

## CHAPTER II

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# BASIC ISSUES IN CONSULTATIVE PRACTICE

AS we have seen, Islamic law has laid the foundation for the principle of consultation. Consequently, the readiness to engage in mutual consultation is regarded as a vital aspect of a Muslim's moral character and conduct, and a fundamental basis for the management of people's public affairs and shared interests. At the same time, however, Islamic law imposes no conditions or restrictions with respect to the particular way or ways in which consultation is to be engaged in. Rather, it leaves such matters to people's discretion, choice and shared deliberations.

As for the practice of consultation by individuals concerning their private and familial affairs, it is viewed in most cases as recommended, but not obligatory. Hence, the peculiar rhythm and procedures that characterize such consultation are, likewise, left to individual preference and choice, to be dictated by the circumstances and capacities of those concerned. Otherwise, consultation could become an intolerable burden, not worth all the suffering it entails. Hence, it is up to each individual to consult with whom he wishes, and in the manner he wishes.

Be that as it may, what concerns us at this point is public consultation, that is to say, consultation concerning public affairs. This type of consultation has to do with planning and facilitating the affairs of the state, society and smaller communities and groups. It is this type of consultation, moreover, which calls for the adoption of myriad organizational and executive procedures. In short, it requires a system, or a detailed set of rules. This system or set of rules having to do with

the practice of consultation has been left to silence by Islamic law. Consequently, the way has been left open for creative thinking within the domain of Islamic legislative principles, a topic to which I will be returning in a later chapter. In the present discussion, however, I will take up certain organizational basics or universals pertaining to the establishment and practice of consultation in the realm of public affairs and their collective management. Such universals, like the details of consultative practice, are not spelled out in detail in Islamic law. However, they may, through a process of induction and careful examination, be derived from the texts of Islamic law and the consultative practice that prevailed in the days of the Prophet and the rightly guided caliphs.

[SECTION I]

THE QUESTION OF WHO MAY BE INVOLVED IN CONSULTATION

Based on narrow conceptualizations of the role, spheres and functions of consultation in Islamic life – conceptualizations which we have had occasion to discuss and refute – the interpretation and application of traditional texts have likewise tended to narrow the circle of those concerned with the consultative process. In fact, there are those who have claimed that God's injunction to the Prophet to "take counsel with them in all matters of public concern" applied to no one but 'Umar ibn al-Khattab and Abu Bakr. Al-Hafiz ibn Hajar states, "Al-Suhayli has attributed to Ibn 'Abbas the statement that consultation was to be limited to Abu Bakr and 'Umar." He continues, saying:

I have found support for this attribution, with a reliable chain of transmission, in *Fada'il al-Sahabah* by Asad ibn Musa and in *al-Ma'rifah* by Ya'qub ibn Sufyan. According to the tradition concerned, the Prophet once said to Abu Bakr and 'Umar, "If the two of you were to agree on a given matter, I would not challenge any counsel you might give me."<sup>1</sup>

"However," he adds, "this [account] provides no basis for restriction,"<sup>2</sup> that is, for the claim that these words of the Prophet would have been true only of Abu Bakr and 'Umar, and of no one else.

As for Judge Ibn al-‘Arabi, his position on this matter is unequivocal. He states, “Those referred to by God’s command to ‘take counsel with them in all matters of public concern’ were all of the Prophet’s Companions.”<sup>3</sup> He then proceeds to refute the claim of those who hold that these words of the Prophet applied only to Abu Bakr and ‘Umar, saying:

There can be no doubt but that they [Abu Bakr and ‘Umar] were eminently worthy to be thus consulted by the Prophet, and that they were more entitled to this privilege [than others may have been]. However, it is not restricted to them alone. Rather, this is merely an allegation, for we find clearly in the biographies of the Prophet that he once said to his Companions, “Advise me in the house...”<sup>4</sup>

Even if the example cited here by Ibn al-‘Arabi were the only evidence at our disposal, it would be sufficient to negate the claim that Abu Bakr and ‘Umar were the only two individuals to whom the Prophet was instructed to turn for advice. It would also be sufficient to demonstrate that the Prophet used to take counsel with all of his Companions. In other words, his consultations were restricted neither to Abu Bakr and ‘Umar, nor to any other of his Companions. Rather, the Prophet counseled with all of his Companions without exception.

The Messenger of God consulted with untold numbers of his Companions. Sometimes he would do so from the pulpit, in which case he would be addressing hundreds of people. At other times he would seek the counsel of those who were present where he had gathered with a group, or those who were with him on a journey. He would take counsel with others individually, and occasionally with two, three or four at a time. We have abundant accounts in which he would utter the words, “Advise me, people,” or other phrases with a similarly general import. Moreover, such instances – some of which are cited in the course of this study – are found in well-known accounts from hadith compilations and the Prophet’s biography.

The two Qur’anic verses which form the basis for consultative practice, namely, Qur’an 3:159 (“take counsel with them in all matters of public concern”) and 42:38 (which speaks of those “whose rule [in all matters of common concern] is consultation among themselves”)

likewise provide the basis for a broad understanding of consultation and its range of applicability. As was noted above, the context for the first verse reads:

And it was by God's grace that thou [O Prophet] didst deal gently with thy followers: for if thou hadst been harsh and hard of heart, they would indeed have broken away from thee. Pardon them, then, and pray that they be forgiven. And take counsel with them in all matters of public concern.

There can be no doubt, therefore, that those with whom the Messenger of God was instructed to take counsel are the same individuals mentioned throughout the passage as a whole. These are the people with whom he had dealt gently by God's grace and who, had he not done so, would have broken away from him. Similarly, these are the people whom God had commanded him to pardon and for whose forgiveness he had been instructed to pray. The pronoun "they" thus refers throughout to a single group of people, namely, the Prophet's Companions and the community of those who had placed their trust in him as God's Messenger.

Moreover, what has been said about the first verse above applies to the second as well. In other words, the people described as those "whose rule [in all matters of common concern] is consultation among themselves" are the same people who have attained to faith, who have placed their trust in God, who "shun the more heinous sins and abominations," who have responded to God's summons, who are constant in prayer, and who spend on others out of the sustenance God has provided for them. Hence, it makes no sense to interpret some phrases in this passage as applying to the whole community of believers and others as applying only to specific individuals. As we have noted, texts with a broad import are to be interpreted as applying broadly until or unless evidence is produced showing that they have a more restricted application.

### *The Equality of Men and Women in the Consultative Process*

Women are included along with men in the consultative process, and women are addressed in this connection on a par with men. Indeed,

this is a principle which applies to all juristic discourse and to all juristic generalizations unless there is specific evidence in support of an exception. Hence, it might have been possible to dispense with a discussion of this issue were it not for the fact that a number of people continue either to deny outright that women are eligible to participate in public consultation, or hesitate to affirm women's place in the public consultative process. Such denial and hesitation have resulted from a build-up of prejudices over the centuries and from arbitrary interpretations of certain Islamic legal texts and concepts.

The first thing that needs to be reaffirmed and established here is that in its various injunctions and prohibitions, Islamic law addresses both men and women alike. This is true even when the masculine pronoun is used, be it singular or plural. Moreover, such commands and prohibitions include men of all classes and categories, and women of all classes and categories. As such, they apply to no one in particular, nor do they exclude or exempt anyone in particular unless there is evidence to this effect. Notwithstanding the theoretical debate that has raged over such matters among scholastic theologians, this principle is recognized and adhered to by the vast majority of Islamic scholars.

Perhaps the clearest and most definitive treatment of this issue can be found in the writings of Imam Ibn Hazm al-Zahiri,<sup>5</sup> who states:

The imperative form of the verb *if'alu* ("Do"), as well as both plural nouns ending with the suffix *un* and those classified as "broken plurals" apply to males and females alike. Similarly, the Messenger of God was sent to men and women equally, and the Prophet's discourse was addressed to men and women alike. Consequently, none of these realities can be seen as pertaining to men alone except on the basis of an explicit text [from the Qur'an or the Sunnah] or a unanimous consensus [of qualified Muslim scholars].<sup>6</sup>

Ibn Hazm then goes on to discuss objections to his point of view, including those that are merely hypothetical. He writes, for example, that "If someone should say, 'So they required them [women] to defend the religion as well as to command what is good and prohibit what is evil,' we would say in reply, 'Yes, this is true. This is women's duty just as it is men's.'"<sup>7</sup> He then concludes with the following definitive statement:

We know for a certainty that the Messenger of God was sent to women just as he was sent to men and that the divinely inspired law which is Islam is binding for women just as it is for men. The only exceptions to this rule are those precepts for which there is evidence that they apply exclusively to women or to men. What this means is that men may not enjoy anything to the exclusion of women unless an explicit text [from the Qur'an or the Sunnah] or a consensus of qualified scholars indicates otherwise.<sup>8</sup>

Support for Ibn Hazm's view may be found in the following hadith passed down on the authority of 'A'ishah, who said, "The Messenger of God was asked about whether a man, if he observes moisture [in the genital area] upon waking from sleep, is required to perform total ablutions. In reply, he said, 'Yes, he is required to do so.'<sup>9</sup> Having heard the Prophet's response, Umm Sulaym asked, 'So if the woman observes the same, is she required to perform total ablutions?' 'Yes,' replied the Prophet, 'for women are men's full sisters.'<sup>10</sup>

In his commentary on this hadith, al-Khattabi states:

Juristically speaking, this hadith affirms the principle of analogical deduction (*qiyas*) and the practice of issuing similar legal rulings in relation to similar individuals or groups of people. Additionally, it affirms that discourse which is grammatically masculine is also addressed to women unless there is evidence for considering it to apply to men only.<sup>11</sup>

In a hadith passed down on the authority of Hudhayfah, the Prophet stated, "If a man is tempted [to sin] through his family, his possessions, or his neighbor, the sin may be atoned for through ritual prayer, almsgiving, commanding the doing of what is good, and forbidding the doing of what is evil."<sup>12</sup> In his commentary on this hadith, Hafiz ibn Hajar relates a statement by Ibn Abi Jamrah, who said, "The Prophet singled out the man for mention here because it is the man who, in the majority of cases, is in a position of authority in relation to his household and his family. However, women are also included in this ruling."<sup>13</sup>

Even if all we had available to us were these texts and general rules, they would provide sufficient proof that men and women are equally entitled to take part in the consultative process, be it public or private.

