews of Banu Awf are Ummah (Community) along with the believers. To the Jews their religion and the believers their religion*”²⁷ Here, it is mentioned that both Muslims and Jews are free to profess their religion and they form a unified community. It may be stated that the Prophet bifurcated between spirituality and state to create peace by the way of coexistence in a multi-religious society. This treaty created a confederation with an idea of collective self-defense and cooperation in weal and woe.²⁸ The creation of political dichotomy from the divine mentions that the principle of coexistence with non-believers was formulated by the Prophet himself. These notions rule out the contemporary interpretation of religious scholars who in their interpretation turn the non-believers into minority dependant on Muslim rule.²⁹ Anwar Ibrahim, one of the contemporary writers, states that Muslims created the concept of *Ummah* that respected other communities and engaged other nations, religions, views, and ideologies to establish moral objectives and we must go with. This idea of unity was forwarded by Muslims and meant for the whole of mankind.³⁰

This knocked out the ideas of a nation on race, color or religion and invited other communities to cooperate for coexistence. Moreover, it can be stated that this treaty and onward Muslim treatment with non-believers were not of subject but citizens. It was later on the idea declined later on and the main purpose of decline was the adoption of the system of various contemporary empires which considers non-conformists as second class citizens. The concept of *Dar-ul-Islam* and *Dar-ul-Kufr* were the later interpretations by the divine scholars on the nation of Muslim superiority on other nations.³¹ The idea of *Ummah* was also interpreted by *Al-Farabi* and the understanding was that it constitutes various communities such as Persians, Abyssinians, Syrians, and Indians. *Farabi* also distinguished the concept of *Ummah* from *millah* and termed *millah* as the principles of life for a community. Notion of *Ummah*, according to *Al-Mawardi* and *Ibne Khaldun*, was also of something which pertains to the community without any reference to a particular belief. Anwar

Ibrahim considers *Ummah* as a unity in diversity.³² All this leads towards the idea of inclusion of non-Muslim to the citizenship of the state without any consideration of belief or religion. It is stressed by thinkers that *Ummah* does not mean a close community but rather it is a diversified community united under a rule. This stance can be further proved by taking the attitude of *Umayyads* and *Abbasids* towards empire where they put a little towards the idea of *Ummah* rather they converted the state towards the family rule on the notion of contemporary empires around.³³ The treaty of Madinah was municipal rather than religious. The main purpose of the treaty was the formation of political instruction to restored peace and security among the inhabitants of Madinah.³⁴ Furthermore, this treaty created religious pluralism instead of a theocratic state.

Formation of Confederation in Madinah by the Treaty of Madinah followed a great deal of traditions of Arab and contemporary ideas of state. The main factor was the Arabian tradition to keep the promises and especially the commitments by the tribes as units. The concept of the sanctity of treaties was established and to abide by the treaties was considered as a prime duty in good faith. This tradition was invoked by Prophet Muhammad to get all factions of Madinah on one page of the establishment of peace and security for all. It was inspired by the idea of together we stand and divided we fall. The long war between the two main tribes of Madinah was put to an end and brotherhood was created between them with spiritual force. Later on, an *Ummah* was established through the treaty which led towards the formation of the state as a political institution. It is pertinent to mention that the source of the confederative state was *Urf* (Local Traditions). The idea of collective self-defense, cooperation in weal and woe, equality of tribal status, the maxim of blood money and the condition of cooperation as well as punishment for defying the treaty was purely based upon local customs instead of religious or divine guidelines.

3.2.2. Dichotomy of State from Divine; illustrations

Scholars who argue in favor of theocratic state put forward their stance that God does not like anarchy and requires believers to form a state for the establishment of peace and order among the community.³⁵ It is further stated that Quran commands as under:

*O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more seemly in the end.*³⁶

It is commanded by Allah to obey him, prophet and the authority among them. Later it is advised that in case of dispute it should be referred to Allah and his messenger. Another argument is forwarded that the Prophet Muhammad established a state in Madinah and articulated a constitution. Moreover, it is stated by many scholars that the prophet assumed the authority of the head of state and acted as the legislature, head of executive and chief justice. Moreover, the later expansion of the Muslim empire in the time of Caliphs in a decade after the death of Prophet Muhammad is also quoted to justify the stance of the establishment of the state by the divine. Moreover, it is argued that it was divine that established Muslim state and the basic foundation of the state were divine commands.³⁷ It is further argued that God is the creator of the universe and all powers of man are bestowed by God and everything which we use belongs to Almighty God and he is the actual owner. No one deserves sovereignty beyond the power of God.³⁸ It can be observed from the arguments that all arguments are from divine books and traditions of Islam and the same ideas somehow were argued by other religious scholars. Let us now analyse the arguments of those who believe that the state and divine are different in their approach.

