

CHAPTER III

AN OVERVIEW OF ISLAMIC CONSULTATION FROM ITS FOUNDING ERA ONWARDS

Prefatory Remarks

CONSULTATION undoubtedly constituted an element of strength, vitality and cohesiveness in the early Islamic community and its fledgling state. Nor can there be any doubt that the Islamic reform and renewal movement derives ongoing inspiration from this model of refinement and wisdom as it searches for the most suitable means of combining faithful adherence to the original model with the ability to meet the specific challenges of the modern age.

Consequently, it is both natural and necessary for us to look simultaneously to Islamic law, which constitutes our authoritative point of reference, and to the concrete circumstances in which we live. It is essential that we link the former to the latter, striving for the proper fit between them. We do not want to remain in a state of ambivalence and confusion, saying, as Jurayj did, “Lord, my mother, or my prayer?”¹ Should we cling to our religion, that is, to our spiritual well-being, and sacrifice our material well-being? Should we give our material well-being priority over our spiritual well-being? Should we look to our present reality and forget our past and our traditions? Or should we immerse ourselves in our heritage and our past while refusing to open our eyes to the age in which we live and the requirements it makes of us?

Happily, we are not being called upon to make a choice between these mutually exclusive sets of alternatives. On the contrary, we have a duty to bring them together, harmonizing their requirements while

keeping each of them in its proper place. And this is what I strive to do in this chapter and the one that follows it.

[SECTION I]

THE EARLY ISLAMIC CONSULTATIVE EXPERIENCE AND THE
LESSONS IT OFFERS

The first verse of the Qur'an pertaining to consultation, namely, Qur'an 42:38, in which God speaks of those "whose rule [in all matters of common concern] is consultation among themselves," was revealed during the Makkan period not long before the emigration to Madinah. Consultation is mentioned here by way of description and commendation, not by way of command, which tell us that consultation was already an ongoing practice in the Muslim community. The Prophet may have established the practice of consultation before the revelation of Qur'an 42:38 and 3:159 ("take counsel with them in all matters of public concern"). Similarly, Muslims themselves may have established the practice based on an intuitive understanding of what was needed in their situation. Whichever the case may be, consultation may be viewed as a spontaneous, instinctive response on the part of mindful, sensible individuals which has been legitimized by Islamic law and instituted as a requirement of sound Islamic practice. Indeed, Islamic law has lent legitimacy to numerous intuitive human practices and principles which operate for the common good.

Quoting al-Tartushi, Ibn al-Azraq states that consultation "is viewed by learned men as one of the foundations of kingdoms and sultanates. Moreover, it is needed by ruler and ruled alike."² Commenting on this statement, Ibn al-Azraq goes on to say that "the same applies to Islamic law, down to the last letter."³ This perfect correspondence ("down to the last letter") between Islamic law and the wisdom manifested in the practice of consultation serves as evidence of the intuitive, spontaneous quality of consultation for everyone endowed with sound reason. Qahtan al-Duri presents evidence of the well-established roots of mutual consultation and communal planning among the Romans, the Greeks, the ancient Iraqis, the Sassanids, the Egyptians and the Assyrians.⁴ All of this, moreover, serves to

demonstrate the validity of the consultative, democratic impulse and of parliamentary representation and representative consultation among various peoples and groups, however disparate the forms they happen to adopt.

It was in response to this legitimate, instinctive impulse that the Messenger of God and his noble Companions entered into the first Islamic experiment in consultation. This experiment continued to be marked by a great deal of spontaneity, open-mindedness and trust, and by very little in the way of detailed regulations and organizational formalities. In fact, these same features marked their lives, relationships, dealings and legal decisions as a whole, and it was only in response to some overriding necessity that changes would be made in this overall pattern. A desert Arab who had heard of Muhammad, his prophetic message and his religion might come to ask about him. He would be told, "There he is, with his Companions." He would then approach the group without seeing anyone who looked any different from the rest or who appeared to be in a position of prominence. Perplexed, he would ask, "Which of you is Muhammad?"!

When the Persian monarch Hurmuzan came seeking permission to see the Caliph 'Umar ibn al-Khattab, he found no chamberlain or doorman. Instead he was told: "The caliph is in the mosque." Hence, he came to the mosque, where he found 'Umar lying down with his head resting on a pile of gravel and his whip in front of him. In response, Hurmuzan exclaimed, "O 'Umar, you have ruled justly. Therefore, you slumber in safety!"⁵

Many things changed after this, and 'Umar was succeeded in the caliphate by 'Uthman ibn 'Affan, who was among the Prophet's most wealthy and influential Companions. Nevertheless, even as caliph, 'Uthman carried on with this tradition of simplicity and its concomitant peace of mind. Al-Hasan al-Basri once said, "I saw 'Uthman ibn 'Affan, who was caliph at the time, taking an afternoon nap in the mosque. And when he arose, one could see the marks left by the gravel on his side." He also said, "I once saw 'Uthman ibn 'Affan sleeping alone in the mosque with a blanket wrapped around him, even though he was the Commander of the Faithful."⁶

One could cite many more examples of this phenomenon from the

lives of the Prophet and his successors, the caliphs. However, my purpose here is simply to remind my readers of the nature of this phase of history and to evoke a sense of the atmosphere that prevailed at that time and the characteristics of its leading figures as we discuss their experience with consultation.

The practice of consultation during this period was both intensive and comprehensive. As such, it encompassed both weighty matters and trivial ones, from issues of peace and war affecting the Muslim community and state, to the caliphate and public legislation, to situations faced by individuals in relation to marriage, divorce, inheritance, and disputes over wells, palm trees and she-camels. However, the most significant thing about these intensive consultations is that they accomplished their fundamental purpose in an ideal manner, and once this had been achieved, very little attention was given to anything else. We might sum up the nature of their deliberations in the phrase, "consultation governed by purposes, not by formalities." They were not unduly concerned about who had been consulted and who had not, nor about who had been present for the discussion and who had been absent so long as those who had been present were worthy to be consulted, no harm had come from the absence of those who had not been present, and no conscious effort had been made to exclude them.