In addition to these, however, we know of numerous instances in which, in some situations, the Messenger of God sought out the counsel of female Companions in particular, and in others, of men and women together. The best known of these situations may be the one in which the Messenger of God consulted with his wife Umm Salamah whose astute counsel has historic significance in view of the seriousness of the crisis it helped to resolve. The situation arose following the conclusion of the Treaty of Hudaibiyyah. The terms of this treaty were not to the liking of most of the Companions, who viewed it as a capitulation and defeat that were demeaning both to them and to their religion in the face of the Qurayshite polytheists. After the treaty had been drawn up, the Messenger of God instructed his Companions to release themselves from the state of ritual consecration for the pilgrimage to Makkah, to slaughter the sacrificial animals they had intended to take to Makkah, and to shave their heads. However, not one of them responded. He repeated his instructions several times, but they still did nothing. In a hadith passed down on the authority of ‘Umar, we read that:

When he [the Prophet] had finished drawing up the treaty, he said to his Companions, “Rise and slaughter your sacrificial animals, then shave your heads.” But not a single man rose to his feet. The Prophet repeated what he had said three times. When he found that even then, none of them had gotten up, he went in to Umm Salamah and told her about the way he had been treated. Umm Salamah replied, “O Prophet of God, is this to your liking? Go back out and, without saying a word to anyone, slaughter your own sacrificial animal, then summon your barber to shave your head.” So he went back out and, without saying a word to anyone, did what she had said: He slaughtered his sacrificial animal, then he summoned his barber, who shaved his head. When his Companions saw what he had done, they too rose and slaughtered their sacrificial animals, then proceeded to shave each other’s heads.<sup>14</sup>

Another instance in which the Messenger of God received helpful counsel from a woman is recorded in *Sahih al-Bukhari*, where we read that, according to an account passed down on the authority of Jabir ibn

‘Abd Allah “the Prophet was standing one Friday [before the congregation] next to a palm tree (or some other kind of tree). One of the women Supporters – or one of the men – then said to him, ‘O Messenger of God, shall we make a pulpit for you?’ ‘If you wish,’ he replied, whereupon they made him a pulpit.”<sup>15</sup> The narrator’s statement that the person who suggested the pulpit may have been a woman or a man from among the Supporters raises a doubt as to whether the person was, in fact, a woman. However, this doubt is eliminated by another account from *Sahih al-Bukhari* in which the Prophet assigned the task of making the pulpit to a woman whose son was a carpenter.<sup>16</sup> It is on this basis that al-Hafiz ibn Hajar favors the view that it was a woman who suggested the idea of making a pulpit,<sup>17</sup> and that it was this same woman who was assigned the task of having it made and bringing it to the Messenger of God.

Based on a blending of accounts, Imam al-Nawawi holds that this woman first proposed the idea to the Messenger of God, who then sent to her with a request that she carry it out.<sup>18</sup> At the same time, this does not mean that the woman mentioned here was the only person to have suggested the idea that she was later assigned to carry out, since we also have a reliable account according to which other Companions held the same opinion, among them Tamim al-Dari, who was mentioned earlier in this connection.

The Qur’an includes two accounts of women’s involvement in consultation, both of which are set in a context which makes clear that such involvement meets with divine approval and consent. The first account, which describes the way in which the Queen of Sheba sought others’ counsel, reads as follows:

[When the Queen had read Solomon’s letter,] she said, “O you nobles! A truly distinguished letter has been conveyed unto me. Behold, it is from Solomon, and it says, ‘In the name of God, the Most Gracious, the Dispenser of Grace: [God says:] Exalt not yourselves against me, but come unto me in willing surrender!’” She added, “O you nobles! Give me your opinion on the problem with which I am now faced. I would never make a [weighty] decision unless you are present with me.” They answered, “We are endowed with power and with mighty prowess in war – but the

command is thine; consider, then, what thou wouldst command.” Said she, “Verily, whenever kings enter a country they corrupt it, and turn the noblest of its people into the most abject. And this is the way they [always] behave. Hence, behold, I am going to send a gift to those [people], and await whatever [answer] the envoys bring back.”<sup>19</sup>

As for the second, it relates the words of one of the two young Midianite women whom Moses happened to meet in his wanderings, and whose flocks he had watered on their behalf. Given the kindness she had received from Moses, the young woman said to her father, “O my father! Hire him, for behold, the best [man] that thou couldst hire is [as] strong and worthy of trust [as he]!”<sup>20</sup> From this wise counsel, great good came.

Those who oppose women’s membership in public consultative councils (that is, parliaments) base their objections on the fact that women are not allowed to hold positions that entail the exercise of sovereignty over others in the public sphere, whereas present-day parliaments do, in fact, exercise sovereign power in social and governmental affairs. However, this view is mistaken, or, at the very least, not embraced by all without question. Regarding the claim that a woman is not allowed to hold any position that entails the exercise of sovereignty over others in the public sphere, there is no firm support for such an unqualified prohibition. Support for this view has been sought in the hadith passed down on the authority of Abu Bakrah who said, “When word reached the Prophet that the people of Persia had placed Chosroe’s daughter over them as queen, he said, ‘No people will prosper who place a woman in authority over them.’”<sup>21</sup>

It is clear that what is said here has to do with those who have placed a woman in authority over them by installing her as head of state, in which case she is sovereign over all its affairs and is answerable to no one above her. The prosperity being denied here thus refers to prosperity in the political and military sense, since the state becomes susceptible to disintegration, weakness and defeat due to the woman’s inability to handle such a position and the fact that people will be unlikely to submit whole-heartedly to her rule. As for prosperity in the spiritual sense spoken of in the Qur’an, it is beyond the reach of the nation spoken of whether it is ruled by a man or a woman. Be that as it

may, in view of this hadith's context and occasion, it may be seen to concern itself with the political and military leadership of a state, or what is referred to in modern parlance as executive authority. Generally speaking, women are undoubtedly less effectual in this type of critical, weighty position.

As for consultative counsels, they involve exchanges of thoughts and viewpoints with a view to engaging in analysis and evaluation, interpretation of texts and events, and the making of theoretical decisions in a variety of areas and in relation to a variety of concerns. It is possible to describe such counsels as forms of public authority. However, we should be careful not to confuse such authority with the kind of executive authority whose successful exercise is virtually impossible apart from significant hardship and without sternness, rigor, patient endurance, firmness of resolve, worldly wisdom, cunning, and the ability to handle opposition on both the domestic and international fronts.

At the same time, it should be remembered that consultative counsels are generally made up of numerous members. Hence, a single member, be it a man or a woman, exercises no sovereignty or authority by himself or herself. Rather, whatever sovereignty or authority is exercised, is exercised by the council as a whole. Hence, in a counsel composed of one hundred members, a single woman will represent only one part of a hundred. As for the public sovereignty, or some forms thereof, which some hesitate to relegate to a woman on the basis of Islamic jurisprudence, it consists not in mere membership in a counsel with scores or even hundreds of members whose interpretative, legislative, and evaluative function serves to complement the actual authority of the state. Rather, it consists in full sovereignty and authority concentrated in the hands of a single woman.

One Qur'anic verse reads:

And as for the believers, both men and women – they are close unto one another: they [all] enjoin the doing of what is right and forbid the doing of what is wrong, and are constant in prayer, and render the purifying dues, and pay heed unto God and His Apostle. It is they upon whom God will bestow His grace: verily, God is Almighty, Wise!<sup>22</sup>

According to juristic scholar Allal al-Fasi, this verse confirms the female believers' overall responsibility in matters of religion just as it confirms it for male believers. This also includes the responsibility to come to other believers' aid, attendance at mosques and assemblies, participation in combat in defense of the faith, commanding the doing of what is good, and forbidding the doing of what is evil.

Al-Fasi then adds:

The Qur'an stipulates that a man should consult with his wife in marital affairs, saying: "And if both [parents] decide, by mutual consent and counsel, upon separation [of mother and child], they will incur no sin [thereby]." <sup>23</sup> Hence, if consultation is this important in the life of the family, how much more important it must be in the life of the greater family, namely, the Islamic community and the state. And just as the Lawgiver has not deprived half of the family – namely, the woman – of the right to be consulted, neither has He deprived half of the Islamic community – namely, Muslim women – of this right. <sup>24</sup>

Al-Juwayni once stated, "We know for a certainty that women have nothing to do with the choice of religious and political leaders and receiving their pledges to carry out their leadership duties."<sup>25</sup> And elsewhere he writes that "women remain secluded in their quarters, whence they delegate their affairs to men, who have the right of guardianship over them. They are not accustomed to dealing with public affairs, nor do they appear prominently as men do in coping with problems. Similarly, they have little to say about matters relating to the confirmation of decisions and points of view."<sup>26</sup> If these statements are intended as descriptions of the reality that prevailed during the author's lifetime, then they are accurate, or nearly so. If, on the other hand, they are intended as a categorical denial or legally based prohibition, they are not acceptable. It is sufficient to note in this connection that two women, namely, Umm 'Amarah, the kinswoman by marriage of Bint Ka'b, and Asma' Bint 'Amru ibn 'Udayy, took part in concluding the Second Pledge of Allegiance at al-'Aqabah which served as the foundation for the Islamic state.<sup>27</sup> Moreover, as will be seen below in the discussion of the pledge of allegiance extended to 'Uthman ibn 'Affan as the third caliph of Islam, 'Abd al-Rahman ibn

‘Awf polled the views even of women in seclusion on this critical matter.

*Consultation Concerning Private Affairs*

The statements concerning consultation in Islamic legal texts, including the Qur’anic commendation of those “whose rule [in all matters of common concern] is consultation among themselves,” were addressed originally to all Muslims for whom the issue being consulted about was a matter of concern. However, this does not preclude the possibility that consultation might be limited at times, whether intentionally or unintentionally, to particular people to the exclusion of others. And as a matter of fact, most general statements or precepts within Islamic law are qualified by exceptions or specifications based on relevant evidence and circumstances. Consultation in particular admits of proxy and delegation, and in certain cases, it falls under the rubric of collective duties that some people may perform on others’ behalf. In such cases, once the duty has been performed and the purpose for consultation has been fulfilled, no further consultation is called for. This principle applies to all collective obligations (*furud kifayah*) in Islam, which are in essence addressed to, and required of, the community as a whole. However, if the duty concerned is fulfilled by some members of the community, it ceases to be required of other members of the community, though they may choose to perform it on a voluntary basis.

It should also be noted that in relation to certain issues, only certain people are qualified to be consulted, in which case there is no basis for the entire community’s involvement. For reasons such as these, consultation is shifted in many cases from the public sphere to the private, or from a wider circle to a narrower one. It should be stressed again, however, that in its origin, consultation is open to all Muslims, although this broad applicability is often narrowed by exceptions and restrictions due to specific causes and based on pertinent evidence.

Hence, when a sufficient number of people have been gathered for consultation and the purpose for which consultation was established has been fulfilled, there is no need to continue with the consultative process or to broaden the circle of those engaged in it. The central determinant is the underlying purposes for which consultation is

undertaken, and once these purposes have been fulfilled to the greatest possible extent, further consultation is pointless. At this point, the one thing needful is to settle the issue and move on to action and practical applications. As God said to the Prophet, "Take counsel with them in all matters of public concern; then, when thou hast decided upon a course of action, place thy trust in God."

A second reason for restricting consultation to some people rather than others is that to involve a wider circle of people in the consultative process would involve far too much hardship. When, for example, the group of people for whom a given issue is a cause for concern includes the entire Muslim community, a broad geographical region, or a large number of people, it will be difficult if not impossible to gather all of them – nor even the majority of them or a significant group of them – in one place for the requisite deliberations. In such a case, resort must be had to what is possible and feasible, which means allowing those who participate in the consultation to stand in for those who do not in accordance with recognized or agreed-upon procedures. It was thus that the ideas of proxyhood and parliamentary representation came into being.

A third reason for restricting those to be involved in consultation is the existence of highly specialized questions and issues concerning which no one but the most highly qualified individuals would have any knowledge and, therefore, anything of value to contribute. These include questions relating to science, law, the judiciary, and industrial, economic and military planning and management. And as is widely recognized, human society continues to move inexorably in the direction of greater ramification and specialization in both the academic and practical realms.

In light of the foregoing, consultation increasingly entails not merely the discussion and exchange of general ideas, indefinite proposals and random solutions, but, rather, the exchange of knowledge and expertise and discussion of those aspects of an issue that will make it possible to carry out proper assessment and planning. Consequently, a large and growing number of issues requiring consultation need to be referred solely to those most qualified to deal with them. Conversely, the involvement of the general public is liable to bring unwholesome

outcomes, since it involves relegating matters to those who are not prepared to give them the treatment they require. Therefore, it is a departure from the wisdom for the sake of which the Islamic law was revealed and the human interests it came to promote.