The debate of dichotomy of religion and state has been elaborated by Ali Abdul Raziq in his book *Al-Islam wa Usul-ul-hukm* and Muhammad Hussain in his book *Al-Itijahat al-wataniyyah*. Both of the books carry their arguments in support of the dichotomy of state from the divine. Here, we will

analyze the arguments for and against the idea of the dichotomy of state from the divine. First, we take the arguments of people who claim that religion and state are the same and the Islamic divine does not consider them different. Scholars have discussed a great deal of argument on the notion of the establishment of the state in Madinah. Some of them agree with the notion of dichotomy while others have stressed on the similitude of state and divine. After going through the debate, the most concrete tradition of Prophet Muhammad states as Angel *Israafil* asked him to choose between being a king or prophethood (*abd*). The prophet asked Angel Gabriel for consultation and was advised to choose the second and he chose the prophethood, not kingship.³⁹ The second hadith talks the same idea when Prophet Muhammad got a scary man before him. The prophet relaxed him saying that he was not a king or tyrant leader.⁴⁰ Divine history witnesses that prophets did not aspire to form the state. We can quote the examples of Jesus Christ, Moses and many others who did not form any state rather focused on divinity and teaching people good morals. It is quoted in the Quran that Allah does not change its tradition. Quran states:

*(Shown in their) behaving arrogantly in the land and plotting evil; and the evil plot encloseth but the men who make it. Then, can they expect aught save the treatment of the folk of old? **Thou wilt not find for Allah's way of treatment any substitute, nor wilt thou find for Allah's way of treatment aught of power to change.***⁴¹

It can be observed that religious scholars are unanimous on the authority of the Quran and Sunnah as primary sources of divine. Here, it can be claimed that all religions before Islam did not aspire to establish any state and divine is the same as it started from Prophet Adam. Now, how the tradition of Allah can change in the case of Prophet Muhammad. Moreover, it can be observed that more stress in Islamic divine is on worship than the affairs of state.⁴² The stance of the dichotomy of state from the divine can be fortified by the idea that the prophet did not

approved or recommended any method of state in his life.⁴³ It is further argued that the divine theories of state are not compatible with the modern state system. These theories advocate the sovereignty of God and where the will of God will be interpreted by an individual or group of particular individuals and this will certainly lead towards dictatorship.⁴⁴

Prophet Muhammad stated, ‘My community will never agree upon an error’.⁴⁵ This notion leads towards the formation of state based on the aspiration of community and states that it is not divine who will motivate the decisions of state but the consensus of society. Moreover, the era of prophethood ended after his death and later on the interpretation of state and the related theories cannot be termed as divine. Those were inspired by the contemporary customs, traditions, and standards of diplomacy. Moreover, all arguments forwarded by the scholars who elaborate state the same as divine is based upon the divine justifications and the people who advocate dichotomy of state from divine not only prove their stance from both internal and external sources. It can be observed that Prophet Muhammad, during his time at Makkah, never advocated the formation of state and later on after migration to Madinah elaborated the concept of community peace and order not the formation of the state. The prophet did not refer to any specific mode of state functioning and appointment of the head of state.

The Civil and Political Rights of Non-Muslims at the time of Prophet

The ideals of the first Muslim community formed by Prophet Muhammad at Madinah were in contrast with the contemporary interpretations of imposing the law of God to everyone without any respect to territoriality and standards of Sovereignty. The study reveals that the state in Madinah was established not on the orientation of theology but the foundation was on the protection of civil and political rights of everyone without any discrimination of religion, race or tribal affiliations. Here, it will be proved that Prophet Muhammad entered into various covenants to establish the equality of citizenship for Muslims, Jews and Christians in one unified *Ummah*. The treaties of

Prophet Muhammad are the guidelines for modern states to establish an impartial system of the state protecting the rights of all its citizens without any discrimination of religious directions. Treaty of Madinah and several other covenants establish it with clarity that Muslims not only coexisted with Jews and Christians in state but also protected one another at the time of foreign invasion.⁴⁶ These covenants can help in policymaking at both national and international level for a peaceful plural society in states and international globalized society among states. The documents made by Prophet Muhammad can be interpreted in a way that they lead towards making of a constitution which guarantees the rights of both Muslims and non-Muslim at par.⁴⁷ The Prophet's genial dealings with non-Muslims were not political tactics but were the guidelines for the modern states to protect the rights of minorities equally and impartially. The Quran proves this statement in the following words: "There shall be no compulsion in religion."⁴⁸ The aspirations of the Treaty of Madinah acknowledge the basic right of both Christian and Jews that they can continue with their religious guidelines with all freedoms and in the matter of state, they will enjoy equal political and civil rights to Muslims. This treaty is ratified by Quranic verse also in these words "Say: O People of the Book come to an equitable word between us and you".⁴⁹ Prophet Muhammad developed a democratic society rather tyrant depicted by critics that accommodated both Jews and Christians in one community.⁵⁰ The message of Prophet Muhammad was very clear in the shape of equality, justice, and rule of law without any relevance to religion and all factions of society adhered to their religious guidelines in spirituality and other personal laws but in collective affairs like public laws, the state was the final authority without any relevance to religion. The state in Madinah respected the standards of tolerance and pluralism.