Similarly, they were not unduly concerned about the numbers of those who were consulted about a given issue so long as those consulted were able to represent those who had been absent by giving truthful expression to their views and seeking to convey their interests as accurately as possible. Nor did they pay significant attention to the numbers of those who supported or opposed this or that point of view so long as the overall trend in favor of this or that viewpoint was clearly discernible, or a consensus had been reached based on a spirit of tolerance and give and take. If one of them disagreed with the rest of the group, after which they could see truth in what he was saying and that he was offering a cogent, well-founded argument, they would have no hesitation about placing their trust in his knowledge, experience and good judgment. In this manner, a single person's opinion might turn into a consensus, or a near-consensus.

Consultations took place in an atmosphere of freedom, safety and confidence. No one showed favoritism toward anyone else, no one sought to deceive anyone else, no one feared anyone else, and no one sought gain at anyone else's expense. Given such an atmosphere, the early Islamic consultative process required neither meticulous rules and regulations, nor guarantees and precautions. When organizational complexity is unnecessary, it becomes a burden and a hindrance, or, at the very least, it may be more trouble than it is worth. In the context of the early Islamic experience, consultation was thus "light" in terms of organization and procedure. However, it was laden with seriousness of purpose and moral gravity.

We have examined several examples of consultation from the life of the Prophet, who had no need of anyone's testimony or vote of confidence, nor did he have any need to justify or defend his reliance on this practice, since it is his example that serves as a model and standard for others, and not vice-versa. Hence, I shall turn now to examples of consultation as it was practiced by his Companions, particularly the rightly guided caliphs, by means of which I hope to further elucidate the features to which I have alluded.

1 – The pledge of allegiance to Abu Bakr

I shall begin with the major consultation that took place in preparation for choosing a successor to the Messenger of God. We read in *Sahih al-Bukhari* that a man once came to 'Umar ibn al-Khattab during the pilgrimage season and said, "O Commander of the Faithful, what would you think of someone who said, 'If 'Umar were to die, I would pledge allegiance to so-and-so, for God is my witness that the pledge of allegiance to Abu Bakr was a mistake!'"

Angered, 'Umar said, "God willing, I will address the community this evening and warn them against people who want to manage the community's affairs by force!"

However, 'Abd al-Rahman ibn 'Awf persuaded 'Umar that the pilgrimage season was not a suitable time in which to raise such an issue, and that he ought to let the matter rest until he had returned to Madinah. Hence, when he had returned to Madinah, 'Umar addressed the people, saying:

“It has reached me that someone has said: ‘If ‘Umar should die, I would pledge allegiance to so-and-so.’ Let no one be beguiled into saying that the election of Abu Bakr was but a sudden lapse, which soon came to an end. Undoubtedly, it was like that but Allah removed its evil impact. There is none among you who could be considered on a par with Abu Bakr. He, who pledges allegiance to someone without consultation with the people, risks himself as well as the person he elects, to be killed. After the Prophet’s death we were informed that the Supporters (*al-Ansar*) remained behind and assembled altogether in the hut of Banu Sa‘idah; and ‘Ali, al-Zubayr and their confidants also remained away from us. The emigrants (*al-Muhajirun*), then, gathered around Abu Bakr. I said to Abu Bakr: ‘let us go to our brethren from the Supporters.’ We went to them. When we were close to them, we met two pious persons of theirs who informed us about the consensus [of the Supporters] over the selection of the leader. They asked us about our destination. When we told them that we wanted to see our brethren from the Supporters, the two advised: ‘Do not go to them. Carry out whatever we have already decided.’ I said: ‘By God, we shall certainly approach them.’ When we reached the hut of Banu Sa‘idah, we spotted a person covered sitting among them. I asked: ‘Who is this?’ They answered: ‘This is Sa‘d ibn ‘Ubadah.’ I, then, asked: ‘What is wrong with him?’ They said: ‘He is not well.’ No sooner had we sat down than their speaker stood and after due praise of Allah said: ‘We are the Supporters of Allah and the majority of the Muslim army. And, O Emigrants! You are only a small group; some people from your people came forward attempting to uproot us and prevent us from [our rightful accession to the Caliphate].’ When he stopped, I intended to speak – I had already prepared a speech that I liked with a view to delivering it before Abu Bakr, and I used to avoid provoking him. Abu Bakr advised me to wait a while, and I disliked to make him angry. So Abu Bakr himself gave a speech and he was gentler and more sober-minded than I was. By God, he never missed a sentence that I liked in my own prepared speech, but he said the like of it or better than it spontaneously. [He spoke more beautifully than what I had prepared in my speech]. He spoke: ‘Whatever good you have said about yourselves, you deserve that, but as for the [issue of Caliphate], it is recognized only for this particular group of the Quraysh. They are the noblest among Arabs with regard to lineage and residence. I have approved for you one of these two men. So give either of them the

oath of allegiance.’ He, then, took my hand as well as that of Abu ‘Ubaydah ibn al-Jarrah who was sitting among us. I found objectionable nothing of what he had said except that proposal. By God, I preferred to be executed without just reason to my leadership of the people among whom there was Abu Bakr. Someone from the Supporters, then, said: ‘There should be a leader from among us and a leader from among you [the Quraysh].’ Thereupon there erupted furor and noise. I isolated myself from the chaos and asked Abu Bakr to stretch his hand. He stretched it; I pledged my allegiance to him, as was done by the Emigrants, and the Supporters followed suit. We, then, pounced upon Sa‘d ibn ‘Ubadah. Someone said: ‘You killed Sa‘d ibn ‘Ubadah.’ I retorted: ‘It was his fate.’ [In his Friday sermon ‘Umar concluded:] ... By God, we did not find anything more appropriate than the election of Abu Bakr. We were afraid that if we left the place without election of the leader and they elected someone from among themselves, we would have to willingly or unwillingly agree to it or in case of opposition there would be chaos.⁷ So, he who pledges allegiance to someone without consultation of other Muslims will risk himself as well as the one to whom he pledged allegiance being killed.”⁸

What becomes clear from this and other accounts is that the consultation that occurred in the context of choosing a successor to the Prophet took place among both individuals and small groups. Similarly, it took place among the Supporters as well as among the Emigrants. All of them then came together in the portico of Banu Sa‘idah, where there was a major consultation and a general discussion between the Supporters and the Emigrants, which resulted ultimately in the pledge of allegiance to Abu Bakr. Moreover, despite the fact that these consultations were varied, decentralized, lengthy and heated, the pledge of allegiance to Abu Bakr was nevertheless viewed as a kind of error. ‘Umar himself, who had been the person to initiate this error, acknowledged it to have been a mistake. However, he explained why it had been an error, why it had been both acceptable and successful, and why it was something that should not be repeated.