What this means is that there are no longer consultants or consultative bodies whose members would be able to deal properly with every type of issue. This approach may have worked in the past; in the present day, however, it is no longer workable or appropriate. Even in the early days of Islam, in fact, many Muslim scholars favored the classification and distribution of consultants according to their specializations and expertise. This approach may be discerned clearly in the following excerpt from the writings of Maliki jurist Ibn Khuwayyiz Mindad, who states:

Rulers are obliged to take counsel with scholars in regard to those things they do not know and aspects of the religion that are unclear to them. They must consult with army commanders in connection with matters relating to war, community leaders in connection with people's interests, and prominent writers, ministers and workers in relation to the interests of the country and the best ways to promote its development.<sup>28</sup>

The principle on which this approach is based is set forth in the Qur'an, where God says to the Prophet, "if you have not [yet] realized this, ask the followers of [earlier] revelation, and they will tell you..."<sup>29</sup> Similarly, God declares:

And if any matter pertaining to peace or war comes within their ken, they spread it abroad – whereas, if they would but refer it unto the Apostle and unto those from among the believers who have been entrusted with authority, such of them as are engaged in obtaining intelligence would indeed know [what to do with] it.<sup>30</sup>

What these verses make clear is that there are issues and cases in which the authorities to which one should turn to for counsel and advice are those with the relevant specializations, knowledge and experience.

At the same time, it should be remembered that the considerations that frequently require consultation to be confined to particular groups

of people do not negate the fundamental principle enunciated above, namely, that as a rule, consultation is intended to involve any and all members of the Muslim community. What this means is that in varying degrees and forms and to the extent that it is feasible, beneficial and appropriate, consultation should encompass the broadest possible spectrum of individuals and groups.

Broad-spectrum consultation may take forms such as those it took in the days of the Prophet, who, when he was addressing a large group, might say, "Advise me, people..." The rightly guided caliphs are known to have taken a similar approach. It might also take forms that are more comprehensive and organized such as what we find today in public elections, general public consultations, and referendums, be they binding or non-binding. Inclusive public consultations can also be conducted on the level of defined groups of people who share a particular concern or issue in common. These might include the residents of a village or neighborhood, worshippers that attend a particular mosque, practitioners of a trade, workers in a factory or company, or students in this or that university. All of these, if they have problems and issues that bring them together, are entitled to resort to consultation among themselves, and they all have the right to be consulted concerning the best way or ways of dealing with the issues or problems that concern them. When this takes place, the consultation may involve all of them or the greatest possible number of them depending on what is most practical and feasible.

[SECTION II]

MEMBERS OF CONSULTATIVE COUNCILS:  
CONDITIONS FOR MEMBERSHIP AND THE MEANS BY  
WHICH MEMBERS ARE CHOSEN

*The Characteristics of Those Who Should be Involved in Consultation*

Individuals whose counsel is sought out by public officials, and who may be appointed by name, should be qualified for this role by virtue of certain qualities they exhibit and certain conditions they fulfill. The most likely thing to come to mind for the Muslim in this connection is

the consultative council (*majlis al-shura*), which operates alongside the head of state and his government. Known in traditional Islamic parlance as *ahl al-hall wa al-'aqd*, or, "those who release and bind," this type of council includes all higher consultative bodies that need senior consultants.

Although such councils may go by different names and enjoy different types of powers depending on location and other factors, they have now become permanent, major institutions in most nations of the world as well as in the majority of Islamic states. Alongside such general councils, a state also requires other, more specialized, consultative councils and institutions. Such specialized bodies operate within a narrower sphere, as a result of which they may convene more speedily and be quicker to reach resolution of the issues brought before them.

Who, then, are these "senior advisors" who are entitled to be on such councils? What qualities must they demonstrate, and what conditions must they fulfill? Such questions can only be answered through a process of investigation, assessment, and a precise definition of criteria based on the particular case involved, the circumstances, the type of council, and the specific powers with which it has been invested. However, there may also be general criteria and conditions that have to be met by those who undertake the investigative, consultative process by means of which public issues are decided on behalf of the Muslim community and society.

In keeping with Muslim jurists' penchant for exactitude, thoroughness and subdivisions, Abu 'Abd Allah ibn al-Azraq insisted that an advisor must fulfill the following twelve conditions: (1) a fully functioning mind combined with long experience, intelligence and perspicacity, (2) piety, (3) such goodwill toward the person seeking his counsel that he will be keen to offer the best possible advice, (4) a clear, calm mind, (5) a lack of bias with respect to the subject concerning which he is being consulted, (6) a combination of knowledge and practical experience in connection with the subject about which he is being consulted, (7) equality with the person seeking his counsel on the level of social class and status, (8) the ability to keep confidences, (9) freedom from envy, (10) freedom from the fear that providing the required counsel would bring harm to him or someone dear to him,

(I1) the readiness to inform the person seeking his advice – in the event that he has failed to provide the counsel required – of the reasons for this failure, and (I2) a personality that is neither excessively jovial nor melancholic.<sup>31</sup>

Although this bent for thoroughness and detail is helpful in that it brings to our attention every consideration that could possibly be relevant to the question under discussion, it can also lead to a kind of pretentiousness, perfectionism and redundancy, which is what we find in some of the conditions listed by Ibn al-Azraq. For example, he stipulates that the person being consulted must be equal in social class and status to the person who has sought his advice. However, this condition is entirely unfounded. For evidence of this, we have only to look to the example of the Prophet, who sought the advice of his Companions, including both those in his inner circle and those outside it. Were the Companions whose advice was sought on the same level as the person seeking their advice? Of course they were not. Indeed, they themselves did not all enjoy the same social status.

For the person whose advice is being sought to enjoy a lesser status than the person who is seeking the advice presents no difficulty. On the contrary, the person of lesser status may possess greater knowledge, experience, and understanding in some areas than a person of higher status. As the ancients used to say, “There are things in a well that one can’t find in a river, and there are things in a river that one can’t find in the sea.” Consequently, we find that Solomon, noble prophet and great king that he was, had no objection to listening to a little hoopoe bird that said to him, “I have encompassed [with my knowledge] something that thou hast never yet encompassed [with thine] – for I have come to thee from Sheba with a tidingsure!”<sup>32</sup>

As for the stipulation that the person whose counsel is sought must be free from envy, this may be viewed as part of the fifth condition, namely, “a lack of bias with respect to the subject concerning which he is being consulted.” The same may be said of the tenth condition, namely, “freedom from the fear that providing the required counsel would bring harm to him or someone dear to him,” which need not be listed separately since it, too, may be subsumed under the fifth condition.

Consequently, the twelve conditions listed by Ibn al-Azraq may be summed up in three comprehensive criteria, namely, knowledge, integrity, and experience. Knowledge encompasses, first, understanding of the Islamic religion as the authoritative framework for a Muslim's thoughts, plans, opinions, assessments, and choices. Similarly, knowledge encompasses one's overall store of information. The more knowledgeable an advisor or consultant happens to be and the broader his or her horizons, the more he or she will be able to benefit and guide those who seek his or her counsel and those with whom he or she exchanges views and opinions in a consultative context.

According to an account quoted earlier, 'Ali ibn Abi Talib said, "O Messenger of God, what are we to do in situations concerning which nothing has been revealed in the Qur'an and in which we have no example from you to follow?" The Prophet replied, "Gather together believers who are knowledgeable (or he said, given to worship). Then consult among yourselves concerning the situation, and do not base your conclusions on the opinion of just one person."<sup>33</sup> Similarly we find in an account recorded by al-Bukhari that "'Umar's advisors were reciters – that is, scholars – be they middle-aged or young."<sup>34</sup>

As for integrity, it includes everything mentioned by Ibn al-Azraq concerning piety, keenness to offer the best possible advice, freedom from bias, envy or fear for the interests of those near and dear to the advisor, and the ability to keep a confidence. If a person lacks integrity, he is liable to harm others with his knowledge more than he helps them; indeed, he may confuse and mislead others while claiming to offer wise counsel and assistance. Such was the advice offered by Satan to Adam and his wife:

Thereupon Satan whispered unto the two with a view to making them conscious of their nakedness, of which [hitherto] they had been unaware. And he said, "Your Sustainer has but forbidden you this tree lest you two become [as] angels, or lest you live forever."

And he swore unto them, "Verily, I am of those who wish you well indeed!" – and thus he led them on with deluding thoughts.

But as soon as the two had tasted [the fruit of] the tree, they became conscious of their nakedness; and they began to cover themselves with

pieced-together leaves from the garden. And their Sustainer called unto them, “Did I not forbid that tree unto you and tell you, ‘Verily, Satan is your open foe?’”<sup>35</sup>

And in a hadith narrated by al-Tirmidhi, Abu Dawud and Ibn Majah, the Messenger of God said, “Those who are called upon to offer counsel are entrusted with other people’s confidence.”<sup>36</sup>

Coming now to the criterion of experience, what I mean by this is functional knowledge based on practice: knowledge of reality, including events and facts, people and their circumstances, problems and their solutions, illnesses and their cures. This criterion thus comes close to Ibn al-Azraq’s first condition, namely, “a fully functioning mind combined with long experience, intelligence and perspicacity.” After all, consultation concerns itself with reality and its various demands, issues and problems; this being the case, it is not merely an intellectual discussion or an academic investigation. Consequently, theoretical knowledge alone is not sufficient; rather, such knowledge needs to be brought down to the level of a sound understanding of real life situations. In sum, then, an advisor – particularly when he is being sought out for advice as an individual – needs to combine theoretical knowledge with practical experience.

However, given the fact that the first and third criteria (knowledge and experience) are interrelated and complementary, there is no reason why a consultative council might not include both knowledgeable individuals who are somewhat lacking in experience, and experienced individuals who lack knowledge in some areas. It is with this understanding that reformist thinker Khayr al-Din al-Tunisi notes the need for scholars and politicians to associate and work together so that in this way, each group can make up for what the other lacks. Otherwise, he asserts, there is bound to be a lack of balance in one direction or another. He writes:

Once you understand what we are affirming, you will realize that one of the most important duties in the realm of Islamic law is for scholars to associate with politicians in order to support one another toward the fulfillment of the aforementioned aim (that is, achieving the best interests of the nation)... This may be seen in the fact that just as the administration

of Islamic legal rulings depends on knowledge of the relevant texts, so also does it depend on a knowledge of the circumstances which are taken into consideration in the application of such texts. But if the scholar chooses to isolate himself from those involved in politics, he thereby shuts himself off from a proper understanding of the aforementioned circumstances.<sup>37</sup>

These three qualities – knowledge, integrity and experience – are the basic conditions that should be met by those who engage in the consultative process as it pertains to public affairs, be they spiritual or material. These qualities are brought together by Imam al-Bukhari in his statement, “After the Prophet’s departure, the imams<sup>38</sup> would take counsel with faithful scholars.”<sup>39</sup> It should be remembered here that “scholars” (*ahl al-‘ilm*) at that time were also individuals with practical experience. These qualities are likewise included in the following statement by Ibn Jama‘ah: “The sultan [the ruler] should take counsel with scholars who are active in the world and who offer advice and counsel for the sake of God, His Messenger, and the believers.”<sup>40</sup>

*Methods of Choosing Those Who Will be Engaged in Consultation:  
Appointment and Election*

The two primary methods of choosing the members of consultative councils are appointment and election.<sup>41</sup> In the first case, the ruler – or someone else who occupies a position of leadership or public authority – chooses particular individuals and names them advisors or members of a consultative council. In the second case, the general public, or a part thereof, undertakes to elect the needed advisors, and all that is required of the president is to accept them and relate to them in their capacity as advisors. Each of these two methods may yield a number of different patterns and styles that differ in their details. In some situations, for example, the two methods may be combined, in which case a number of the advisors are chosen by the first method while the remainder are chosen by the second, thereby making it possible to benefit from the advantages each method has to offer.