Pluralism means not only a diverse society but the engagement of society in diversity.⁵¹ It is more than tolerance as it requires society to across the differences among various groups.⁵² It further requires the dialogue in society on various definitions of culture, religion, and language.⁵³ Pluralism, in short, means

respect for the difference and leading towards some idea which is compatible with society. It leads towards dialogue and means not only speaking of ideas but listening to the concepts of others. Prophet Muhammad tried to establish a state compatible with the standards of polarisation of Arab society at Madinah. The main idea was to get all diverse tribes living at peace side by side without any prejudice to what they believe. This claim can be proven by the various treaties of Prophet Muhammad with non-Muslims such as the Treaty of Madinah, Treaty of *Najran* and Covenant with the Monks of Mount Sinai. Hadith of Prophet Muhammad can best describe pluralism in the following words:

“Christian merchants from Syria came to Madinah to trade. While they were there, they converted the two sons of one of Muhammad’s followers. The son then returned to Syria with the merchants. When their faith sought permission from the prophet to go after his sons and demand their return, the Prophet responded by reciting the verse, ‘There is no compulsion in religion’. The story goes on to say that the man held this against the Prophet, which led to the revelation of a verse of Quran, ‘But no, by your Lord! They do not believe until they make you a judge of what is in dispute between them, and then find no reluctance in their hearts as to what you decide and submit with full submission.’ So no matter how much the Muslim father wished to demand that his sons return to Madinah and Islam, the Quranic command that there is no compulsion in religion prevailed.”

The aforementioned Hadith is a real illustration of pluralism where the Prophet allowed the free practice of Christianity. Apart from this tradition, the Prophet at many instances advocated religious pluralism maintaining the dichotomy of divine and state. We can also quote here a part of Covenant of

Mount Sanai for the freedom of religion and plural society in the following words:

“A bishop shall not be removed from his bishopric, nor a monk from his monastery, nor a hermit from his tower, nor shall a pilgrim be hindered from his pilgrimage. Moreover, no building from among their churches shall be destroyed, nor shall the money from their churches be used for the building of mosques or houses of the Muslims”⁵⁴

This text clearly states that any Muslim state cannot discriminate or harm non-Muslim in terms of their rights and a plural society will be established on the principles of impartiality and justice. The establishment of a state has nothing to do with the religious beliefs of its people unless they rebel against the state and its sovereignty. We can quote here the text from Treaty with the Persian Christians:

“All pious believers shall deem it their bounded duty to defend believers and to aid them whosoever they may be, whether far or near, and throughout Christendom shall protect the places where they conduct worship and those where their monks and priests dwell. Everywhere, in mountains, on the plains, in towns and in waste places, in deserts, and wheresoever they may be, that people shall be protected, both in their faith and in their property, both in West and in the East, both on sea and land.”

The aforementioned text stresses the duty of the state to protect religious pluralism and not to force any specific religion or interpretation of some specific ideology on people. The text demonstrates that defending the Christian community is a collective duty of the state and they have all civil rights as citizens. Moreover, their belief is validated and protected by the Prophet himself. All these texts from the life of Prophet

Muhammad bear authority for contemporary Muslim state to establish a plural society which not only establishes a plural state theoretically but in practical terms also where all religions not only coexist but cooperate and strengthen one another.

The prophet established the civic community instead of ethnicity.⁵⁵ This was the same as the United States today. The state established at Madinah by Prophet Muhammad denied all ethnic standards by establishing the sanctity of humans as compared to blood, race, culture and other ideas of contemporary nations of his time. The newly established state made it clear to all inhabitants of Madinah that it will be adherence to the rule of the state which will make them nearer and dearer of the state irrespective of their colour, race, culture or belief. Natives of Madinah were given equal civil and political rights to their counterpart migrants from Makkah and non-Muslim tribes. The members of the community in Madinah were unified under the idea of equality before law and state without any reference to belief and religion. This civic orientation of society met all standards of impartial state.