The reason it could be described as a mistake was that it took place in a precipitous, unplanned manner and outside the bounds of a

tried-and-true system. This, in turn, was due to the critical circumstances in the context of which it took place, namely, the state of shock produced by the death of the Messenger of God in the absence of a defined arrangement for the choice of a successor. Still another reason for looking favorably on this “mistake” is that it was the first experience of this type in the history of Islam and the Muslim community. Nevertheless, it is plain to see that the choice of Abu Bakr was preceded by a great deal of candid, uncensored exchange and discussion.

Be that as it may, the most important reason for the acceptability and success of this “mistake” is that the caliph who was chosen as a result of it was of a moral and political stature that no one else could have claimed to rival. For not only was he eminently virtuous, but he exhibited moral and spiritual strengths that qualified him to act as the Prophet’s successor. Indeed, even some of the Supporters who would have preferred that the first caliph be one of them, and not one of the Emigrants, came forward without reservation to promise their support for Abu Bakr in particular once ‘Umar had initiated the process of pledging allegiance to him as the new caliph. Moreover, they were undoubtedly more comfortable with Abu Bakr and more unanimous in their support of him than they would have been toward any leader from among the Supporters.

Even so, the spontaneous manner in which Abu Bakr was chosen constituted, in ‘Umar’s view, an exceptional case which, although it ended successfully, was nevertheless not something to be repeated or to be viewed as a model for emulation. There never has been, and there never will be, another Muslim of Abu Bakr’s stature. Consequently, ‘Umar spoke unequivocally and decisively, saying:

Let no one be beguiled into saying that the election of Abu Bakr was but a sudden lapse, which soon came to an end. Undoubtedly, it was like that but Allah removed its evil impact. There is none among you who could be considered on a par with Abu Bakr. He, who pledges allegiance to someone without consultation with the people, risks himself as well as the person he elects, to be killed.

The reason ‘Umar uttered these words is that those who consider treating this mistake as a rule to be adhered to actually want to destroy

the Muslim community and to cancel out the role of “those who release and bind” within its collective life. For in so doing, they nullify the right and obligation to seek out others’ counsel and to be sought out for counsel. This is why, when he learned that someone had described the pledge of allegiance to Abu Bakr as a mistake on the basis of which consultation would no longer be needed, ‘Umar responded immediately and forcefully, saying, “God willing, I will address the community this evening and warn them against people who want to manage the community’s affairs by force!” This warning alludes to the danger that those who pledge allegiance to someone in error, as well as those who accept such a mistaken pledge, will meet their end at others’ hands. Hence, his words contain the most eloquent and serious possible warning.

However, some jurists and scholastic theologians, having chosen to remain blithely unaware of ‘Umar’s stern words of warning, continue to cling to this mistake, taking it as a rule of conduct in public affairs by saying that a caliph may be chosen based on a pledge of allegiance from four, three or two people, or even a single person. Imam al-Juwayni presents the various stances that have been taken on this issue, including the positions advocated by al-Ash‘ari and al-Baqillani, according to which “political and spiritual leadership (*al-imamah*) is confirmed by virtue of a pledge of allegiance from a single man from among ‘those who release and bind’ (*ahl al-hall wa al-‘aqq*).”⁹ Al-Juwayni then concludes by saying that “as I see it, a pledge of allegiance should involve a number of followers, supporters and disciples through whom a visible, indomitable force is constituted.”¹⁰ This is precisely what is stipulated by Ibn Taymiyyah when he states that:

According to some scholastic theologians, the position of the caliphate (or that of any comparable spiritual and political leader) is confirmed through a pledge of allegiance by four individuals. Others hold that it is confirmed through a pledge of allegiance by two individuals, and still others, through a pledge of allegiance by only one individual. However, these are not the positions held by the Sunni imams,¹¹ who hold that the caliphate or any other position of spiritual and political leadership is confirmed through the agreement of the powerful members of a society by virtue of whose obedience the purpose of the caliphate is fulfilled.¹²

According to al-Juwayni, 'Umar's pledge of allegiance to Abu Bakr would not have been valid, binding or effective had it not been for the fact that "when he pledged his allegiance [to Abu Bakr], others present felt moved to follow suit."¹³ If, on the other hand, 'Umar's pledge of allegiance to Abu Bakr had been met with widespread opposition, it could not be said that the caliphate is confirmed through a pledge of allegiance by a single man.¹⁴

Moreover, were we to adopt the position that the caliphate is confirmed through a pledge of allegiance by a single man and that this pledge is automatically binding for the entire Muslim community, we would be giving a single person the right to set a ruler over the Muslim community without seeking their counsel or receiving any authorization from them. Indeed, the Messenger of God himself declared, "If I were to install someone in power [over the Muslim community] without first seeking others' counsel, I would install Ibn Umm 'Abd."¹⁵

Hence, the Messenger of God himself did not give himself the right to place anyone in authority over the Muslim community without consulting them first. Indeed, God said of him, "Indeed, there has come unto you an Apostle from among yourselves; heavily weighs upon him [the thought] that you might suffer [in the life to come]; full of concern for you is he, and full of compassion and mercy towards the believers,"¹⁶ and, "The Prophet has a higher claim on the believers than [they have on] themselves."¹⁷ How, then, could he possibly have given this right to someone else?

2 – The appointment of 'Umar as Abu Bakr's successor

When Abu Bakr had become gravely ill, he commenced consultations concerning who might succeed him in the event of his death. He summoned 'Abd al-Rahman ibn 'Awf and said, "Tell me about 'Umar ibn al-Khattab." 'Abd al-Rahman replied, "Any matter about which you ask me, you are more knowledgeable about it than I am." "Nevertheless, I am asking you," said Abu Bakr. 'Abd al-Rahman replied, "He is most surely better than even you think him to be."