The method of republican or general election, in which the general public is responsible for electing and choosing, allows for the participation of the public at large in comparing among and choosing

candidates for advisory posts. The advisors chosen by this method thereby become representatives or proxies on behalf of the people as a whole, from whom they come and by whom they have been chosen. In this capacity, they are to promote their constituents' interests and express the sum total of their views. If such an election is free and fair, its results will be more objective and balanced than that of appointment, and less prone to being influenced by favoritism and subjective personal considerations.

As for the appointment method, it has the advantage of allowing for the choice of competent, qualified individuals who are not known to or appreciated by the public at large. The election method may, for a variety of reasons, result in the choice of some less worthy individuals at the expense of those who may have been better or more qualified. However, the appointment method may, in whole or in part, develop into a form of personal control which assigns advisors on demand. In such a situation, the advisors enjoy no real autonomy and the standards of competence on the basis of which they are to be chosen are undermined or may even cease to exist. In sum, although each of these two methods has both advantages and disadvantages, the public election method is undoubtedly safer and more effective. For this reason, I propose that this method be given priority, together with the possibility of adopting the appointment method in a secondary, limited fashion.

The validity and priority of the election method are confirmed by the fact that it was the method most frequently relied upon by the Prophet and the rightly guided caliphs. During that exemplary phase of history, leaders, notables, advisors and overseers emerged naturally from their communities, clans, cities and villages as individuals who enjoyed people's spontaneous, freely given appreciation and respect. Consequently, it was the community at large that demonstrated their approval of them and elected them. The Prophet related to such leaders, notables and chiefs as people who had been chosen by their communities and who had taken their positions of prominence by virtue of the popular acclaim, confidence and appreciation they already enjoyed.

In the second <sup>6</sup>Aqabah Pledge of Allegiance, the Prophet said to the men of the Aws and Khazraj tribes, "Bring me twelve chiefs from

amongst yourselves who are leaders of their communities, nine from the Khazraj tribe, and three from the Aws tribe.” Similarly, when, at the time of the Battle of Hunayn, the Prophet wished to show kindness to the Hawazin tribe by restoring to them the captives who had been taken from among them during the battle, he summoned those of his Companions who had taken part in the fighting and presented the matter to them, saying:

“Your brethren (meaning, the Hawazin) have approached me in repentance. Consequently, I would like to restore their captives to them. Hence, those of you who wish to approve of this course of action, let them do so, and those of you who wish to retain the captives in their possession, let them do so, and we will give them to them out of the first spoils God grants us.” In response the people said, “We approve of [what you wish to do], O Messenger of God.” The Messenger of God then replied, “We do not know which of you have granted their permission [for me to do this], and which of you have not. Therefore, return [home] until your leaders (*‘urafa’ukum*) tell us what you have decided.” Hence, the people retreated [for a consultation] and their leaders (*‘urafa’uhum*) spoke with them. Then they returned to the Messenger of God and informed him that they had approved his plan of action and granted him permission to carry it out.<sup>42</sup>

In *Fath al-Bari*, al-Hafiz ibn Hajar states that the term *al-‘urafa’* (singular, *‘arif*), rendered in the passage above as “leaders,” refers to “individuals who oversee a group of people.” They are termed *‘urafa’* (derived from the verb *‘arafa*, meaning “to know”) due to the fact that they are familiar with such people’s affairs and, when necessary, can explain their circumstances and points of view to those above them.<sup>43</sup> As for the term *naqib* (plural, *nuqaba’*), translated above as “chief,” it refers to the head of a tribe. Such a person directs the tribe’s affairs and investigates thoroughly what would be in their best interest.<sup>44</sup> What concerns us here is the fact that such chiefs and leaders came to occupy these positions as a result of a kind of spontaneous social election process which was, in turn, a reflection of their respected status and worthiness, and of people’s approval of and confidence in them. Consequently, no one had sent them in from outside or imposed them

on the people; rather, they themselves had emerged from within their communities.

The practice of the rightly guided caliphs was modeled on that of the Prophet. If they wished to seek others' counsel concerning a spiritual or mundane matter, they would gather leading figures in the community in order to discuss it. We are told by al-Baghawi on the authority of Maymun ibn Muhran and Abu 'Ubayd in "the Book of Judicial Practice" (*kitab al-qada'*) that if a case was brought before Abu Bakr and he found no precedent for it in the Qur'an or the Sunnah:

he would gather together the finest, most prominent figures from among the people and consult with them. If they agreed unanimously on a verdict, he would base his own judgment thereon. 'Umar, may God be pleased with him, used to do likewise. If he found no basis for a ruling in the Qur'an or the Sunnah, he would look to see whether Abu Bakr had ruled on a similar case. If so, he would base his own ruling on that of Abu Bakr. Otherwise, he would summon the leaders of the Muslim community and consult with them, and if they agreed on a ruling, he would rely on this as the basis for his own verdict.<sup>45</sup>

In a similar vein, we are told by the author of *Nizam al-Hukumah al-Nabawiyyah* ("The Prophetic System of Government") that when, after the Prophet's death, the members of his family were preparing to wash his body for burial, some of the Supporters came to the door and called out, saying, "We are his maternal uncles! Let some of us be present for the washing!" In reply, they were told to agree on one man from among them who would come in and be present for the washing. Hence, after consulting among themselves, they chose Aws ibn Khawli, who attended the washing and burial of the Messenger of God's body along with his family.<sup>46</sup>

Nevertheless, such public or general election of leaders, be it spontaneous or organized as it is in the case of modern-day elections, does not necessarily involve all members of the society. Rather, the process may take place on a smaller, more private scale, as when scholars, jurists or specialists in this or that academic or professional field elect someone from among them. All such instances fall under the rubric of what I am terming "republican" or "general" election, in which the majority of

the members of a society, or of a group within the society, choose the leaders and officials who will be authorized to act as their advisors and to make decisions in connection with their affairs.

At the same time, adoption of election as the method of choice need not prevent us from employing the appointment method in a supplementary capacity. This latter method may thus be employed within limits in keeping with the benefits it helps to achieve, yet without its leading to authoritarianism and excessive personal control. In fact, there are situations – such as those requiring the choice of highly specialized advisors or members of specialized advisory boards or committees concerned with national security, the military, the economy and the like – in which appointment may be the soundest, most ideal approach.

[SECTION III]

THE BINDING NATURE OF CONSULTATION AND THE ISSUE  
OF THE MAJORITY

*The Outcomes of Consultation: Are They Binding, or Merely Instructive?*

There has been widespread discussion in our day of the question of whether the outcome of the consultative process is binding or merely instructive. The question here is whether, when the ruler, leader, director or anyone else in authority consults with his advisors, their counsel and opinions are binding for him such that he is obliged to act on their advice, or whether he should view them as merely a source of insightful feedback. In the latter case, his role is simply to ask them for clarification of issues and be enlightened by their points of view, after which he makes whatever decision he himself views as best regardless of whether or not it is in agreement with their views.

The writings of the majority of early Muslim scholars – including jurists, Qur'an commentators and others – indicate that when a ruler or leader consults with his advisors, he is expected to derive from their discussion what he believes to be correct and to enjoy the greatest support, that is, what he considers to be the truth or what most nearly approaches the truth. In the end, however, the authority on which he

relies is his own opinion and assessment. This is what is meant by instructive consultation. However, more and more contemporary scholars and thinkers tend toward the view that a leader or someone in a position of power or authority who seeks out the counsel of advisors is obliged to abide by what most or all of these advisors have agreed upon. This is what is known as binding consultation.

Still others have detailed and compared a variety of situations, in some of which they view consultation as binding, and in others of which they view it as merely instructive. One such thinker is Qahtan al-Duri, who asserts that if there is a disagreement between an imam (that is, a leader endowed with spiritual authority) and his advisors over a question that admits of differing interpretations – that is to say, a question concerning which there is no explicit text in the Qur'an or the Sunnah – then

...the imam alone is entitled to make a final decision if he is qualified to engage in independent reasoning (ijtihad). This is the case whether he agrees or disagrees with the majority of his advisors. Therefore, the right to pass, amend and annul laws relating to matters about which there is no explicit text in the Qur'an or the Sunnah is the prerogative of the imam who is qualified to engage in ijtihad. If, on the other hand, the imam is not qualified to engage in ijtihad; if he is qualified to do so but has no opinion; or if, after authorizing the consultative counsel to decide a matter, the members of the counsel are of differing opinions, then he should abide by the majority view.<sup>47</sup>

When early Muslim scholars, including Qur'an commentators and jurists, discussed the evidence in support of viewing consultation as binding or instructive, they only did so insofar as it pertained to the consultative practice of the Prophet. In this connection, some of them remark that the Prophet had no need to consult others to begin with; how, then, could he possibly have been obliged to adopt others' points of view? However, if we trace the issue back further than these early thinkers by examining the biography of the Prophet and the examples set by his Companions and the rightly guided caliphs, we find that there was a clear tendency to adhere to whatever had been agreed upon by most or all of those whose counsel had been solicited.

The question of whether the results of consultation are binding is closely related to the question of whether the majority view must be adhered to. Hence, I will be presenting the evidence relevant to both questions in the course of my discussion of the majority. At present, however, I will limit myself to the citation of certain traditions that point to the fundamental inclination to adhere to the point of view agreed upon by the majority of those who have been consulted. According to one such tradition, cited above, ‘Ali ibn Abi Talib asked the Prophet what he and the other Companions should do in situations concerning which nothing had been revealed in the Qur’an and in which they had no example from the Prophet to follow. In reply, the Prophet said, “...consult among yourselves concerning the situation, and do not base your conclusions on the opinion of just one person.”<sup>48</sup> It is clear from this hadith that there was a trend toward acting on the view supported by the group who had been consulted, not that of a single individual. After all, the Prophet did not say, “Consult among yourselves about the matter, then let your leader decide on it.” On the contrary, he forbade dependence on just one person’s opinion.

The same implication can be derived from the tradition according to which the Messenger of God said to Abu Bakr and ‘Umar, “If the two of you were to agree on a given matter, I would not challenge any counsel you might give me.”<sup>49</sup> If the person who made this statement was the Messenger of God himself, and if he was saying this to two of his disciples and followers, then what are we to say of someone who takes counsel with a group of people who are mostly likely to be his equals, and from the same social class? In *al-Marasil*, Abu Dawud narrates an account on the authority of ‘Abd Allah ibn ‘Abd al-Rahman ibn Abi Husayn in which a man said, “O Messenger of God, what is prudence?” The Messenger of God replied, “It is to take counsel with someone else, then act on his or her advice.”<sup>50</sup> If, then, this is what is required – or at the very least, fitting – for someone who consults with a single individual who has an opinion to share, then it is even more vital a duty for someone who consults the most qualified scholars of the Muslim community. This conclusion is supported, as we have seen, by the practice of the rightly guided caliphs, particularly Abu Bakr and ‘Umar. As Abu Bakr once said to ‘Amru ibn al-‘As when Khalid ibn

al-Walid sent word to him for instructions: "Consult with them, and do not oppose what they tell you."<sup>51</sup>

It is related that when 'Umar ibn 'Abd al-'Aziz, one of the rightly guided caliphs, took over the governorship of Madinah, he summoned ten of its jurists and said to them, "I have called upon you with regard to something for which you will be rewarded by God, and in which you will be supporters of truth and justice. I do not want to decide any matter without your agreement, or the agreement of someone who is present on your behalf."<sup>52</sup>

As noted earlier, Qahtan al-Duri proposes the view that if an imam is qualified to serve as a *mujtahid*, he is entitled to act on his own interpretation and point of view even if it is at variance with that of his consultative council, and that he has the prerogative to legislate on matters concerning which there is no explicit text in the Qur'an or the Sunnah. Al-Duri may have based his view on a principle enunciated by *usuliyyun*, that is, scholars of the principles of jurisprudence, namely, that a *mujtahid* should not imitate other *mujtahids*, but, rather, should adopt whatever view he has arrived at based on his own reasoning. This principle applies to purely academic interpretations which scholars may be called upon to formulate within their respective specializations and which are not binding on the community at large. In keeping with this principle, every individual who holds an opinion at which he has arrived based on his own investigation and interpretation has the right to adopt this point of view for himself or to communicate it to others as a legal opinion. Similarly, he has the right to defend and adhere to his point of view; and once he has done so, others are free either to accept it or reject it.