Civic community can be attributed to something adverse to the idea of ethnic discrimination based upon the idea of equality and respect for all its members without any prejudice to their origin and belief. Society may protect the rights of its citizens without any reference to their linguistic, cultural and religious affiliation. Moreover, the society that provides an atmosphere of growth to all its citizens and equal opportunities for the pursuit of happiness.⁵⁶ Civic Society can be elaborated as: “a community of equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values”.⁵⁷ Briefly, a civic community allows various cultures, languages, beliefs, and ideas to coexist in one nation. The state at Madinah demonstrates all these standards of being a civic state rather than religious. Treaty of Madinah included Jews in the community and rendered equal rights to them as their Muslim counterparts. In the case of Christians, the Treaty with Monks of Sanai, Treaty of *Najran* and Treaty with the Christians of Persia demonstrate the civic community rather than ethnic one based upon religious ethos. Prophet Muhammad was pluralist in

terms of political orientation of state and denied the idea of the boundary as a property of some specific nation or group. By establishing the plural state in Madinah, he established a community based upon civic equality. The prophet never inflicted any harm to non-Muslim based upon their belief and maintained the separation of state from the practice of religion and faith. In the following words the Prophet ensured this stance:

“The covenant of Allah is that I should protect their land, their monasteries, with my power, my horses, my men, my strength, and my Muslim followers in any region, far away or close by, and that I should protect their business. I grant security to them, their churches, their business, their houses of worship, the places of their monks, the places of their pilgrims, wherever they may be found...”⁵⁸

The text clarifies the duty of the state in terms of property and religious rights of any particular group. It makes it clear that the state bears the duty to protect the rights of its citizens without any reference to religion. If we suppose religion has something to do in state affairs than the act of the Prophet cannot be validated by the divine guidelines as protecting the religious places of non-Muslims can lead towards the basic idea of Islam and that is monotheism and other religions like Christianity names Christ as the son of God. The language used by the Covenant of Prophet Muhammad in his treaties with non-Muslims shares a great deal of similarity with the Declaration of Rights of Man and Citizen enacted by the French Assembly in 1789.⁵⁹ So, in the light of all these arguments and text presented from the treaties of Prophet Muhammad, it may be inferred that the community in Madinah did not discriminate any faction based on belief or religious affiliation rather the society was built on the principles of pluralism, impartial civil rights and equality before the law.

3.2.4. Structure of Community at Madinah

The divine attributed this migration as the end to *Jahiliyah* and the start of enlightenment. The Muslim community in Makkah was organised on the concept of *naqba* (singular *naqib*). The prophet initially appointed 12 of them and appointed one of them as chief to whom all will report. Holy Prophet also described their duties in following words, “You are guardians of people in their affairs like the guardianship of Helpers to Jesus, son of Mary; and I am the guardian of my people”.⁶⁰ This was made to decentralised the authority and organise community with better administration. It is worth mentioning here that this arrangement was inspired by local Arab customs of the time of Prophet Muhammad and it was the first instance of establishment of authority in Makkah and this arrangement was not renounced in Madinah. It is pertinent to mention here that the appointment of *naqib* was best to control the tribal society. Prophet Muhammad entered Madinah in the capacity of reformer and prophet on 24th September, 622 CE.⁶¹ He interpreted his induction to Madinah not as a king but as a reformer in the following words, “Every city is conquered with violence except Madinah which was conquered by Quran”.⁶² Before his arrival, it is evident that a large number of local populations accepted his prophethood, not kingship.

On his arrival at Madinah, the Prophet inspired the local population to unite into a community based upon collective self-defense and cooperation in economic growth. This was initially pursued through the establishment of brotherhood among two long fighting tribes of *Aws* and *Khazraj*. The next step was to get all believing and non-believing tribes to a codified document to settle their disputes during war and peace. This document is known as the Treaty of Madinah. Wensinck wrote, “Reorganization of the political system in Madinah was accomplished through the prophet’s fruitful negotiation of a series of treaties with binding legal effect on the parties, the most important of which were collectively known as Madinah Constitution”.⁶³ Some scholars do not agree to attribute the Treaty of Madinah as a constitution as the script does not name

it so and instead the words as 'book' and '*sahifa*' are used for the document. It can be quoted that the word '*Kitab*' is mentioned two times and '*sahifa*' is used for more than 8 times. There are various other opinions on the authenticity of the document but the discussion can be sum up by quoting the stance of Wellhausen. He defines it in the following words, "If the document had been a fabrication, its author would have conformed to the criteria of later periods. No true Muslim writing under the *Umayyads* or the *Abbasids* would have included non-Muslim in the *Umma*, no one would have dwelt to such an extent on the hate of Quraysh as the true enemies of God, and no one would have fabricated an ordinance in which the prophet made so little direct use of his divine authority. Not only have the content, but also the form, spoken for the authenticity of the document".⁶⁴