He then summoned 'Uthman ibn 'Affan and said, "Tell me about 'Umar." "You, of all of us, know the most about him," 'Uthman replied. "Nevertheless, I am asking you," Abu Bakr insisted. 'Uthman

said, "What I know of him is that what he conceals is even better than what he reveals, and that there is no one among us who can compare to him."

Abu Bakr also consulted with Sa'īd ibn Zayd, Usayd ibn al-Hudayr, and other Emigrants and Supporters. Usayd said, "I know he would be the best to come after you. It pleases him to see others content, and it angers him to see others unhappy. What he conceals is better than what he reveals, and no one more capable than he could possibly assume the caliphate."¹⁸

The most significant thing to note in connection with these consultations and testimonies is that they are free of any sort of dissimulation, partiality, tendentiousness or fear. For these men knew nothing of such failings. Consequently, when some of the Companions who felt they had reason to object to 'Umar's appointment as caliph heard of Abu Bakr's nomination of him, they wasted no time in coming to see Abu Bakr, saying, "Given what we know of 'Umar's severity, how will you answer your Lord if He asks you why you appointed him over us?" In response to those who voiced such reservations as well as to others who shared them, Abu Bakr would say, "Are you trying to frighten me? Verily, the person I have appointed as my successor is the best among your people. And you can tell others what I have said."¹⁹

Ibn 'Asakir narrates an account on the authority of Yasar ibn Hamzah, who said:

When Abu Bakr's health was failing and he had to oversee the people through a small window, he said, "O people, I have entered into a covenant. Does it meet with your approval?" The people replied, "Yes, it does, O Caliph of the Messenger of God." Then 'Ali rose and said, "We will only agree to it if the person you have appointed is 'Umar." Abu Bakr replied, "It is 'Umar indeed."²⁰

Here also we find consultation taking its course in all honesty and spontaneity, and in an atmosphere of candor and simplicity devoid of doubts, suspicions and accusations. Abu Bakr appointed 'Umar as his successor. In the process, however, he consulted the most prominent Emigrants and Supporters, after which he presented the matter to as many as he could within the general Muslim community. As a result,

he was able to ascertain with certainty that 'Umar would assume his post as the Muslims' spiritual and political leader with their consent and approval, and with a clear conviction on their part that no one else might have been a better choice. Consequently, their confidence in 'Umar and in those who had nominated him to them was unbounded. Moreover, in light of such considerations, it no longer matters greatly how many people were consulted, how they were consulted, and whether there was anyone else who should have been consulted.

3 – The pledge of allegiance to 'Uthman

After 'Umar had been stabbed²¹ and it had become apparent that he did not have long to live, people began coming to see him, requesting that he draw up a will and testament and appoint a successor as Abu Bakr had done. In response, 'Umar stated, "For this task I know of no one more qualified than the men who enjoyed the Messenger of God's favor at the time of his death." He then named 'Ali ibn Abi Talib, 'Uthman ibn 'Affan, Zubayr ibn al-'Awwam, Talhah ibn 'Ubayd Allah, Sa'd ibn Abi Waqqas, and 'Abd al-Rahman ibn 'Awf, saying, "Let my son 'Abd Allah be a witness to the proceedings, though he himself should not be nominated."²²

These noble leaders met together and began to take counsel among themselves, whereupon 'Abd al-Rahman ibn 'Awf said to them, "I do not wish to vie with you for this position [i.e., the caliphate]. If you wish, however, I will choose someone from amongst yourselves for you." The others agreed to his proposal and assigned him the task of nominating a successor to 'Umar. Seeing that 'Abd al-Rahman had been appointed to this task, people began coming to him and taking counsel with him for several nights in a row. Finally, on the eve of the day on which a pledge of allegiance was extended to 'Uthman, al-Miswar said:

'Abd al-Rahman came knocking at my door late at night. He kept knocking until I had wakened, then said, "So, I see you are asleep! I myself have hardly slept a wink these past three nights. Go out, now, and call Zubayr and Sa'd."

So I called them for him and he consulted with them. Then he called to me and said, "Summon 'Ali for me," which I did, and he held a private

conversation with him until midnight. Then ‘Ali rose and departed, hoping he himself might be caliph. And in fact, ‘Abd al-Rahman had feared some opposition from ‘Ali.²³

Then he said, “Call ‘Uthman for me.” So I called him, and the two of them sat having a private conversation until they were obliged to part when the muezzin issued the call to the dawn prayer. After he had led the people in the dawn prayer and these men had gathered at the pulpit, he sent for all of the Emigrants and Supporters who were present, and for the military commanders. (They had performed this pilgrimage with ‘Umar.) When they had all gathered, ‘Abd al-Rahman said, “I bear witness that there is no god but God and that Muhammad is the Messenger of God. And now, on to the subject at hand: ‘Ali, I have discussed the matter of the caliphate with the people, and they consider no one to be equal to ‘Uthman. Therefore, do nothing that would give others cause to blame you.”

He then turned to ‘Uthman and said, “I hereby pledge you my allegiance in keeping with the way of life we have received from God, His Messenger, and the two caliphs who have succeeded him in leadership.”