What concerns us in this discussion, however, is those points of view which will become legislation that is binding for the community as a whole. Such viewpoints pertain to the management of people's public affairs and interests; moreover, like legislation, they come to have binding force by virtue of the authority wielded by the community's rulers. This latter context thus goes beyond the issue of whether a *mujtahid* does or does not imitate other *mujtahids*. If we seek to apply this principle here, we might say that the imam who is qualified as a *mujtahid* is entitled to cling to his own point of view even if it conflicts

with that of those who have advised him, that he may believe in the rightness, or relative rightness, of his position, and that he has the right to expound it to others and to offer arguments in its defense. In so doing, he will be imitating no one else, be it an individual or a group. However, opinions which are adopted with a view to becoming laws that are binding for the nation or groups within it are, practically speaking, another matter, and it is with these opinions that we are concerned in the present discussion.

### *The Question of the Majority*

The principle of the majority states, in essence, that the outcome of consultation should be viewed as binding. In other words, if the outcome of consultation is viewed as binding, this implies the necessity of adhering to the opinion agreed upon by the majority of those consulted. When there is consultation concerning this or that matter, we are generally faced with one of two situations: Either those involved in the consultation agree unanimously on a single point of view – a situation that presents no difficulty – or they hold two or more differing views.<sup>53</sup> Any point of view which is supported by more than half of those consulted is the majority view. Conversely, any point of view supported by fewer than half of those consulted is the minority view. Moreover, even in the unlikely event that all those consulted agree on a single point of view which conflicts with that of their leader (governor, ruler, chairman, etc.), we still have a majority view and a minority view.

Therefore, the situation encountered in a consultative setting will be either unanimous agreement or a divided vote, in which case we have one view represented by the majority and another represented by the minority. The latter situation, which is by far the most common, is a matter of controversy, and it is this situation that concerns us here. The position I am advocating is that the majority view should be adopted and adhered to by consultative councils and bodies with decision-making powers. Moreover, given the fact that this issue, with its dual dimensions – the binding nature of consultation, and the binding nature of the majority view – is the primary determinant of the course taken by consultative proceedings, it will be necessary in what

follows to make a thorough presentation of the evidence of relevance to the question.

*I – Looking to the Qur’an*

The Qur’an contains no explicit ruling on whether the majority view must be adhered to in consultative settings; indeed, it contains no mention of it. Nevertheless, some contemporary scholars have attempted to refute the claim that the majority view is binding in consultative situations based on Qur’anic condemnations of what appears to refer to large, or larger, numbers of people. One scholar who represents this view is Hasan Huwaydi, who speaks thus of his objection to the principle of the majority:

Generally speaking, verses from the Book of God condemn the majority and praise the minority. We read there, for example: “Now if thou pay heed unto the majority of those who live on earth, they will but lead thee astray from the path of God” (6:116), “Yet – however strongly thou mayest desire it – most people will not believe [in this revelation]” (12:103), “And most certainly have We destined for hell many of the invisible beings and men...” (7:179), “and the truth do most of them detest” (23:70), “Say: ‘There is no comparison between the bad things and the good things, even though very many of the bad things may please thee greatly’” (5:100), “few are the truly grateful [even] among My servants” (34:13), and “how few are they [who believe in God and do righteous deeds]” (38:24). When believers are compared to those who deny the truth or even to one another, the best of people are found to be a minority. Hence, what can be said in the majority’s favor, despite its great numbers, as compared to the minority with its superiority and greater virtue?<sup>54</sup>

Another representative of this viewpoint is Ahmad Rahmani, who has written a sizeable book entitled, *al-Haqiqah al-Jawhariyyah fi Mushkilat al-Akthariyyah wa al-Aqalliyyah: Dirasah fi al-Tafsir al-Mawdu‘i* (“The Essential Truth About the Problem of the Majority and the Minority: A Study in Objective Interpretation”). So keen is the author to support the minority and discredit the majority that he has fallen prey to error, over-generalization and over-simplification, and this

despite his acknowledgment of certain exceptions to his overall thesis. He sums up his conclusions in the words:

The foregoing thorough investigation points to a fundamental conclusion, namely, that throughout human history, the majority (“the popular masses”) have stood on the negative side, while the enlightened minority – referred to in Islamic parlance as “the majority of scholars” and those who adhere to their views – have stood on the positive side.<sup>55</sup>

The author goes on to assert that even “in Islamic states themselves, one notes opposition to those who advocate an Islamic point of view, with large numbers of people opposing God and His Messenger and spreading corruption and wickedness on earth. However, the majority is always on the negative side while the minority alone is on the positive side due to the fact that the secret of human perfection and integrity lies in the perfection of human power: the power of vision and understanding and the capacity for acquired knowledge and action.”<sup>56</sup> The author concludes his book with the question, “Is it not high time that we thought seriously and came to our senses by placing leadership in the hands of the righteous minority, represented by ‘the majority of the scholars’ and other upright individuals who live in accordance with their wisdom?”<sup>57</sup>

I, for one, do not see what point there is in calling people to come to their senses and turn leadership over to “the righteous minority” so long as the majority to whom such a call is addressed always stands “on the negative side” because it lacks “the power of vision and understanding and the capacity for acquired knowledge and action.” Be that as it may, the primary error into which the proponents of this notion of “the blameworthy majority” in the Qur’an have fallen consists of their failure to take account of the context in which such blame occurs. For the verses that condemn “most people” or “most of them” tend to refer to polytheists, those who are bent on denying the truth, the arrogant, the hypocrites, and those who received earlier revelation (Christians and Jews). Moreover, the basis for the condemnation is their conceit and their refusal to believe in unseen realities, as a result of which they ridicule the notion of the afterlife and the values and actions with which belief in the afterlife is associated.

All these things – that is, belief in the afterlife and the values and actions to which it leads – have their source in divine revelation and the certainty it makes possible. Moreover, everyone who fails to recognize revelation as the source of guidance for his or her life – whether he belongs to the general public, that is, to the majority, or to the self-assured, academic elite – is headed down the wrong path. Qur’anic condemnation is addressed to the general public (the majority) no more frequently than it is addressed to the elite (the minority), be it a ruling elite, or a scholarly elite. Similarly, the general public, or majority, is no more subject to error and waywardness than is the elite, or minority.

It should be remembered that some of the most misled, and misleading, figures in history have been prominent, highly intelligent thinkers and philosophers. The question then arises: Have such individuals belonged to the majority, or to the minority? Or have they represented the majority of the minority, or the minority that leads the majority? Although the Qur’an singles out the majority, or some majorities, for criticism in certain places, there are numerous places in which it likewise criticizes “the elders” or “notables” of the community, describing them as being profoundly misled and deceptive. As such, the Qur’an portrays them as those who have most fiercely opposed the messages brought by the prophets and who, in so doing, have hindered their peoples from responding to these messages or even listening to them.

The Qur’an tells us that the notables of Noah’s people replied to his message, saying, “Verily, we see that thou art obviously lost in error!”<sup>58</sup> Elsewhere we read concerning the same community, “But the great ones among his people, who refused to acknowledge the truth, answered, ‘We do not see in thee anything but a mortal man like ourselves; and we do not see that any follow thee save those who are quite obviously the most abject among us. And we do not see that you could be in any way superior to us. On the contrary, we think that you are liars!’”<sup>59</sup> Similarly, we are told that in the days of the Prophet Muhammad, “their leaders launched forth [thus]: ‘Go ahead, and hold steadfastly unto your deities. This, behold, is the only thing to do.’”<sup>60</sup>

In fact, the same story has been repeated time and time again down

the ages as God's messengers and prophets have been met with hostile receptions on the part of their societies' ruling elites, who have done everything in their power to resist the prophets' messages and to prevent others from responding to them as well. Describing the days of the prophet Shu'ayb, the Qur'an tells us that the notables of his people, being full of arrogant pride, said to him:

"Most certainly, O Shu'ayb, we shall expel thee and thy fellow-believers from our land, unless you indeed return to our ways!" Said Shu'ayb, "Why, even though we abhor them?"....But the great ones among his people, who were bent on denying the truth, said [to his followers], "Indeed, if you follow Shu'ayb, you will, verily, be the losers!"<sup>61</sup>

Indeed, prophetic hadiths and other traditions also warn us against the corruption of Islamic society's ruling elite, namely, its scholars and political leaders, whose corruption can ruin the community just as their honor and integrity can reform and bless it.

The light of prophethood shines through in the words of 'Umar ibn al-Khattab, who once said, "Know that people will continue to conduct themselves uprightly so long as their religious leaders and guides continue to do so."<sup>62</sup> 'Umar's words contain an unspoken warning, since they imply that if the general populace strays from righteousness, they will do so as a result of the waywardness of their leaders and guides. These words of 'Umar echo similar words spoken by Abu Bakr al-Siddiq. We read in *Sahih al-Bukhari* that:

Abu Bakr once went in to see a woman from the tribe of Ahmas by the name of Zaynab. Having noticed that she said nothing, he asked, "Why does she not speak?" Others then told him that she had performed the pilgrimage to Makkah in silence. "Speak," he said to the woman. "This is not acceptable. Such conduct is a carryover from the days of ignorance." So the woman began to speak. "Who are you?" she asked. "One of the Emigrants," he replied. "Which of the Emigrants?" she inquired. "From the tribe of Quraysh," he told her. "From which Quraysh are you?" she persisted. "What a lot of questions you ask!" he exclaimed. "I am Abu Bakr." She asked him, "What will keep us on the righteous path on which God has placed us since the days of ignorance?" To this he replied, "You

will remain on this path so long as your spiritual-political leaders do so.”  
“And who are the spiritual-political leaders?” “Did your tribe not have chiefs and nobles who gave them instructions and whom they obeyed?”  
“Yes, they did,” she replied. “So also are spiritual-political leaders to their people.”<sup>63</sup>

Commenting on this account, al-Hafiz ibn Hajar states, “‘The righteous path’ is the religion of Islam and all that it leads to by way of justice, unity, the defense of those who have been wronged, and setting all things in order.” Commenting further on Abu Bakr’s use of the word, “your spiritual-political leaders” (*a’immatukum*), he writes, “Since people tend to adhere to the religion of their sovereigns, it follows that political leaders who stray from the right path will lead others astray with them.”<sup>64</sup>

There are some who have gone so far as to disparage large numbers of people, things, etc. in and of themselves. In support of this attitude they cite the Qur’anic verse which reads:

Say: “There is no comparison between the bad things and the good things, even though very many of the bad things may please thee greatly. Be, then, conscious of God, O you who are endowed with insight, so that you might attain to a happy state.”<sup>65</sup>

This verse, however, in no way disparages the notion of “manyness,” nor does it convey the notion that small numbers are preferable to large ones. What it does disparage is “the bad things” even if there happen to be many of them. At the same time, it affirms that a few of “the good things” are better than many of the bad. Hence, the contrast and comparison here are not between small numbers and large ones, but, rather, between good and bad. As for abundance in and of itself, it is desirable and praiseworthy. As such, it is a blessing which God bestows on His worshippers, saying, “Remember the time when you were few, and how He made you many. And behold what happened in the end to the spreaders of corruption!”<sup>66</sup> As for what truly merits condemnation, it is the act of involving Muslims in a comparison that has to do with bad and good and likening large numbers of them to a proliferation of evil despite the fact that by “evil” or “bad,” the

Qur'anic discourse is referring to polytheism, unbelief, hypocrisy, illicit gain, or that which is unclean and polluted!