3.5. Muslim Experience with Nation-State System

The role of the divine in Nation-State System was secondary as it was in the era of empires. Ottoman Empire was headed by monarchs who were sole authorities to interpret law. It is pertinent to mention that the society during empires was divided into two kinds. One comprised the penal laws of the state. These were codified and enforced through sovereign power. Other were the interpretations by various scholars of the divine about the private matters like worships, family, and contracts that were dealt with following the interpretations of scholars. These scholars also needed the pleasure of monarch to get their interpretations enforced through the courts. Treason was the greatest of all crimes and any interpretation affecting the monarch invoked it. The same status of divine instruction was adopted in modern Muslim Nation States.

The social contract in modern Muslim states is threefold. First, it promised to provide the fundamental rights of citizens. Secondly, it ensures loyalty towards the state. Third, it settles that no legislation will be made against divine inspiration. Afghanistan, Iran, Iraq, and Pakistan ensure divine compliance

through constitutional guarantee to protect divine compliance of laws. Muslim states with written constitutions adopt the method of judicial review to ensure Sharia'h compliance. For example, the Constitution of the Islamic Republic of Pakistan 1973 through Article 2(a) codifies that any law repugnant to the Quran and Sunnah will be null and void.⁶⁵ This leads towards a check on the power of the legislature to codify under the prescription of divine law. In compliance with this clause, if the Supreme Court of Pakistan interprets certain legislation against the aspirations of the Quran and Sunnah, the legislation will be of no authority. The same constitutional model is followed by other Muslim states like Afghanistan, Iran, Iraq, and Egypt.

Amalgamation of divine laws with the theory of legal positivism and signing of the Universal Declaration on Human Rights 1948 (UDHR) has led towards various constitutional issues. A debate is going on in Muslim countries about the constitutional modus. The intelligentsia is divided into two parts. The first wants to see the state as divinely guided and modern concepts of state only secondary or subservient to divine inspirations.⁶⁶ Others are the advocates of establishing a modern state with all secular ideas without the interference of the divine. This debate has led to various constitutional questions. The question of the viability of legal positivist constitutional orientation to divine limitation is yet to be decided. The matter of limitation of the powers of parliament to legislate is very important. The most significant is changing societies and new demands while the divine holds a specific interpretation of its ideas. So, the question arises about the durability of divine interpretation with rapidly transforming standards of modern society. Adoption of the universality of Human Rights is also a challenge ahead for the Muslim States. This debate needs to be addressed in detail through a scholastic perspective. The absence of consensus among the constitutionalists and polarized vies regarding the constitutional model is leading towards various issues.⁶⁷

The main issue Muslim states are facing is the legitimacy of national laws. Muslim majority living in nation-states still feel themselves bound to divine interpretations by non-state

authorities. These interpretations later lead towards non-state attitude by general masses. This non-state attitude is both peaceful and militant. Peaceful means the matters concerning family, contract and other social issues while others lead to the level of militancy and deem nation-state as something not validated by the divine. This leads to terrorism and challenging the authority of sovereign states. This interpretive legitimacy of divine instructions needs settlement in the era of nation-states.

3.7. Conclusion

A critical view on the historical evolution of the Muslim state reveals that the divine always required validation of state authority. The life of Prophet Muhammad in Makkah was different than in Madinah. In Makkah, the prophet exercised only divine authority and focused on various theories regarding beliefs and worships. Muslims in Makkah followed the traditional law of tribal Arabs. Afterward, migration led towards the organisation of society through various pacts with other tribes and the establishment of order in Madinah. It is clear that the pacts with other tribes of Madinah and non-Muslim tribes included them in one community and the orientation of society was multi-religious. This is in clear contrast with the teachings of divine teachings but to maintain the state and order in society which is the greater aim of divine as well as an authority, the state authority and divine operated dichotomous. The same can be observed from the study of the institution of caliphate where state authority took various decisions in contrast with the divine aspirations to keep maintain the state equilibrium. The era of Muslim monarch maintained the dichotomy of state/public laws. The monarchs in Muslim history maintained control over the interpretation of divine commands. Muslim sultans influenced and controlled the interpretation of divine by direct sermons, letters and by promoting the scholars who were in harmony with the 'interests of state'. To conclude, it may be said that the Muslim state followed the maxim of validation of divine through state authority not otherwise.

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