In this way ‘Abd al-Rahman pledged his allegiance to ‘Uthman, who also received pledges of allegiance from the people, including the Emigrants, the Supporters, the military commanders, and the Muslim community at large.²⁴

An account passed down on the authority of al-Zuhri tells us that “people came to ‘Abd al-Rahman during those nights, counseling with him and confiding in him. And no one with whom he thus met in private preferred anyone over ‘Uthman.”²⁵

Ibn Kathir relates that ‘Abd al-Rahman ibn ‘Awf:

...then arose and proceeded to take counsel with people concerning ‘Ali and ‘Uthman. Working steadily over a period of three days and nights, he combined the Muslim community’s opinions with those expressed by their notables and leaders. Sometimes he would meet with many people gathered in one place and at others, with individuals scattered here and there; he would meet with them alone, in pairs, and in groups, privately and publicly. He even managed to solicit the views of women who were secluded in their private quarters, of young boys in Qur’an schools, and of

parties of riders and desert Arabs who had come to Madinah from the outlying desert areas. In the course of his consultations, he found no one who preferred ʿAli over ʿUthman ibn ʿAffan with the exception of ʿAmmar and al-Miqdad, who were reported to support ʿAli ibn Abi Talib, but who eventually took the pledge of allegiance with everyone else.²⁶

I do not wish to engage in a lengthy commentary on this unique instance of consultative practice. However, I would like to draw attention to a number of salient points: (1) ʿUmar's decision to appoint the six men whom he assigned to undertake the task of finding him a successor was based on a foundation that was at once unassailable and unrepeatable, since the criterion for his choice was the Messenger of God's personal stamp of approval on these six men in particular. (2) In addition to enjoying the Prophet's endorsement, these men were also leaders and chieftains who enjoyed the favor of the Muslim community as a whole. Ibn Battal observes that "[ʿUmar] knew that the Muslim community would support whoever was endorsed by these six men. After all, the community as a whole submitted to them as their spiritual and political leaders."²⁷ And as al-Tabari tells us, "There was not a single Muslim in those days who enjoyed their standing. For they were unrivaled as men of piety, seniority in the faith, virtue, learning, and political leadership who had emigrated with the Messenger of God."²⁸ (3) Yet in spite of all this, ʿAbd al-Rahman ibn ʿAwf engaged in such thorough consultations with the members of the community that he could be said to have conducted a popular referendum on the question of who should succeed ʿUmar. Moreover, it is clear that people had absolute confidence in him and in the results of his inquiry.

4 – Consultation over conquered lands

The question of how to dispose of conquered territories is a juristic issue with political, military and economic dimensions. Moreover, it was a subject of dispute among the Companions, including ʿUmar ibn al-Khattab in his capacity as caliph. Some held that lands that had been conquered should be divided among the victorious combatants as would any other type of booty, while others held that they should not be divided, that combatants should have no share in them, and that the only spoils that should be divided were movable goods.

Abu ‘Ubayd narrates with his own chain of transmission that, referring to the villages that ‘Umar ibn al-Khattab had conquered by force, Bilal once said to him, “Divide them among us, and take one-fifth for yourself.” ‘Umar replied, saying, “No. This practice applies to other types of wealth, but not to lands. Rather, I will set them aside as a religious endowment, and their produce shall be distributed among their inhabitants and the Muslims.”²⁹

When ‘Umar, the fighters and their representatives were unable to reach a solution that everyone could agree upon, he opened the matter up for discussion with trusted advisors. He first consulted with the senior Emigrants, most of whom supported his position. However, ‘Abd al-Rahman ibn ‘Awf supported the demands of the conquering fighters. ‘Umar then brought the issue before the senior Companions who were also among the Supporters, and they agreed unanimously with ‘Umar’s position.

Abu Yusuf states:

As for ‘Abd al-Rahman ibn ‘Awf, he believed that what the fighters had obtained through combat should be divided among them, whereas ‘Uthman, ‘Ali, Talhah, and ‘Umar’s son agreed with ‘Umar. Hence, ‘Umar sent to ten of the Supporters who were elders and chieftains, five of them from the Aws tribe, and five from the tribe of Khazraj. When they had gathered, he uttered praise to God, then said, “I have called upon you in order for you to take part in the trust I have been given with respect to those affairs of yours for which I am responsible. For I am simply one of you. Today you are acknowledging the truth regardless of who agrees with me and who disagrees with me. I do not want you to go along with something which is nothing but my personal whim. Moreover, you have a Book from God which speaks the truth. And I swear by God that if I have uttered a command, I want it to be obeyed only insofar as it is the means to achieving what is right and just.”

Those present said, “Speak, for we are listening, O Commander of the Faithful.”

‘Umar went on, “You have heard the views of the people who claim that I am depriving them of their rights, and that I – God forbid! – am treating them unjustly. If I have deprived them of something that is theirs and given it to someone to whom it does not belong, I shall be consigned

to misery. However, I have seen that there is no land left to conquer after that of Chosroes. God has given us their wealth, their lands, and their non-Muslim inhabitants as booty. I have divided what they won as booty among those who took part in the fighting, and I have set aside the one-fifth designated for the Islamic state, which I am in the process of distributing in the most appropriate manner. I think it best to set aside the lands, with their non-Muslim inhabitants, as a religious endowment and to impose both a land tax (*kharaj*) and a head tax (*jizyah*) upon them. These taxes will serve as a kind of war booty gained without combat for the benefit of the Muslim community, including the former combatants and their children, and those who come after them. Have you seen these frontiers? They need men to protect them. Have you seen these great cities, such as Damascus, al-Jazirah, Kufa, Basra, and Cairo? They need to be filled with armies and to be generously funded. So where will these obtain the resources they need if the lands and their non-Muslim inhabitants are divided?"

In reply, the people said, "You are right, and well have you spoken. If these frontiers are not guarded, if these cities are not manned, and if they are not supplied with what they need to remain strong, people of unbelief will return to their cities."³⁰

It is clear from the foregoing that 'Umar was not alone in his assessment of this issue as some have suggested. Rather, he was supported in his opinion by the majority of the learned, knowledgeable Companions. It might be argued that he was committed to his point of view before he sought others' counsel and received their support. However, if he had been determined not to change his point of view and to act on it unilaterally, he would not have opened the issue up for discussion in the first place.

In fact, there is reason to believe that 'Umar himself had wanted to divide up the conquered territories, and that some of the Companions whose counsel he sought had opposed this stance, urging him to leave the lands in the hands of their original owners. Abu 'Ubayd relates with his own chain of transmission on the authority of Harithah ibn Madrab, on the authority of 'Umar, that 'Umar had wanted to divide the arable land among the entire Muslim community. He consulted others about this matter and was told by 'Ali ibn Abi Talib, "Let them

[the lands' non-Muslim inhabitants] be a source of income for the Muslims." And thus he did.