Believing Muslims, both men and women, are for the most part good. Moreover, there can be no doubt that if there is a good entity, more of it is preferable to less of it, just as less of something bad is preferable to more of it. Hence, a quantitative or numerical increase in that which is good represents an increase in goodness. The same, moreover, applies to believing Muslims. How much more, then, must it apply to those among them who are qualified to be sought out for advice and counsel, including Muslim scholars and “those who release and bind”?

A subtle, rather ironic inference has been made by Ibn 'Arafah al-Tunisi, who relates that in the view of Ibn al-Munir al-Iskandari, the same verse cited earlier as evidence that the Qur'an disparages the majority – namely, “Say: ‘There is no comparison between the bad things and the good things, even though very many of the bad things may please thee greatly’”<sup>67</sup> – actually indicates confidence in large numbers (in other words, the majority) and favors them [over small numbers, or the minority].<sup>68</sup> Ibn Ashur quotes Ibn 'Arafah as saying in his commentary:

I once had a discussion with Ibn 'Abd al-Salam.<sup>69</sup> I said to him, “This verse indicates that greater weight should be given to testimony offered by a larger number of people. For they [scholars] have disagreed over whether, if two trustworthy individuals testify to this or that assertion while ten trustworthy individuals testify against it, the two trustworthy individuals' testimony should be adopted, or that of the ten trustworthy individuals. The most widespread view is that the testimony of two trustworthy individuals and that of ten trustworthy individuals have equal weight. Another recognized view, however, is that greater weight should be given to the testimony offered by the greater number. Moreover, God's words, ‘even though very many of the bad things may please thee greatly’ serve as evidence that larger numbers are to be given greater consideration, since they are only dropped from consideration in relation to that which is bad or evil.” Ibn 'Abd al-Salam did not agree with me whatsoever. However, I then found that Ibn al-Munir had mentioned it [this view] in particular.<sup>70</sup>

Evidence in favor of giving greater weight to what we might term the worthy majority is found in *Sahih Muslim*, the Book of Funerals (*kitab al-jana'iz*), where we read the following account passed down on the authority of Anas ibn Malik:

A funeral procession once passed by, and the deceased was praised for having been a good man. In response, the Prophet of God said, "It must be, it must be, it must be."

Then another funeral procession passed by, and the deceased was condemned for having been an evil man. In response, the Prophet of God said, "It must be, it must be, it must be."

Umar turned to the Prophet and said, "May my father and mother be your ransom! Why is it that, when one funeral procession passed by and the deceased was said to have been a good man, you said, 'It must be, it must be,' and when another funeral procession passed by and the deceased was said to have been an evil man, you also said, 'It must be, it must be'?"

The Messenger of God replied, "Whoever you<sup>71</sup> declare to have been good must merit Paradise, and whoever you declare to have been evil must merit the Hellfire. You are God's witnesses on earth, you are God's witnesses on earth, you are God's witnesses on earth."

According to Imam al-Nawawi, what this account means is that "when a Muslim dies and God inspires all, or most, people to speak well of him, this serves as evidence that he will be among the inhabitants of Paradise." If, then, the testimony of a majority, or large number, of believers may be relied on in determining who merits Paradise or Hellfire, how can it be described as unreliable in matters relating to mundane affairs and people's earthly interests, including the choice of those individuals best qualified to occupy positions of governmental authority and the like?

The verse cited frequently thus far, namely, Qur'an 42:38, which commends those "whose rule [in all matters of common concern] is consultation among themselves," suggests that in true consultation, the view adopted is a communal one, and the decisions made are shared in common rather than being made by a single individual. Hence, we may say that true consultation has taken place when authority is granted to all those involved, when the views of all are

taken into consideration, and when the matter under discussion is settled based on what most of them have to say. In other words, the decision being discussed is a matter of common concern from beginning to end, and may not be made by any one of them without the consent of the group as a whole.

Another passage of relevance here is the account quoted earlier of the Queen of Sheba's response to the message she had received from King Solomon:

[When the Queen had read Solomon's letter,] she said, "O nobles! A truly distinguished letter has been conveyed unto me. Behold, it is from Solomon, and it says, 'In the name of God, the Most Gracious, the Dispenser of Grace: [God says:] Exalt not yourselves against me, but come unto me in willing surrender!'" She added, "O you nobles! Give me your opinion on the problem with which I am now faced. I would never make a weighty decision unless you are present with me."

The key phrase here, in my opinion, is "I would never make a weighty decision unless you are present with me."

However, in order for the Queen's words to provide us with a solid basis for our argument, attention needs to be drawn to two points. The first point is made in a statement by Imam al-Shatibi – which, as far as I know, no one has ever taken issue with. He writes:

Some accounts and statements recorded in the Qur'an are preceded or followed (the latter being the most frequent) by a rebuttal of some kind. If such a rebuttal is found, it is clear that the account or statement is false or invalid. If, however, no such rebuttal is found, this points to the truth or validity of the account or statement. . . . The Qur'an has been referred to as a standard or criterion (*furqan*), a source of right guidance, a proof, and a clear explanation of all things. It is God's testimony to human beings concerning everything from the most general to the most specific. Consequently, it is impossible that any untrue or invalid statement should be found in the Qur'an without the Qur'an itself drawing attention to this fact.<sup>72</sup>

As for the Queen of Sheba's statement that she would never make a weighty decision without the consent of her noble advisors, we find nothing anywhere in the Qur'an that would counter it or nullify its validity. Similarly, what we find in the life and example of the Prophet testifies to the soundness of the Queen's words. Consequently, there is no basis for denying the validity of the principle enunciated and adhered to by this woman. On the contrary, God has included this account in the Qur'an in order for it to be recited to His servants through the ages and until the end of earthly time. Nor is there any basis for the accusatory tone evinced by Adnan al-Nahwi, who states, "The counsel which she sought was not a search for a way out or an inquiry into truth. It was nothing but an administrative style, a model of government, and a means of managing automatons or ruling the dead."<sup>73</sup>

For if the views expressed by this queen's advisors had been voiced out of fear, impotence or sycophancy on their part, or in response to authoritarianism and tyranny on her part, she would have had no need to say to them, "I would never make a weighty decision unless you are present with me." What this tells us, then, is that her words reflect the actual policy that was in effect among them. If her advisors had been nothing more than yes-men, or, in al-Nahwi's words, "automatons" or "the dead," there would have been no reason for her to state explicitly that she would make no important decisions without their approval; in fact, there would have been no reason for her to take counsel with them at all.

The second, even more important, point to which attention needs to be drawn is that the Queen of Sheba is held up in the Qur'an as an example of commendable conduct and good management whose life came to an auspicious end. As for her having originally been a polytheist, this is due to the fact that "she [was] descended of people who deny the truth."<sup>74</sup> However, no sooner had she heard the call to truth than she said, "O my Sustainer! I have been sinning against myself [by worshipping aught but Thee]. But now I have surrendered myself, with Solomon, unto the Sustainer of all the worlds!"<sup>75</sup> Hence, the Queen of Sheba may be likened to all those who have said, "O our Sustainer! Behold, we heard a voice call [us] unto faith, 'Believe in your Sustainer!' – and so we came to believe...."<sup>76</sup>

Everything the Qur'an relates in connection with the Queen of Sheba's words and actions from the time she received Solomon's letter indicates that she is being held up as an example of prudence and good management. In this respect, the Qur'an's treatment of the Queen of Sheba is similar to its treatment of *Dhu al-Qarnayn*, or the Two-Horned One.<sup>77</sup> A number of commentators have taken a lesson from this context and drawn others' attention to it. Commenting on the Queen of Sheba's consultation and exchange with her advisors, al-Qurtubi states:

She was courteous toward her people and took counsel with them about the matter before her. At the same time, she gave them to understand that this was her policy concerning every situation she might face by saying, "I would never make a weighty decision unless you are present with me." How much more so, then, would she need them to be present with her in the face of such a major crossroads? Her advisors then responded to her in a manner that brought her satisfaction by acknowledging, first of all, that they were possessed of "power and mighty prowess in war" while, at the same time, showing themselves ready to submit to whatever she thought best.

Al-Qurtubi then remarks, "It was an exchange that reflected the best possible attitude on everyone's part."<sup>78</sup>

The queen's words and actions testify to the fact that she was worthy of the authorization granted to her by her consultative council and that she was a woman of experience, understanding and wisdom. Consequently, when God relates her statement that "Verily, whenever kings enter a country, they corrupt it, and turn the noblest of its people into the most abject," He then affirms her pronouncement by saying, "And this is the way they [always] behave."<sup>79</sup> Commenting on this passage, Ibn 'Abbas states, "These words are uttered by God, Who, in so saying, informs Muhammad and his community of believers of [the truth of her words]."<sup>80</sup>

In support of this perspective we have the following statement by Islamic scholar Muhammad al-Amin al-Shanqiti:

Do you not see that when the Queen of Sheba, who, together with her

people, had been a worshipper of the sun, uttered words that were true, God affirmed her in them? Her being an idol-worshipper does not prevent [God from] affirming her in the truth she has uttered, namely, “Verily, whenever kings enter a country, they corrupt it, and turn the noblest of its people into the most abject.” On the contrary, God confirms her in her observation, saying, “And this is the way they [always] behave.”<sup>81</sup>

In sum, the queen’s statement, “I would never make a weighty decision unless you are present with me” is related in the Book of God without being preceded or followed by a word of condemnation or refutation. This fact, together with the context of support and approval in which the account concerning the Queen of Sheba is set, leads us to the conclusion that the determination she expresses not to make any significant decisions concerning her government without the knowledge and consent of her advisors – represented by their unanimous agreement, or the agreement of the majority – is an example to be emulated.

## *2 – Consideration shown for the majority during the life of the Prophet*

As in the case of the Qur’an, one finds no explicit statement in accounts of the Prophet’s life and example to indicate that we are, or are not, expected to adopt and adhere to the majority view in situations involving consultation. However, the well-attested accounts we possess of the ways in which the Prophet applied the principle of consultation provide powerful support for the notion that the consultative process ends with the adoption and application of the view held by the majority of those who have been consulted. The following examples are illustrative:

### *2.1 – The Battle of Badr*

When the Prophet learned that the Qurayshites were preparing to go to war against the Muslims, he took counsel with his Companions concerning how to respond to the situation. Abu Bakr, ‘Umar, and al-Miqdad ibn ‘Amr spoke up in support of the Prophet’s opinion that the Muslims should go out to meet the Qurayshites. However, these three men were all from among the Emigrants, whereas the Prophet also wanted to hear what the Supporters thought about the matter. Hence,

he kept on saying, "Advise me, people." Commenting on these words of the Prophet, Ibn Ishaq states, "In so saying, he was addressing the Supporters, because they represented the majority of his Companions."<sup>82</sup>

Hence, the Messenger of God did not wish to go into battle until he was certain that he had the support of the majority of his Companions, Emigrants and Supporters alike. However, the Supporters' support and willingness to go out was of greatest importance, since they made up the majority of the Prophet's Companions. Once he had heard explicit statements of support from their chiefs and leaders, he issued the command to set out, saying, "March forth and be of good cheer, for God, Exalted is He, has promised me victory over one of the two enemy parties. Indeed, at this very moment, I can see the places where our enemies will perish."<sup>83</sup> At the conclusion of the battle, the Muslims found themselves in possession of a number of captives from among the polytheists, and no revelation had been received concerning how to deal with the situation. Hence, the Prophet consulted with the Companions once more.