It has also been related that when 'Umar came to al-Jabiyah (in Syria), he wanted to divide the land among the Muslims. However, Mu'adh ibn Jabal said to him, "If you do this, be assured that it will bring consequences you would rather avoid. If you divide the land, the greater part of its yields will be in the hands of the people, after which they will die. They will then go to a single man or a single woman. After this, they may be succeeded by people who supplant Islam altogether, at which point they [the Muslims] will have nothing for themselves. Therefore, strive for an arrangement that will serve their best interests not only now, but in the future." In response, 'Umar adopted Mu'adh's advice.³¹

Abu 'Ubayd then concludes, saying, "In other words, he ['Umar] set the arable land aside as a religious endowment for the Muslim community which would benefit them from one generation to the next. He did not take one-fifth for the Islamic state, nor did he divide it. In so doing, he acted on the advice he had received from 'Ali ibn Abi Talib and Mu'adh ibn Jabal."³²

The Early Muslim Experiment in Consultation: A Summation

The following is a brief summation of the features that marked the early Muslim community's practice of consultation during the days of the Prophet and the rightly guided caliphs, as well as the lessons that we stand to glean from this practice.

This early period and its consultative practice were characterized by the following elements: (1) A marked willingness to seek out others' counsel, (2) Complete freedom of thought, expression and initiative, (3) Truthfulness, candor, fairness, and trust, and (4) Organizational simplicity and flexibility in keeping with the nature of existing relationships which, based on openness, truthfulness and clarity, helped serve to achieve the essential purposes of consultation.

[SECTION II]

HISTORICAL DEVELOPMENTS IN CONSULTATIVE PRACTICE

The transition from the era of the rightly guided caliphs – itself an extension of the prophetic era – to the Umayyad era, or from the rightly guided caliphate to the Umayyad state, involved a profound shift in the Muslim community's political situation. For although the Muslim conquests continued apace in the various areas of doctrine, culture, politics, knowledge and the military, the political shift from a prudent caliphate founded on the wisdom of seeking out others' counsel to a dictatorial caliphate founded on hereditary succession inflicted a deep wound that would be a long time in healing.

One of the primary victims of this shift – which first struck at the head of the Islamic state, then worked its way through the body of the Islamic community as a whole – was the practice of consultation which, having been established and approved by the Qur'an, had become a way of life for both the Prophet and the rightly guided caliphs after him. During this later period of Islamic history, consultation was, for the most part, the last thing anyone would turn to or rely on in his management of affairs. Whoever examines Islamic political history, jurisprudence, scholastic theology, works on legal policy, and legal rulings relating to governance will find that consultation hardly receives any attention whatsoever, and that its functions, if they are recognized at all, are relegated to a secondary status.

In the introduction to his book entitled *Siraj al-Muluk* ("The Lamp of Kings"), the illustrious scholar Abu Bakr al-Tartushi tells us that it is meant to be a book "through the study of which the wise man can dispense with the company of other wise men, and the king can dispense with ministers' counsel."³³ Hence, consultation had become something that a king could dispense with by simply reading a book! It was as though consultation were nothing but a lesson to be read or memorized rather than being, as it is in fact, a way of life and a source of practical wisdom to be gleaned from every issue that faces a ruler in his realm, and every government official in the course of carrying out his or her duties and tasks.

This, then, is the pathetic state in which consultation had come to find itself even among scholars and thinkers. This was not, it should be

noted, al-Tartushi's doing. Rather, it was the outcome of a particular historical trajectory and climate.

As for political practice in its new guise, it could no longer tolerate the thought of being bound by consultation since, as a matter of course, commitment to consultation would impose limits on political freedom. In fact, it could reverse the entire process that had been set in motion by the leader concerned, which was no longer viewed as an acceptable option. As for those caliphs and other rulers who adhered to the practice of consultation and allowed themselves to be guided by it, they generally did so due to their own personal integrity, good sense and piety. An example of such a leader was 'Umar ibn 'Abd al-'Aziz (d. 720 CE), who is considered to have been one of the rightly guided caliphs due to the similarity between his manner of life and that of the first four caliphs of Islam. The following is an example of his prudent consultative policy as related by Imam al-Tabari in his *History*:

When 'Umar ibn 'Abd al-'Aziz came to Madinah, he stayed in the home of Marwan, where people came to greet him. After he had performed the noon prayer, he summoned ten of the city's leading jurists: 'Urwah ibn al-Zubayr, 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah, Abu Bakr ibn 'Abd al-Rahman, Abu Bakr ibn Sulayman ibn Abi Hatmah, Sulayman ibn Yasar, al-Qasim ibn Muhammad, Salim ibn 'Abd Allah ibn 'Amr, 'Abd Allah ibn 'Abd Allah ibn 'Amru, 'Abd Allah ibn 'Amir ibn Rabi'ah, and Kharijah ibn Zayd. After the men had come in and seated themselves, 'Umar uttered praises to God, then said, "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. Hence, if you should see anyone violating someone else's rights, or if you should hear that anyone working for me is committing injustice, then I adjure you by God to inform me of the matter." They then departed, calling down God's blessings upon him.³⁴

These words spoken by 'Umar ibn 'Abd al-'Aziz assign the task of providing counsel to these jurists in three areas: (1) engaging in independent reasoning and taking part in decision-making ("I do not want to decide any matter without your agreement"), (2) keeping a close

watch on society and any injustices or violations that might occur, and (3) keeping government employees under surveillance and reporting any wrongdoing.