*Sahih Muslim* contains the following account related by 'Umar ibn al-Khattab, who stated:

Abu Bakr said, "O Prophet of God, these are our paternal cousins and members of our clan. Hence, I propose that you take a ransom from them [and, in return, release the captives]. This will give us greater power over the unbelievers, and perhaps God will lead them to Islam."

The Messenger of God replied, "What do you think, O son of al-Khattab?"

"No, O Messenger of God!" I said. "I do not agree with Abu Bakr. Rather, since we have now gained mastery over them, we should strike their necks... After all, these people are the chief inciters to unbelief."

However, the Messenger of God inclined toward Abu Bakr's view, not toward mine.

I returned the following day, and what should I find but the Messenger of God and Abu Bakr weeping.

"Tell me," I said, "what has made you and your companion weep? For if there is something to weep about, I will weep also. And if not, I will pretend to weep since you two are weeping!"

The Messenger of God replied, "I am weeping over your companions' suggestion to me that they should take ransom [for the captives]." Then, pointing to a tree near him, he added, "For I have been shown the torment to which they are subject as though it were closer to me than this tree."

It was then that God, Almighty and Exalted is He, revealed the words, "It does not behoove a Prophet to keep captives unless he has battled strenuously on earth. You may desire the fleeting gains of this world – but God desires [for you the good of] the life to come: and God is Almighty, Wise. Had it not been for a decree from God that had already gone forth, there would indeed have befallen you a tremendous chastisement on account of all [the captives] that you took. Enjoy, then, all that is lawful and good among the things which you have gained in war, and remain conscious of God: verily, God is Much-Forgiving, a Dispenser of grace."<sup>84</sup>

Although the beginning of the account suggests that the point of view adopted by the Messenger of God – namely, that they should take a ransom for the captives – had been suggested by Abu Bakr alone, its conclusion ("I am weeping over your companions' suggestion to me that they should take ransom [for the captives]") makes it clear that this was, in fact, the view proposed by most of the Companions.

Hence, in this situation the Messenger of God adopted the opinion supported by the majority of his Companions. Consequently, the resulting divine blame was directed at the group as a whole. This is the import of the words quoted above: "You (plural) may desire the fleeting gains of this world – but God desires [for you the good of] the life to come.... Had it not been for a decree from God that had already gone forth, there would indeed have befallen you (plural) a tremendous chastisement on account of all [the captives] that you took...." Commenting on this passage, Ibn Ashur states, "The words 'You may desire' are addressed to the group which had advised that ransom be taken for the captives. Hence, there is reason to believe that the Messenger of God was not being blamed, since he had simply adopted the majority view."<sup>85</sup> Moreover, it has been related that most of the Companions wished to take a ransom.<sup>86</sup>

However, God's reproach of the Companions was not due specifically to the course of action they had advocated. Rather, it was due to the motive that lay behind it, namely, the desire for worldly gain

(“You may desire the fleeting gains of this world...”). Hence, the only Companions to whom the reproach was addressed were those who had supported the idea of taking a ransom with this type of worldly intention.

### 2.2 – *The Battle of Uhud*

After the Qurayshites' defeat at the Battle of Badr, their leaders undertook a broad mobilization of forces and material support in order to avenge themselves on the Muslims and restore their reputation. In response, the Prophet took counsel with his Companions and presented them with his point of view, which was that they should remain in the city and repel Quraysh's attack from within. However, a large number of the Companions opposed this view, thinking it better to fight the Qurayshite army outside the city, since this would better demonstrate their valor and their zeal for their cause. In other words, they feared lest the Qurayshites, or anyone else for that matter, would think that their decision not to leave the city was a result of weakness and fear. Ibn al-ʿArabi relates:

Hamzah, Saʿd ibn ʿUbadah, al-Nuʿman ibn Malik ibn Thaʿlabah, and others from the Aws and Khazraj tribes said, “O Messenger of God, do you not fear that our enemy may think that we have refrained from coming out to meet them out of cowardice? For if they do think thus, it will strengthen their morale and cause them to be even more confident in their attack.” The Supporters spoke in a similar manner, as did some of the men from the tribe of Banu al-Ashhal. Abu Saʿd ibn Khaythamah spoke eloquently in the same vain, as did others as well.<sup>87</sup>

The Companions continued to insist on the idea of going out until, at last, the Prophet decided to abide by their wishes. When they had made ready to set out, however, some of the Companions feared that they might have forced their Prophet to come out against his will. Hence, they said to him, “We forced you into this, and we had no right to do so. So if you wish, remain in the city, O Messenger of God.” He replied, “Once a prophet has donned his coat of mail, he must not remove it until he has gone out to battle.” And with that, he went out at the head of one thousand of his Companions.<sup>88</sup>

This consultation and its aftermath have aroused a great deal of discussion in our time. The question is: Do they indicate that the outcome of consultation and the majority view should be viewed as binding, or do they indicate the very opposite? As a matter of fact, the consultation that took place in relation to the Battle of Uhud has been interpreted in both these ways on the basis of two disparate readings. According to the first reading – which we might term a literal (not literalist) reading – the Messenger of God relinquished his own point of view in favor of that held by the majority of his Companions. Things then proceeded on this basis without veto, abrogation or objection; in fact, it was immediately after this that the divine command to “take counsel with them in all matters of public concern”<sup>89</sup> was revealed. As for the second reading – which might be termed an interpretative reading – it indicates that adherence to the majority view when it is at odds with that of the imam is an incorrect and unsound course of action. According to the latter understanding of events, the defeat the Muslims suffered during this battle came as a lesson and “a moral to be heeded by other Muslims down the ages, lest they go against the point of view upon which their imam has insisted based on the illusion that the outcome of consultation – that is, the view of the majority – is binding.”<sup>90</sup>

The reason I have referred to this second reading as “interpretative” is that it disregards the clear, evident meaning of the event and relies instead upon assumptions which negate its apparent significance. Those who adopt this interpretative reading assume that the Messenger of God insisted on remaining in the city despite the fact that there is no evidence for such an “insistence” on his part. All the Prophet did was to express his opinion; then, when it became apparent that there were many who not only held the opposing view, but vigorously defended it, he proceeded to go along with this view and put it into action.

The second assumption upon which this interpretative reading is based is that the Muslims’ defeat at the Battle of Uhud resulted from their having gone out to fight outside the city in keeping with the approach that most of them had supported. Seen in this way, the defeat at Uhud was intended to teach them a lesson and to offer a warning to

those who would come after them. As a matter of fact, however, this assumption is mistaken. After all, it is a well-attested fact that the reason for the Muslims' defeat at Uhud had nothing to do with their having fought outside the city. Neither the Companions who took part in this battle, nor the Prophet – who never missed an opportunity to warn, teach and instruct – ever mentioned this as the reason for their defeat. Indeed, the Qur'an itself deals in detail with this battle and its implications, yet without so much as a single mention of this interpretation.

At the same time, the cause of the defeat – namely, the disobedience committed by the archers who had been instructed by the Prophet to remain on the mountain side – is mentioned explicitly in all the records of the Prophet's life, as well as in a number of hadith collections. The archers had been instructed not to come down from the mountain, regardless of how the battle was progressing, until they had received a command to do so. However, when they saw that the Muslim army had the upper hand in the first round, they thought the battle had been won and, lured by the prospect of copious spoils, disobeyed the Prophet's instructions and descended into the valley.

Now, this violation had nothing to do with the fact that they had left Madinah in order to fight the Qurayshites. On the contrary, it, or some other breach, could have taken place at any time and in any situation. Therefore, without resorting to arbitrary interpretations and assumptions, it may be said that the decision to leave Madinah led to a clear, swift victory. This is likewise mentioned in the books that record the events of the Prophet's life. Following this, however, the tide turned due to the serious error committed by the detachment of archers whose role in the battle was of such critical importance. For when they vacated their positions, the victory that had lain within their reach suddenly turned to defeat. These events are detailed in the relevant texts; hence, I need not repeat them here.

### *2.3 – The Battle of the Trench (also known as the Battle of the Confederates)*

In this battle, the polytheists, the Jews and the hypocrites formed an alliance against the Muslims in order to extirpate them once and for all. To this end, they laid siege to the city of Madinah for such a long time that the Muslims were hard pressed to see a way out of their dilemma.

God speaks to the Muslim fighters, saying:

[Remember what you felt] when they came upon you from above you and from below you, and when [your] eyes became dim and [your] hearts came up to [your] throats, and [when] most conflicting thoughts about God passed through your minds. For there and then were the believers tried, and shaken by a trial severe.<sup>91</sup>

In the face of this extremely difficult situation, the Prophet began thinking of a way to make a breach in the blockade. Then, resorting to the alliance's weakest, least committed link – namely, the tribe of Ghatafan – he bargained with them until they had reached an agreement whereby they would withdraw from the alliance against the Muslims in return for one-third of Madinah's date crop for that year. However, he made implementation of the agreement conditional on the approval of his Companions, particularly the leading men of Madinah (that is, the Supporters). After all, the fruits that would be paid to Ghatafan belonged to them. Therefore, the Prophet said that he would not implement the agreement until after he had consulted with “the Sa<sup>ʿ</sup>ds,” meaning Sa<sup>ʿ</sup>d ibn Mu<sup>ʿ</sup>adh, Sa<sup>ʿ</sup>d ibn ʿUbadah, Sa<sup>ʿ</sup>d ibn Mas<sup>ʿ</sup>ud, and Sa<sup>ʿ</sup>d ibn Khaythamah.<sup>92</sup> When these men learned of the agreement and what it entailed – and when, additionally, they realized that it was not a revelation from God nor even the Prophet's desire, but, rather, simply a means by which he hoped to alleviate their suffering and break the siege that had been imposed on them – they appointed as their spokesman Sa<sup>ʿ</sup>d ibn Mu<sup>ʿ</sup>adh, who said:

O Messenger of God, both we and they once associated partners with God and worshipped idols. We neither worshipped God truly nor did we know Him. [At that time], they would never have aspired to eat of our crops unless we had either sold them to them or given them to them as a gift of hospitality. Therefore, now that God has honored us by guiding us to Islam and made us strong through you and this religion, do you expect us to give them our wealth? Verily, we have no need for such an agreement! Verily, we will give them nothing but the sword until God judges between us.

The Prophet replied, saying, "It shall be as you have said." Thereupon Sa'd ibn Mu'adh took the document on which the terms of the agreement had been recorded and struck out what was written therein, saying, "Let them make war against us."<sup>93</sup>

In this situation we find that the Prophet thought and planned, and that of all people, he was the most disposed to seek out others' counsel. He devised a solution by means of which to mitigate the Muslims' sufferings, then negotiated a tentative agreement to this end with the leaders of Ghatafan. However, before finalizing the agreement and carrying it out, he laid it on the table for discussion among his Companions. Having done this, he ended up abandoning his original plan and adopting the outlook of his advisors, who represented the majority of the Muslim community in Madinah.

#### *The Prophet's Distinctive Rank*

Thus far we have discussed the many situations in which the Messenger of God sought out others' counsel. In so doing we have noted that he, of all people, was the most willing to take counsel with others, to bow to his Companions' points of view, and sometimes even to accede to a viewpoint expressed by one of them alone. However, it is important that we not lose sight of his status as God's Prophet, nor of his distinctive qualities and attributes. Indeed, we need to be reminded just as people better than we were once reminded, "And know that God's Apostle is among you. Were he to comply with your inclinations in each and every case, you would be bound to come to harm [as a community]."<sup>94</sup>

Hence, if we find that in many cases the Prophet did not rely on consultation but, rather, acted without waiting to hear other people's views, this is, in fact, what one would expect of someone who is the Messenger of God, and who has been granted protection against any act of disobedience to His commands. As God's Prophet, he had available to him something superior to consultation, namely, divine revelation. And just as he never spoke out of personal desire, neither were his actions or perceptions shaped by selfish motives. His actions were never inspired by concern for his personal interests or a drive to achieve his own ends, nor did he succumb to subjective inclinations

and moods. On the contrary, he thought and behaved with the utmost fairness and integrity.

In view of the foregoing, it may be said that whether the Prophet took counsel with his Companions or adopted a course of action against their wishes, he was fully within his rights, whereas such complete freedom was not the prerogative of those who came after him, including caliphs, scholars, and rulers. On the other hand, given the fact that he engaged in frequent consultation with others and waived his own point of view in favor of that supported by his Companions – assuming that he had received no divine revelation in connection with the situation at hand – it follows that other commanders and leaders are immeasurably more obliged than he was to take others' opinions into account. However, even though the Prophet sometimes refrained from taking others' counsel, although he was not obliged to engage in consultation to begin with, and, having engaged in consultation, was not bound by its results, this approach would not be justified for anyone else, since there has been no prophet since his time, nor anyone without a vulnerability to sin.

Considerations such as these serve to refute objections that might be raised based on certain cases – which are, in any event, quite limited in number – in which the Messenger of God proceeded with a course of action without taking anyone else's opinion into consideration. An example of such a situation is his conclusion of the Truce of Hudaibiyyah despite the fact that his Companions were adamantly opposed to it. What prompted the Prophet to conduct himself in this manner was the fact that he had received divine revelation showing him that this was the proper course to take. Evidence for this may be found in the following facts:

*Firstly:* As the Prophet was on his way to Makkah in the year 6 AH with the intention of making the pilgrimage, his she-camel suddenly kneeled on a trail overlooking Hudaibiyyah. Though others chided the animal, saying it was balking for no reason, the Prophet corrected them, saying, "Rather, she is being held back by God, just as Abraham's elephant once was."<sup>95</sup>

*Secondly:* 'Umar ibn al-Khattab, who was angered by the agreement since he saw its terms as demeaning to the Muslims, came to the

Prophet and said, "O Messenger of God, are you not truly God's Prophet?" "Yes, I am," he replied. "Are we not in the right while our enemy is in the wrong?" "That is correct," he replied. "Why, then, do we offer concessions where our religion is concerned? And how shall we retreat when God has yet to judge between us and our enemies?" In reply he said, "I am God's Messenger. He is the One who gives me succor and victory, and I would never disobey Him."<sup>96</sup>

These incidents make it clear that the Prophet was acting based on a command from God and that he was carrying out what had been revealed to him. This is why he sought no counsel from others concerning any aspect of the Treaty of Hudaibiyyah. Indeed, the Qur'an declares explicitly, "And He it is Who, in the valley of Makkah, stayed their hands from you, and your hands from them, after He had enabled you to vanquish them. And God saw indeed what you were doing."<sup>97</sup>

Some have claimed that "the Treaty [of Hudaibiyyah] was a military strategy which the Apostle did not wish to reveal lest it be leaked to the enemy, who may then have exploited it as a means to foil the Muslims' plan."<sup>98</sup> However, this assertion remains nothing but speculation. Besides, prophets do not enter into covenants and charters as military ruses which they conceal from their friends and foes alike. It is true, of course, that [as the Prophet himself once said,], "War is deception." However, there can be no deception in peace, reconciliation, covenants and pledges of safety. How much truer this principle must be, then, when things happen by divine inspiration.

### *3 – Consideration for the majority among Islamic scholars*

Some hold that the idea of consideration for the majority has been borrowed from the Western democratic system and that, consequently, it is foreign to Islamic thought and culture. I am not denying that Western democratic culture has had a significant role to play in the promotion of this idea in recent times. However, the idea of respect for the majority is neither new nor foreign to our Islamic culture and legal system. On the contrary, it is deeply rooted in Islamic society, thought and legal practice. The principle of giving greater weight to the majority has been supported and applied by Muslim scholars from the early days

of Islam in a number of different areas, albeit not in the realm of politics.

Hadith scholars, for example, give greater weight to accounts supported by a larger number of narrators. Similarly, jurists and scholars of the principles of jurisprudence give greater weight to juristic interpretations supported by a larger number of academics and thinkers. The majority likewise serves to tip the scales in relation to judicial interpretations and proofs. Mention was made earlier of some who give greater weight to the testimony of a larger number of witnesses than they do to the testimony of a smaller number provided that all the witnesses are equally reliable. In fact, the testimony given by a larger number of people even serves to tip the scales when a decision needs to be made concerning which scholar will be sought out for a legal opinion or other sorts of teaching or counsel. Judge Abu Bakr ibn al-ʿArabi states that:

If an ordinary individual is faced with a problematic situation, he should seek out the most knowledgeable person of his generation and country, then ask him about the situation he faces and adhere to whatever judgment this person issues. Moreover, in order to ascertain who is the most knowledgeable person of his time, he must use his own independent reasoning by searching for relevant information until he obtains such information and its validity is agreed upon by the majority of the people.<sup>99</sup>

If scholars disagree on an issue, the soundest approach is to adopt the view held by the majority. The same principle applies to the views held by the Companions. Abu Ishaq al-Shirazi states, “If one of two points of view was supported by the majority of the Companions while the other was supported by the minority, the point of view supported by the majority was given greater weight. This is based on the words of the Prophet, who said, ‘Follow [the view of] the majority.’”<sup>100</sup> Similarly, Ibn al-Qayyim states, “If all four (meaning, all four of the rightly guided caliphs) supported a given point of view, it was undoubtedly the correct one. If, on the other hand, most of them supported a given view, it was most likely to be the correct one.”<sup>101</sup>

Abu Ya'la writes:

It is related that 'Ali once said, "I was once consulted by 'Umar about slave women (literally, 'the mothers of sons'), and the two of us agreed that they should be set free. However, I later thought it best to keep them in slavery." 'Ubaydah (al-Salmani, a *tabi'i*) then said to him, "The opinion of two individuals who are judged to be reliable is of more value to us than that of just one."<sup>102</sup>

Concerning another, similar issue, he was told, "A matter concerning which you have consulted with the Commander of the Faithful, and in relation to which you have deferred to his view, is of more value to us than a view which you have arrived at alone." And he laughed.<sup>103</sup>

The fact that a view is held by the majority of scholars, the majority of those classified as *ahl al-hall wa al-'aqd* ("those who release and bind"), or even the majority of the general public on matters on which they are eligible to be consulted, is viewed as reliable practical evidence in its favor, though it is not necessarily definitive proof that the view in question is the correct one. Hence, adhering to the majority view ensures that we will be more likely to be right and less likely to be wrong, since, as Abu al-Husayn al-Basri states, "it is most likely that the correct view will be held by the majority."<sup>104</sup> And in the words of Shams al-Din al-Isfahani:

It is unlikely that the view held by the minority will be well attested, since the view held by a single person at odds with the majority will probably have less evidence in its favor. The words of the Prophet, "Follow [the view of] the majority" indicate that the view of the majority has more evidence in its favor, and if this is the case, then it ought to be adopted.<sup>105</sup>

Adoption of the principle according to which the majority view is the most likely to be correct and reliable does not preclude the possibility that the opposite may be the case, namely, that the majority is mistaken while the minority, or even a single individual, is in the right. However, such occurrences are rare, particularly in relation to practical issues. Moreover, rarities cannot serve as the basis for legal rulings according to the principles of Islamic jurisprudence. Rather, juristic

rulings and courses of conduct must be based on the majority of cases.

It should also be borne in mind that although the truth may lie with the minority or with a single person as over against the majority view, this remains for the most part nothing but a theoretical possibility. As such, it is a possibility that cannot be denied; by the same token, however, it cannot be counted on with certainty. In the event that a group of people are of differing opinions, be they a consultative council or some other group, we are faced with a majority view supported by its particular evidence and arguments, as well as a minority view or the view of a single individual, which is likewise supported by its own evidence and arguments.

If we say that the truth merits our support even if it is represented by a single individual, that the final authority is the evidence alone, and that the leader in this case must go wherever the evidence leads, then, in the words of Ibn Taymiyyah, “whichever opinion is in greatest harmony with the Book of God and the example of His Messenger should be adopted and acted upon.”<sup>106</sup> In principle, this is a reasonable statement. However, in order for it to be valid, it must be assumed that the issue under discussion is clear, or has become clear, and that it does not entail a variety of dimensions and alternatives. And conversely, it must be assumed that the opinion to be rejected is inconsistent with the Qur’an and the Sunnah and that those who propose it have no knowledge of either.

In some cases, people may see things in the same light, employing their faculties of understanding and observation.<sup>107</sup> However when each side proposes its own perspective supported by specific evidence and arguments, convinced that its position is the most in harmony with the Qur’an and the Sunnah and the most likely to preserve the best interests of Islam and Muslims in the situation at hand, then it is of no use for us to say: We will follow the truth wherever we find it, be it with the majority, the minority, or a single individual. For if the “truth” had been ascertained with sufficient clarity for us to know with whom it lies, there would no longer be a majority view and a minority view. This is the kind of situation that attained in the days of the Companions in relation to the question concerning whether genital contact between spouses requires them to perform total ablutions.<sup>108</sup>

According to Ibn Hazm, “God Almighty has not commanded us to defer to the majority. Moreover, untruth is a departure from the truth even if those who support it happen to be everyone on earth, and not a single person.”<sup>109</sup> However, this is nothing but a stubborn insistence on one’s own opinion and indulgence in fallacious logic. In this connection, great wisdom is to be found in the words of Imam al-Shatibi, who concluded his life as a writer with these measured, instructive words: “Although truth must be esteemed without regard for what people think or say, it is nevertheless through people that truth is known. It is through people that we arrive at a knowledge of the truth, and it is they who act as guides along the path that leads to it.”<sup>110</sup>

Those possessed of knowledge and experience, as well as the general public in relation to matters that are of relevance to their conditions and interests, are the guides along the path to rightness and truth, or, at the very least, to that which is righter and truer. Similarly, they are the guides along the path to perceiving what is required by the Qur’an and the Sunnah and the intents and purposes that underlie them. In other words, they are the standard by which to measure what is possible and what is not, what is acceptable and what is not.

Hence, the support of large numbers of people for this or that point of view consists of more than blind, deaf numbers, as it were. Rather, it means more insight, more evidence, and greater probability that such a point of view is the correct one. Basically speaking, rightness and truth can be assumed to rest – if not always, then most of the time – with the majority. The opposite situation may occur; however, it remains an exception or a possibility, nothing more. As al-Battal states in his commentary on the hadiths collected by al-Bukhari, “The principle of analogical reasoning was rejected by al-Nazzam and a number of the Mu‘tazilites, and they were emulated in this by juristic scholar Dawud ibn ‘Ali. However, it is the community that should be viewed as the competent authority, and those who depart from the community should not be heeded.”<sup>111</sup> The word “community” (*al-jama‘ah*) refers to the majority of the community of scholars.