Another of these exceptional cases is the consultative practice engaged in by the rulers of the Muravid State (*dawlat al-murabitin*) which ruled Morocco, Andalusia and West Africa from the second half of the fifth century AH/eleventh century CE through the early part of the sixth century AH/twelfth century CE. This great state was known as “the jurist state” because of the critical role played by jurists in its rise and ongoing administration, and the way in which allegiance was pledged to its leaders. In order for allegiance to be pledged to a new ruler – who bore the title “Commander of the Muslims” – he was required to commit himself to seeking counsel from the state’s leaders in all his affairs and to comply with jurists’ instructions and advice in both the political and religious realms.³⁵

Describing jurists’ influence on the Muravid state, Moroccan historian ‘Abd al-Wahid al-Marakishi tells us that Muravid ruler ‘Ali ibn Yusuf, who was known as “the godfearing,” “would make no decision concerning any matter in his entire kingdom without first consulting the jurists.”³⁶ Of all the Islamic states down the ages, the *Murabitin* state was one of the most committed to carrying out the teachings of Islamic law and engaging in the practice of consultation. It was the Muravid state which nurtured the thought of ‘Abd al-Haqq ibn ‘Atiyyah, who was quoted earlier as saying that any judge who “fails to consult those possessed of knowledge and piety must be dismissed.”³⁷

Unfortunately, however, examples such as these have continued to be notable exceptions out of the hundreds of leaders and monarchs who have ruled Islamic regions and nations down the centuries. Moreover, even when the term *ahl al-hall wa al-‘aqd*, or, “those who release and bind” came into use among Islamic thinkers with all it implies by way of power to settle, determine, ratify and annul – all the functions that pertain to a high-level decision-making body – the manner in which such a consultative body was to be formed and the powers with which it was to be invested nevertheless remained unclear and inconsistent due to theoretical differences among scholars and rulers’ mood-driven, autocratic practices.

Add to this the fact that the scholars who spoke about “those who release and bind” largely relegated these advisors’ function to that of choosing the imam, or political-spiritual leader. As for the manner in which the imam was to conduct his leadership – the way he led others in prayer, the way he governed, and the way the individuals who had entrusted him with authority continued to work with him: acting as his partners, censors and guides, sometimes agreeing with him and other times disagreeing, issuing commands and prohibitions – the matter received nothing but the most cursory treatment, and this despite the fact that the aforementioned functions are required by the lofty title of “those who release and bind.”

Organizational Progress and Consultative Decline in the Islamic State

Following the consolidation and expansion of the Islamic state during the era of the rightly guided caliphs, it witnessed a steady process of evolution in virtually all of its structures, systems, and methods of operation. Developments sometimes took place through borrowing and replication of the experiences of other nations, and at other times through creative innovation based on Islamic sources and principles. In this way, the Islamic state acquired a number of new or improved organizational structures in the political, financial, administrative, military, educational, judicial and social spheres.

However, it was not only the expansion of the state’s powers and responsibilities that required such organizational developments. In addition, the quantitative and qualitative transformations being undergone by Islamic societies (or the Islamic nation) likewise called for the development of mechanisms for assimilation, regulation, preservation of unity and cohesion, and coping with the many difficulties and challenges that had resulted from such societal changes. The Islamic state and community had gone from a life marked by simplicity, spontaneity, solidarity, brotherly goodwill, and self-control on the individual, social and moral planes to a new life which, while it could not dispense with what had gone before, nevertheless needed to go beyond it. It was a life that required that affairs be organized and regulated by means of legislation, institutions, guarantees and precautionary measures for the benefit of both rulers and the ruled.

Islamic states and societies developed a number of systems or plans in various areas, which in turn witnessed numerous developments and exhibited a variety of organizational patterns from one era to the next, from one region to the next, and from one state to the next. Such plans included the judiciary plan, the *hisbah* plan, the justice plan, and the fatwa plan, as well as comprehensive systems of education and religious endowments.³⁸ Al-Wansharisi gives us a brief overview of some of the plans that were in effect in Andalusia. According to a later thinker of Cordova, these included the judicial plan, the most refined forms of which were the group judiciary (*qada' al-jama'ah*), the greater police (*al-shurtah al-kubra*), the intermediate police (*al-shurtah al-wusta*), the lesser police (*al-shurtah al-sughra*), assessor of injustices (*sahib al-mazalim*), and chief of referral (*sahib radd*). This latter figure was on the order of a police chief, and was so called due to the cases that were referred to him for a verdict. Still others included city master (*sahib madinah*) and market master (*sahib suq*). In sum, the areas covered by these plans were the judiciary, law enforcement, human rights surveillance, judicial referral, and the market.³⁹

My purpose in mentioning these various plans is to draw attention to the fact that at a time when Islamic states and societies were devising and refining the systems and arrangements required to meet their spiritual and material needs, consultation had not taken the form of any plan or system. In fact, it had not been subjected to any clear, defined organization whatsoever. The advanced level of consultation that had been established by the Prophet and the rightly guided caliphs should have been maintained, however. In addition, efforts should have been expended to make the transition from the simple, unplanned, flexible form of consultation that had characterized the early days of Islam to the detailed, regulated and highly organized practice that would have best suited both life's steady evolution and the legal functions and arrangements that had been devised and developed by the Muslim community. However, what happened to consultation did not, generally speaking, entail any sort of progression. In other words, consultative practice did not advance in the way required by the Muslim community's new circumstances or preserve the gains it had achieved in its initial stages.

Even the process of choosing the Muslim community's political-spiritual leader – discussions of which had once been inseparable from discussions of consultation, and around which jurists' and scholastic theologians' rulings and debates over consultation had come to focus almost entirely – had now been divorced entirely from the realm of consultation on both the theoretic and practical levels. As we saw earlier, some prominent scholastic theologians went so far as to say that someone could be confirmed as the new caliph through a pledge of allegiance by only one or two of the individuals deemed qualified to choose the new leader, that is, of "those who release and bind." But in such a situation, what remains of consultation? And what sort of "releasing" and "binding" is being done by "those who release and bind"?

This, then, had become the status of consultation among scholars and theorists. As for its status on the practical level, the choice and appointment of a successor to the caliph had become a purely personal matter. The caliphate was something the current caliph could bequeath to whomever he wished, just as someone might bequeath part of his wealth to relatives of his choice. Under Islamic law, one is allowed to set aside only one-third of one's wealth to specific individuals; nevertheless, one-third is a generous proportion. In this situation, however, one had people bequeathing the caliphate and disposing of the entire Islamic nation, with its fortunes and its future, without limit or constraint. One could bequeath the caliphate to one's sons, to one's father, to one's brothers, and to whoever else one chose. In fact, it would sometimes be handed down to two or three people simultaneously. Hence, as if it were not enough for the individual in power to usurp the rights of his contemporaries and successors, the usurpation could now afflict untold generations to come.

In fact, things reached the point where the title of caliph was being bestowed upon young boys and infants. Given this type of absurdity, it would have behooved Muslim scholars to specify, explicitly and collectively, that the person installed as caliph had, at the very least, to have reached puberty. If some of them had stipulated a somewhat higher age, this would have been a prudent and welcome measure. An interesting and instructive event of relevance here is the composition of a work entitled, *Aḥmal al-Aḥlam fi man Buyi'a qabl al-Ihtilam min*

Muluk al-Islam wa ma Yata'allaqu bi dhalika min al-Kalam, which deals with the subject of pledging allegiance to individuals as Muslim rulers before they had reached the age of puberty.⁴⁰ The work's author, Lisan al-Din ibn al-Khatib, mentions that as of his day, the number of those to whom allegiance had been pledged as caliphs or kings before they reached puberty came to no fewer than forty-eight!

Oddly, Ibn al-Khatib did not compose his work in order to criticize this phenomenon or to expose its illegitimacy. On the contrary, he wrote it in defense of the practice. At the same time, however, he acknowledged that the issue had aroused a great deal of controversy. He tells us that "decisive arguments and brilliant proofs have been replaced by the edge of the sword."⁴¹ In other words, the verdict on the issue was being determined not by Islamic law, but by force of arms. Perhaps it was this that led him to justify the act of pledging allegiance to minors with the words, "We are obliged to submit to certain things out of allegiance to...many of those who hold positions of influence in Islam. Nor are such practices innovations of our own time. Hence, if they are correct in their interpretation...we are content to adhere to their view. Similarly, if they have erred with their many and varied jurists and scholars, we are content to share in their error."⁴²

We thus find that in all but certain exceptional cases, consultation had ceased to be practiced in any genuine, systematic way on the political plane. Instead, accession to power took place either on the basis of hereditary succession plain and simple, or through conquest and usurpation. As for the way in which governmental affairs were run, it was in the hands of the ruler alone, whose personal needs, interests and moods determined all. This has been the most widespread form of political rule.

The Judicial Exception

Perhaps the best, most lasting, and most highly developed application of consultation in Islamic history is to be found in the Islamic judicial system. The precedent of taking counsel with others in relation to judicial matters finds its roots in the practice of the rightly guided caliphs, particularly 'Umar and 'Uthman. According to the Judge Abu

Mutarraf al-Sha‘bi, a judge must not proceed independently in arriving at a ruling on a case. Rather, he is to adhere to the precedents set by just judges and rulers who have gone before him. We know that the Prophet’s Companions consulted with others concerning the rulings they were called upon to issue despite the fact that they themselves were men of unrivaled piety and virtue. ‘Uthman ibn ‘Affan was once presented with a case in which someone had brought a complaint against a woman who was descended from the Hashemite line, that is, the family of the Prophet. In reaching his verdict, ‘Uthman sought counsel from ‘Ali ibn Abi Talib, whose opinion was that ‘Uthman should rule in favor of the woman’s opponent. When the Hashemite woman faulted ‘Uthman for ruling against her, he sent word to her, saying, “It was your paternal cousin who advised me to do so.”⁴³

Ibn Qudamah (537 AH/1187 CE) describes the way in which the rightly guided caliphs took counsel with others in the provinces in which they ruled. He quotes Ahmad ibn Hanbal as saying that “when Sa‘d ibn Ibrahim became governor of the province of Madinah, he would sit with al-Hakam and Hammad seeking their counsel. How good it would be if [other] rulers would do the same.”⁴⁴

This ancient form of judicial consultation took a highly systematized form, particularly in Andalusia and Morocco, where it had become an integral part of the court system. In this system, those sought out for counsel were appointed as advisors, having been chosen by the judge or ruler from the class of jurists who were qualified to issue legal decisions based on Islamic law. Muhammad Abd al-Wahhab Khallaf states:

This system was found nowhere in the Islamic world at that time but in Morocco and Andalusia. In Andalusia it completed the structure of the judiciary, and was viewed as a necessary, inseparable part thereof. Those appointed to serve [as advisors in this system] were chosen from among those jurists who were known to have well-founded opinions and a breadth of knowledge. They were appointed by the ruler or the caliph based on a nomination made by the group judge (*qadi al-jama‘ah*).⁴⁵

Khallaf quotes the author of *Akhbar al-Qudah* as saying that:

When ʿUthman ibn ʿAffan, the third of the rightly guided caliphs, sat down to issue a verdict in a legal case, he would summon four of the Prophet's Companions – namely, ʿAli, Talhah ibn ʿUbayd Allah, al-Zubayr, and ʿAbd al-Rahman – and consult with them. Whatever decision they supported, he would confirm. And he would say to the litigants, “It was these men who issued the verdict, not I.”⁴⁶

This consultative approach to the court system is one of the foundations of the notion of the communal judiciary (*al-qada' al-jama'i*). In addition, it is older than, and superior to, the jury system applied in the West. Allal al-Fasi states:

The Islamic judicial system in Andalusia and Morocco was distinguished by the use of advisors or muftis who would be called upon by the judge to assist him in discerning the truth in relation to the cases brought before him. This is superior to the jury system which has flourished in the British judicial system and which has been adopted by other European judiciaries.⁴⁷

Given this judicial exception in the realm of consultation, the Islamic judiciary over history has represented the best in Islamic life and Islamic practice in general, since it has continued to rely on a genuinely Islamic source of authority, and has succeeded to a large extent in maintaining its autonomy and evenhandedness.

If we add to this the fact that Muslim judges have always been among the most prominent and highly qualified scholars and jurists, what this tells us is that scholars and jurists have maintained their influence and role in Islamic society over the centuries. The reason for this is that Islamic history's successive states and political regimes have been unable to challenge the hold maintained by Islamic sources of authority on the legislative and cultural spheres. The primary concern of Muslim rulers has been to retain control over affairs on the political, military, and security fronts. As for the legislative, cultural, academic, scientific, educational and social spheres, they have remained subject to the undisputed control of Islamic authority.